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Title: A Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to the provision of unpaid military family leave

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Attachments: 1. Summary of Int. No. 996, 2. November 10, 2015 - Stated Meeting Agenda with Links to Files

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Int. No. 996

By Council Members Miller, Ulrich, Chin, Constantinides, Eugene, Gentile, Lancman, Rose and Cohen

A Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to the provision of unpaid military family leave

Be it enacted by the Council as follows:

Section 1. This local law shall be known as “The Family Military Leave Act.”

§ 2. Subdivision (e) of section 2203 of the New York city charter, as amended by local law number 46 for the year 2013, is hereby amended to read as follows:

(e) The commissioner shall have all powers as set forth in chapter 8 of title 20 of the administrative code relating to the receipt, investigation, and resolution of complaints thereunder regarding earned sick time, and the power to conduct investigations regarding violations of such chapter upon his or her own initiative. The commissioner shall have all powers as set forth in [chapter] chapters 8 and 9 of title 20 of the administrative code relating to the receipt, investigation, and resolution of complaints thereunder regarding earned sick time

and military family leave, and the power to conduct investigations regarding violations of such chapter upon his or her own initiative.

§ 3. Paragraph (1) of subdivision (h) of section 2203 of the New York city charter, as relettered by local law number 46 for the year 2013, is hereby amended to read as follows:

(h)(1) Notwithstanding any inconsistent provision of law, the department shall be authorized, upon due notice and hearing, to impose civil penalties for the violation of any laws or rules the enforcement of which is within the jurisdiction of the department pursuant to this charter, the administrative code or any other general, special or local law. The department shall have the power to render decisions and orders and to impose civil penalties for all such violations, and to order equitable relief for and payment of monetary damages in connection with enforcement of [chapter] chapters 8 and 9 of title 20 of the administrative code. Except to the extent that dollar limits are otherwise specifically provided, such civil penalties shall not exceed five hundred dollars for each violation. All proceedings authorized pursuant to this subdivision shall be conducted in accordance with rules promulgated by the commissioner. The remedies and penalties provided for in this subdivision shall be in addition to any other remedies or penalties provided for the enforcement of such provisions under any other law including, but not limited to, civil or criminal actions or proceedings.

§ 4. Title 20 of the administrative code of the city of New York is amended by adding a new chapter 10 to read as follows:

CHAPTER 10

MILITARY FAMILY LEAVE

§ 20-927 Definitions. As used in this chapter, the following terms have the following meanings:

Calendar year. The term “calendar year” means a consecutive twelve month period, as determined by an employer.

Child. The term “child” shall mean a biological, adopted or foster child, a legal ward, or a child of an employee standing in loco parentis.

Employee. The term “employee” means any “employee” as defined in section 190(2) of the labor law who is employed for hire within the city of New York for more than eighty hours in a calendar year who performs work on a full-time or part-time basis, including work performed in a transitional jobs program pursuant to section 336-f of the social services law, but not including those who are employed by (i) the United States government; (ii) the state of New York, including any office, department, independent agency, authority, institution, association, society or other body of the state including the legislature and the judiciary; or (iii) the city of New York or any local government, municipality or county or any entity governed by general municipal law section 92 or county law section 207.

Employer. The term “employer” means any “employer” as defined in section 190(3) of the labor law, but not including (i) the United States government; (ii) the state of New York, including any office, department, independent agency, authority, institution, association, society or other body of the state including the legislature and the judiciary; or (iii) the city of New York or any local government, municipality or county or any entity governed by general municipal law section 92 or county law section 207.

Period of military conflict. The term “period of military conflict” means a period of war declared by the United States Congress, declared by executive order of the president, or in which a member of a reserve component of the armed forces is ordered to active duty pursuant to either sections 12301 and 12302 of Title 10 of the United States Code or Title 32 of the United States Code.

Retaliation. The term “retaliation” means any threat, discipline, discharge, demotion, suspension, reduction in employee hours, or any other adverse employment action against any employee for exercising or attempting to exercise any right guaranteed under this chapter.

§ 20-931 Right of military families to take to unpaid time off. a. During a period of military conflict, an employee who is the spouse, domestic partner, parent, grandparent, sibling, child, or the child or parent of a member of the military’s spouse or domestic partner, of a member of the armed forces of the United States, national guard, or reserves who has been notified of an impending call or order to active duty or has been

deployed is entitled to a total of twenty days of unpaid leave per year, after the member of the military has been notified of an impending call or order to active duty and before deployment or when the member of the armed forces is on leave from deployment.

b. An employee who seeks to take leave under this chapter must provide the employer with notice within ten business days of receiving official notice of an impending call or order to active duty or of a leave from deployment, of the employee's intention to take leave under this chapter.

c. An employee who takes leave under this chapter is entitled on return from leave:

1. To be restored by the employer to the position of employment held by the employee when the leave commenced or be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment at the same workplace or a workplace within a reasonable distance of the employee's workplace when leave commenced; and

2. Maintain all employment benefits accrued before the date on which the leave commenced.

d. During any period of leave taken under this chapter, if the employee is not eligible for any employer contribution to medical or dental benefits under an applicable collective bargaining agreement or employer policy during any period of leave, an employer shall allow the employee to continue, at the employee's expense, medical or dental insurance coverage, including any spouse and dependent coverage, in accordance with state or federal law.

§ 20-934 **Retaliation and interference prohibited.** No employer shall engage in retaliation or threaten retaliation against an employee for exercising or attempting to exercise any right provided pursuant to this chapter, or interfere with any investigation, proceeding or hearing pursuant to this chapter. The protections of this chapter shall apply to any person who mistakenly but in good faith alleges a violation of this chapter. Rights under this chapter shall include, but not be limited to, the right to request and use unpaid military family leave, file a complaint for alleged violations of this chapter with the department, communicate with any person about any violation of this chapter, participate in any administrative or judicial action regarding an alleged

violation of this chapter, or inform any person of his or her potential rights under this chapter.

§ 20-935 **Notice of rights.** a. An employer shall provide any new employee at the commencement of employment or any existing employee within thirty days of the effective date of this local law, with written notice of such employee's right to military family leave pursuant to this chapter, including the right to be free from retaliation and to bring a complaint to the department. Such notice shall be in English and the primary language spoken by that employee, provided that the department has made available a translation of such notice in such language pursuant to subdivision b of this section. Instead of providing each employee with such notice, an employer may instead conspicuously post such notice at such employer's place of business in an area accessible to employees.

b. The department shall create and make available notices that contain the information required pursuant to subdivision a of this section and such notices shall allow for the employer to fill in applicable dates for such employer's calendar year. Such notices shall be posted in a downloadable format on the department's website in Chinese, English, French-Creole, Italian, Korean, Russian, Spanish and any other language deemed appropriate by the department.

c. Any person or entity that willfully violates the notice requirements of this section shall be subject to a civil penalty in an amount not to exceed fifty dollars for each employee who was not given appropriate notice pursuant to this section.

§ 20-936 **Employer records.** An employer shall retain records documenting such employer's compliance with the requirements of this chapter for a period of three years unless otherwise required pursuant to any other law, rule or regulation, and shall allow the department to access such records, with appropriate notice and at a mutually agreeable time of day, in furtherance of an investigation conducted pursuant to this chapter.

§ 20-937 **Other legal requirements.** a. This chapter provides minimum requirements pertaining to unpaid military family leave and shall not be construed to preempt, limit or otherwise affect the applicability of

any other law, regulation, rule, requirement, policy or standard that provides for more generous leave policies or otherwise extends protections to employees.

b. Nothing in this chapter shall be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation, nor shall anything in this chapter be construed to diminish or impair the rights of an employee or employer under any valid collective bargaining agreement.

§ 20-938 Enforcement and penalties. a. The department shall enforce the provisions of this chapter. In effectuating such enforcement, the department shall establish a system utilizing multiple means of communication to receive complaints regarding non-compliance with this chapter and investigate complaints received by the department in a timely manner.

b. Any person alleging a violation of this chapter shall have the right to file a complaint with the department within two years of the date the person knew or should have known of the alleged violation. The department shall maintain confidential the identity of any complainant unless disclosure of such complainant's identity is necessary for resolution of the investigation or otherwise required by law. The department shall, to the extent practicable, notify such complainant that the department will be disclosing his or her identity prior to such disclosure.

c. Upon receiving a complaint alleging a violation of this chapter, the department shall investigate such complaint and attempt to resolve it through mediation. The department shall keep complainants reasonably notified regarding the status of their complaint and any resultant investigation. If the department believes that a violation has occurred, it shall issue to the offending person or entity a notice of violation. The commissioner shall prescribe the form and wording of such notices of violation. The notice of violation shall be returnable to the administrative tribunal authorized to adjudicate violations of this chapter.

d. The department shall have the power to impose penalties provided for in this chapter and to grant an employee or former employee all appropriate relief. Such relief payable to an employee or former employee shall include:

1. for each instance of military family leave requested by an employee but unlawfully denied by the employer and not taken by the employee: five hundred dollars;

2. for each instance of unlawful retaliation not including discharge from employment: five hundred dollars and equitable relief as appropriate; and

3. for each instance of unlawful discharge from employment: full compensation including wages and benefits lost, a two thousand five hundred dollar penalty and equitable relief, including reinstatement, as appropriate.

e. Any entity or person found to be in violation of this chapter shall be liable for a civil penalty payable to the city not to exceed five hundred dollars for the first violation and, for subsequent violations that occur within two years of any previous violation, not to exceed seven hundred and fifty dollars for the second violation and not to exceed one thousand dollars for each succeeding violation.

§ 5. This local law shall take effect 120 days after its enactment and the commissioner shall take such measures as are necessary for its implementation, including the promulgation of rules, prior to such effective date.

MWC
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