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Int. No. 732

By the Public Advocate (Mr. Green), and by Council Members DiBrienza, Eldridge, Quinn, Malave-Dilan, Eisland, Espada, Freed, Linares, Lopez, Perkins, Reed and Watkins; also Council Members Clarke, Cruz, Foster, Koslowitz, Leffler, Michels, Miller, Robinson, Sabini and Wooten

A Local Law to amend the administrative code of the city of New York, in relation to establishing a comprehensive policy for city employees regarding domestic violence and the workplace.

Be it enacted by the Council as follows:

Section 1. Legislative findings and intent. The City Council finds and declares that it is in the interest of the City of New York to establish a comprehensive policy for city employees governing domestic violence and the workplace. Domestic violence is widespread in the New York City and often interferes with a victim's ability obtain and/or retain employment. Yet economic security and financial independence of victims of domestic violence is essential to their ability to escape abusive relationships. One study found that over one-half of those surveyed had lost their jobs, at least in part, due to domestic violence. Other studies have found that between twenty-four and fifty-two percent of those surveyed were harassed by their abusers on the job, and

most have little choice but to find time during the workday to seek medical and/or legal services and other assistance. There is also evidence of an increase in the numbers of domestic violence victims who have lost their children to foster care because of their inability to protect themselves and their children from an abuser. Innovative workplace programs in both the public and private sectors are playing an important role in addressing these problems. Several states, including New York, now provide unemployment compensation to employees who leave their jobs voluntarily due to domestic violence, deeming that "good cause" under the law. New York State has also enacted legislation that established an executive office to develop model domestic violence policies for counties, state agencies and private employers, as well as an advisory council to develop strategies for domestic violence prevention. (N.Y. Exec. Law § 575). In 1988, the Governor of Maryland issued an executive order mandating domestic violence awareness training and policies for all of its employees, prohibiting adverse employment actions against employees based on their status as victims of domestic violence and providing for conspicuous posting of information about domestic violence and available resources. Maine has enacted landmark legislation that requires employers to provide employees who are victims of domestic violence with leave, paid or unpaid, to address issues resulting from incidents of domestic violence. The City of Miami has enacted similar legislation. Further, several large corporations have implemented policies designed to address the issues faced by employees who are victims of domestic violence.

This local law encompasses the best of such innovative approaches in an effort to effectively address the problems faced by city employees who are victims of domestic violence. The goals of this local law are to assist victims of domestic violence in protecting their economic interests so that they may gain the independence needed to escape abuse, and to achieve greater workplace productivity for the City of New York by reducing workplace stress, absenteeism and employee turnover.

§2. Title 12 of the administrative code of the city of New York is amended by adding a new chapter 4 to read as follows:

CHAPTER 4

DOMESTIC VIOLENCE

§12-401 Definitions. Whenever used in this chapter the following words shall have the following meanings:

a. "Agency" shall mean an agency as defined in section 1-112(1) of the administrative code of the city of New York.

b. "Department" shall mean the department of citywide administrative services, or any other department or agency that the mayor designates.

c. "Domestic violence" shall mean acts or threats of violence, not including acts of self-defense, committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim, by a person who is or has been in a continuing social relationship of a romantic or intimate nature with the victim, or a person who is or has continually or at regular intervals lived in the same household as the victim. For purposes of this definition, "acts or threats of violence" shall include but not be limited to acts that would constitute violations of the penal law.

d. "Employee" shall mean an employee of any agency.

§12-402 Prohibited acts. It shall be an unlawful discriminatory practice for an agency, or an agent thereof, to refuse to hire or employ or to bar or to discharge from employment an individual, or to discriminate against an individual in compensation or other terms, conditions, or privileges of employment, because of the actual or perceived status of said individual as a victim of domestic violence.

§12-403 Leave of absence for victims of domestic violence.

a. Every agency shall grant leave from work, with or without pay, to an employee who is a victim of domestic violence for the following purposes:

1. to prepare for and/or attend court proceedings arising out of an incident(s) or threat(s) of domestic violence; or

2. to obtain necessary support, assistance, services, or shelter to address or remedy issues arising out of an incident(s) or threat(s) of domestic violence.

b. In establishing whether an employee meets the requirements for a domestic violence-related leave of absence, the employing agency may require an employee to provide the following:

1. documentation regarding the domestic violence giving rise to the need for the leave of absence, including, but not limited to, a police report, court or medical record, certification from a shelter official, attorney, counselor, member of the clergy, physician, or other professional from whom the employee has sought assistance regarding an incident or incidents of domestic violence; or

2. a sworn statement made by the employee describing the basis for the request for a leave of absence.

§12-404 Duration of Domestic violence related leaves of absence.

a. A domestic violence-related leave of absence shall be granted for a maximum of twelve weeks in a twelve month period, either as intermittent leave days or as a single block of time. A domestic violence-related leave of absence may be extended under exceptional circumstances with the approval, and at the sole discretion, of the employing agency. An employing agency may request documentation supporting a request for such extension.

b. An employee taking a domestic violence-related leave of absence must first exhaust all his/her other existing accrued leave, including leave to which the employee is entitled pursuant to the Family and Medical Leave Act of 1993, if applicable.

c. If an employee requesting a domestic violence-related leave of absence has utilized 12 weeks of other accrued leave during the six month period immediately preceding the date the domestic violence-related leave of absence is to begin, then such domestic violence-related leave of absence shall be for a maximum of six weeks.

d. An employee seeking a domestic violence-related leave of absence must give his/her employer reasonable advance notice before the domestic violence-related leave of absence begins, unless such notice

would pose an actual or perceived danger to the employee or would be otherwise unreasonable under the circumstances.

e. Upon return from a domestic violence-related leave of absence, the employee shall be restored to the position held by the employee prior to the domestic violence-related leave of absence, or to a substantially equivalent position with comparable terms and conditions of employment, unless such restoration would cause an undue hardship to the agency.

f. A domestic violence-related leave of absence shall not be considered a break in service for the purposes of pay and benefits; provided, however, that a domestic violence-related leave of absence that is unpaid shall not count as service in determining benefits, including pensions.

§12-405 Administration and Enforcement.

a. This chapter shall be administered and enforced by the department for all mayoral agencies, and by a comparable personnel administrative unit for non-mayoral agencies. The department shall establish guidelines as models for the administration and enforcement of this chapter.

b. In administering domestic violence-related leaves of absence, the department and the comparable personnel administrative units shall:

1. explore methods to minimize the impact of unpaid domestic violence-related leaves of absence on the employee's group health benefits and, where appropriate, issue rules regarding such methods; and
2. issue rules regarding the filing and processing of complaints under this chapter.

§12-406 Complaints.

a. Any employee may file a complaint with the department or, in the case of non-mayoral agencies, with such agency's comparable personnel administrative unit if such employee believes that s/he has been:

1. wrongfully denied a domestic violence-related leave of absence or restoration to a particular or substantially equivalent position with comparable terms and conditions of employment following a domestic violence leave of absence; provided, however, that an employee may not file a complaint alleging wrongful

denial of an extension of leave pursuant to section 12-404(a) of this chapter; or

2. subjected to any of the prohibited discriminatory acts included in Section 12-402 of this chapter.

b. After a complaint is filed, the department, or in the case of a non-mayoral agency, the comparable personnel administrative unit, shall investigate and issue a written report within ninety days of the filing date. Such report shall either dismiss the complaint, and provide specific reasons for such dismissal, or uphold the complaint in whole or in part, and recommend specific corrective action designed to make the complainant whole, including, but not limited to, restoration of the employee to the position s/he held prior to the domestic violence-related leave of absence, or to a substantially equivalent position with comparable terms and conditions of employment, provision of back-pay and restoration of benefits, and provision of costs incurred by the complainant as a result of a loss of benefits; provided, however, that such costs shall not include attorney's fees. The employing agency shall implement the department's recommendations within forty-five days of the issuance thereof.

c. Nothing herein shall limit an employee's right to file a complaint at the New York city commission on human rights pursuant to title 8 of the administrative code of the city of New York; provided, however, that if an employee has filed a complaint with the department or comparable personnel administrative unit, then s/he may not file a complaint with the New York city commission on human rights alleging the same or similar facts. If an employee has filed a complaint with the New York city commission on human rights, and that complaint has been adjudicated on its merits and has not been dismissed pursuant to subdivisions a, b, or c or section 8-113 of the administrative code of the city of New York for lack of probable cause or jurisdiction, or for administrative convenience, then an employee may not file a complaint with the department or comparable personnel administrative unit alleging the same or similar facts.

§12-407 Confidentiality. All domestic-violence-related employee records shall be confidential and shall be maintained in a separate file apart from the employee's personnel file. Such records shall not be released or disclosed without the employee's prior written authorization or unless so ordered by a court of competent

jurisdiction.

§12-408 Domestic violence awareness and assistance initiative.

a. The department shall establish a domestic violence awareness and assistance initiative which shall be implemented by all agencies and which shall include, but not be limited to, the following:

1. the dissemination of information about domestic violence to employees, managers and/or supervisors;

2. the dissemination of information regarding available resources, including counseling services, legal services and other assistance for victims of domestic violence;

3. the dissemination and posting of notices regarding the existence of the domestic violence awareness and assistance initiative;

4. guidelines and training for managers and/or supervisors addressing domestic violence issues raised by employees;

5. guidelines and training for the confidentiality of domestic violence-related employee information;

6. guidelines and training for basic safety protocols to ensure workplace security;

7. guidelines for the provision of reasonable accommodations for employees who are victims of domestic violence, including, but not limited to, changing a telephone number or the placement of a work station to avoid the occurrence of domestic violence in the workplace; provided, however, that the provision of such accommodations is voluntary and may be granted at the sole discretion of the employing agency; and

8. guidelines for the expedited processing of changes in electronic funds transfer requests or medical and other benefits for employees who are victims of domestic violence.

b. Notices of the existence and purposes of the domestic violence awareness and assistance initiative shall be posted in highly visible locations within each agency, such as bulletin boards, rest rooms, break rooms, conference rooms and online information databases, and shall be included in information packages given to new employees.

§12-409 No diminishment of rights under collective bargaining agreements. No provision herein shall diminish or impair any right or benefit which is available to an employee pursuant to a collective bargaining agreement including the right to submit a dispute to a grievance-arbitration procedure; nor shall any provision herein limit the right of an agency and a duly certified public employee union to negotiate an agreement providing for rights or benefits supplementing the provisions herein.

§12-410 Severability. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§3. Effective date. This local law shall take effect ninety days after enactment.