Legislation Details (With Text)

File #:	Int 0204-2024 **Version:** *	**Name:**	Earned Safe and Sick Time Act
Type:	Introduction	**Status:**	Committee
		In control:	Committee on Civil Service and Labor
On agenda:	2/28/2024		
Enactment date:		**Enactment #:**	
Title:	A Local Law to amend the administrative code of the city of New York, in relation to the expansion of worker coverage under the Earned Safe and Sick Time Act		
Sponsors:	Shahana K. Hanif, Carmen N. De La Rosa, Tiffany Cabán, Kevin C. Riley, Lincoln Restler, Julie Won, Christopher Marte, Erik D. Bottcher, Crystal Hudson, Gale A. Brewer, Sandy Nurse, Alexa Avilés, (in conjunction with the Brooklyn Borough Presiden		
Indexes:			
Attachments:	1. Summary of Int. No. 204, 2. Int. No. 204, 3. February 28, 2024 - Stated Meeting Agenda, 4. Hearing Transcript - Stated Meeting 2-28-24		

Date	Ver.	Action By	Action	Result
2/28/2024	*	City Council	Introduced by Council	
2/28/2024	*	City Council	Referred to Comm by Council	

Int. No. 204

By Council Members Hanif, De La Rosa, Cabán, Riley, Restler, Won, Marte, Bottcher, Hudson, Brewer, Nurse and Avilés (in conjunction with the Brooklyn Borough President)

A Local Law to amend the administrative code of the city of New York, in relation to the expansion of worker coverage under the Earned Safe and Sick Time Act

Be it enacted by the Council as follows:

Section 1. Section 20-912 of the administrative code of the city of New York, as amended by local law number 172 for the year 2021, is amended by amending the definitions of “employee” and “employer” and adding a definition of “professional services” in alphabetical order to read as follows:

“Employee” shall mean any “employee” as defined in subdivision 2 of section 190 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, or any person deemed an employee under section 20-912.1, but not including work performed as a participant in a work experience program pursuant to section 336-c of

the social services law, and 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 section 92 of the general municipal law or section 207 of the county law.

"Employer" shall mean any "employer" as defined in subdivision (3) of section 190 of the labor law, or any other person who employs a person deemed an employee under section 20-912.1, 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. In determining the number of employees performing work for an employer for compensation during a given week, all employees performing work for compensation on a full-time, part-time or temporary basis shall be counted, provided that where the number of employees who work for an employer for compensation per week fluctuates, business size may be determined for the current calendar year based upon the average number of employees who worked for compensation per week during the preceding calendar year, and provided further that in determining the number of employees performing work for an employer that is a chain business, the total number of employees in that group of establishments shall be counted.

"Professional services" shall mean professional services provided by any of the following: (i) writers; (ii) graphic designers; (iii) webpage and digital designers; (iv) animators, illustrators, industrial product designers, interior designers, or fashion designers; (v) fine artists; (vi) photographers; (vii) journalists, freelance digital media workers, videographers or audio/podcast producers; (viii) software engineers; or (ix) musicians and other persons otherwise engaged in the performing arts.

§ 2. Chapter 8 of title 20 of the administrative code of the city of New York is amended by adding a new

section 20-912.1 to read as follows:

§ 20-912.1 Presumption of employment.

a. Solely for the purposes of this chapter, any person performing any services for a hiring entity other than professional services for remuneration within the city of New York for more than 80 hours in a calendar year, including labor or services performed in a transitional jobs program pursuant to section 336-f of the social services law, shall be classified as an employee of the hiring entity unless it can be shown that the person is a separate business entity, or all of the following criteria are met, in which case the person shall be an independent contractor:

1. The individual is free from control and direction in performing the job, both under his or her contract and in fact;

2. The service must be performed outside the usual course of business for which the service is performed; and

3. The individual is customarily engaged in an independently established trade, occupation, profession or business that is similar to the service at issue.

b. Whether a person performing professional services for a hiring entity is an independent contractor or employee of the hiring entity shall be determined by applying the criteria in subdivisions h and i.

c. Any hiring entity that seeks to challenge a person's employee status on the ground that the person is an independent contractor pursuant to this section bears the burden of proof.

d. The failure to withhold federal or state income taxes or to pay unemployment compensation contributions, workers' compensation premiums, or disability or paid family leave benefits premiums with respect to an individual's wages shall not be considered in making a determination under this section, except as set forth in subdivision f.

e. An individual's act of securing workers' compensation, liability insurance, or disability or paid family leave benefits with a carrier as a sole proprietor, partnership, or otherwise shall not be binding on any

determination under this section.

f. Solely for purposes of determining whether a business entity performing services for a hiring entity is an employee under this section, a business entity, including any sole proprietor, partnership including any limited liability partnership, corporation, limited liability company, or entity shall be considered a separate business entity from the hiring entity, engaged in a business-to-business relationship, where all of the following criteria are met:

1. The business entity is performing the service free from the direction or control over the means and manner of providing the service, subject only to the right of the contractor for whom the service is provided to specify the desired result;

2. The business entity is not subject to cancellation or destruction upon severance of the relationship with the hiring entity;

3. The business entity has a substantial investment of capital in the business entity beyond ordinary tools and equipment and a vehicle, such as a website or website business listings for the business entity, business cards, dedicated workspace apart from a vehicle, trademarks, general liability insurance for the business entity, and/or business or professional software, and not including any payments for access to an application through which work is distributed;

4. The business entity owns the capital goods, if any, gains the profits and bears the losses of the business entity, as a result of its exercise of managerial skills and the prices that it independently sets for its services;

5. The business entity makes its services directly available to the general public on a continuing basis;

6. The business entity performs services rendered on a federal income tax schedule as an independent business or profession;

7. The business entity performs services for the hiring entity under the business entity's name;

8. When the services being provided require a license or permit, the business entity obtains and pays for

the license or permit in the business entity's name;

9. The business entity furnishes the tools and equipment necessary to provide the service;

10. If necessary, the business hires its own employees without approval of the hiring entity, pays the employees without reimbursement from the hiring entity and reports the employees' income to the internal revenue service;

11. The hiring entity does not represent the business entity as an employee of the hiring entity to its customers; and

12. The business entity has the right to perform similar services for others on whatever basis and whenever it chooses.

g. When a business entity meets the definition of a separate business entity pursuant to subdivision f, the separate business entity will be considered a hiring entity subject to all the provisions of this chapter in regard to classification of individuals performing services for it.

h. The presumption of employment set forth in this section shall not apply to workers under contract for professional services, and instead the determination of whether such worker is an employee or an independent contractor shall be determined using the test set forth in subdivision i, if the hiring entity demonstrates that all of the following factors are met:

1. The individual maintains a business location, which may include the individual's residence, that is separate from the hiring entity;

2. The individual has any license or permit required by law for the individual to practice their profession;

3. The individual has the ability to set or negotiate his or her own rates for the services performed;

4. Outside of project completion dates, timing that is inherent in the project itself, and reasonable business hours, the individual has the ability to set his or her own hours;

5. The individual is customarily engaged in the same type of work performed under contract with

another hiring entity or holds himself or herself out to other potential hiring entities as available to perform the same type of work; and

6. The individual customarily and regularly exercises discretion and independent judgment in the performance of the services.

i. For workers who fall within the exemptions described in subdivision h of this section, the following factors, none of which is determinative, must be considered for determining whether such worker is an employee or an independent contractor:

1. The extent of control which, by the agreement, the hiring entity may exercise over the details of the work;

2. Whether or not the individual hired is engaged in a distinct occupation or business;

3. The kind of occupation, with reference to whether the work is usually done under the direction of the hiring entity or by a specialist without supervision;

4. The skill required in the particular occupation;

5. Whether the hiring entity or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work;

6. The length of time for which the person is hired;

7. The method of payment, whether by the time or by the job;

8. Whether or not the work is a part of the regular business of the hiring entity;

9. Whether or not the parties believe they are creating an employment relationship;

10. Whether the hiring entity is or is not in business; and

11. Whether or not the hiring entity has been assigned, or otherwise retained, in word or in substance, the copyright of any material to be produced pursuant to the contract.

§ 3. Subdivision f of section 20-913 of the administrative code of the city of New York, as added by local law 46 of 2013, is amended to read as follows:

f. The provisions of this chapter do not apply to (i) work study programs under 42 U.S.C. section 2753, (ii) employees for the hours worked and compensated by or through qualified scholarships as defined in 26 U.S.C. section 117, (iii) any person deemed an independent contractor [contractors who do not meet the definition of employee under section 190(2) of the labor law] under section 20-912.1 and (iv) hourly professional employees.

§ 4. Section 20-919 of the administrative code of the city of New York is amended by adding a new subdivision d to read as follows:

d. Notwithstanding subdivision a of this section, all employers who were not subject to the requirements of this chapter before the enactment date of the local law that added this subdivision shall provide employees with a notice of rights as required under paragraph 1 of subdivision a of this section within 60 days of such enactment date.

§ 5. This local law takes effect 120 days after it becomes law except that the commissioner of consumer and worker protection shall take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.

Session 13
LS #8579
1/19/24

Session 12
BG/NAB
LS #8579
7/28/22 2:10PM