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Title: A Local Law to amend the administrative code of the city of New York, in relation to the provision of sick time earned by employees

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Int. No. 1667

By Council Members Lander and Chin

A Local Law to amend the administrative code of the city of New York, in relation to the provision of sick time earned by employees

Be it enacted by the Council as follows:

Section 1. Section 20-924 of the administrative code of the city of New York, as added by local law 46 of 2013, is amended to read as follows:

§ 20-924 Enforcement,[and] penalties and private right of action. 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, including any organization, 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. Within thirty days of written notification of a complaint by the department, the person or entity identified in the complaint shall provide the department with a written response and such other information as the department may request. The department shall keep complainants reasonably notified regarding the status of their complaint and any resultant investigation. If, as a result of an investigation of a complaint or an investigation conducted upon its own initiative, 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 shall include: (i) for each instance of sick time taken by an employee but unlawfully not compensated by the employer: three times the wages that should have been paid under this chapter or two hundred fifty dollars, whichever is greater; (ii) for each instance of sick time requested by an employee but unlawfully denied by the employer and not taken by the employee or unlawfully conditioned upon searching for or finding a replacement worker, or for each instance an employer requires an employee to work additional hours without the mutual consent of such employer and employee in violation of section 20-915 of this chapter to make up for the original hours during which such employee is absent pursuant to this chapter: five hundred dollars; (iii) for each instance of unlawful retaliation not including discharge from employment: full compensation including wages and benefits lost, five hundred dollars and equitable relief as appropriate; and (iv) for each instance of unlawful discharge from employment: full compensation including wages and benefits lost, two thousand five hundred dollars and equitable relief,

including reinstatement, as appropriate.

e. Any entity or person found to be in violation of the provisions of sections 20-913, 20-914, 20-915 or 20-918 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.

f. 1. Any person claiming to be aggrieved by a violation of this chapter shall have a cause of action in any court of competent jurisdiction for compensatory damages, injunctive and declaratory relief, attorney's fees and costs, and such other relief as such court deems appropriate, including the following remedies for violations of this chapter: (i) for each instance of sick time taken by an employee but unlawfully not compensated by the employer, three times the wages that should have been paid under this chapter or two hundred fifty dollars, whichever is greater; (ii) for each instance of sick time requested by an employee but unlawfully denied by the employer and not taken by the employee or unlawfully conditioned upon searching for or finding a replacement worker, or for each instance an employer requires an employee to work additional hours without the mutual consent of such employer and employee in violation of section 20-915 of this chapter to make up for the original hours during which such employee is absent pursuant to this chapter: five hundred dollars; (iii) for each instance of unlawful retaliation not including discharge from employment: full compensation including wages and benefits lost, five hundred dollars and equitable relief as appropriate; and (iv) for each instance of unlawful discharge from employment: full compensation including wages and benefits lost, two thousand five hundred dollars and equitable relief, including reinstatement, as appropriate.

2. When determining compensatory damages for a violation of any provisions of this chapter, a court may consider: the goals of deterring future violations, encouraging employees to report violations, and protecting and improving the public health; the degree of good or bad faith of the employer; the gravity of the violation; any history of previous violations; and the compliance or noncompliance with recordkeeping, notice,

and other requirements of this chapter.

g. Submitting a complaint to the department shall be neither a prerequisite nor a bar to bringing a private action.

h. A person must file a complaint with the department, or a court of competent jurisdiction, within two years of when that person knew or should have known of an alleged violation of this chapter, except that any person who filed a timely complaint with the department prior to the effective date of the local law that amended this subdivision whose complaint has not been finally resolved by the department shall have the right to file a complaint in a court of competent jurisdiction notwithstanding the requirement that such complaint be filed with a court of competent jurisdiction within two years of when that person knew or should have known of any alleged violation.

[f.]i. The department shall annually report on its website the number and nature of the complaints received pursuant to this chapter, the results of investigations undertaken pursuant to this chapter, including the number of complaints not substantiated and the number of notices of violations issued, the number and nature of adjudications pursuant to this chapter, and the average time for a complaint to be resolved pursuant to this chapter.

§ 2. Chapter 8 of title 20 of the administrative code of the city of New York is amended to add a new section 20-925 to read as follows:

§ 20-925 Enforcement by the corporation counsel. The corporation counsel or such other persons designated by the corporation counsel on behalf of the office may initiate in any court of competent jurisdiction any action or proceeding that may be appropriate or necessary for correction of any violation of this chapter, including actions to secure permanent injunctions, enjoining any acts or practices that constitute such violation, mandating compliance with the provisions of this chapter or such other relief as may be appropriate.

§ 3. This local law shall take effect immediately upon enactment into law.

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