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Int. No. 1396

By Council Members Cabán, Restler, Sanchez, Avilés, Marte, Nurse, Brewer, Hanif, Stevens, Menin, Williams, Hudson, Krishnan, Brannan, De La Rosa, Louis, Ayala, Ossé, Abreu, Schulman, Brooks-Powers, Gutiérrez, Bottcher, Won, Banks, Farías, Zhuang, Hanks, Holden, Gennaro, Riley, Salamanca, Ung, Dinowitz, Feliz, Salaam, Joseph, Epstein, Lee, Morano and Vernikov (in conjunction with the Brooklyn Borough President)

A Local Law to amend the administrative code of the city of New York, in relation to requiring the licensing of last-mile facilities

Be it enacted by the Council as follows:Section 1. Paragraph 1 of subdivision b of section 20-557 of the administrative code of the city of New York, as added by local law number 80 for the year 2016, is amended to read as follows:

1. a licensee has been convicted of a misdemeanor pursuant to subdivision a of section [20-566] 20-556 of this subchapter;

§ 2. Chapter 2 of title 20 of the administrative code of the city of New York is amended by adding a new subchapter 39 to read as follows:

SUBCHAPTER 39

LAST-MILE FACILITIES

§ 20-566 Definitions. For the purposes of this subchapter, the following terms have the following meanings:

Commissioner. The term “commissioner” means the commissioner of consumer and worker protection.

Consumer. The term “consumer” means a final retail customer in the city from whom a merchant received an offer to purchase a product.

Core services. The term “core services” means core delivery services and core warehouse services. The term “core services” does not include work performed by any person that facilitates, offers, or arranges for the delivery of goods solely by commercial motor vehicles over 26,001 pounds Gross Vehicle Weight Rating (GVWR) required by federal law, rule, or regulation to be registered with the federal motor carrier safety administration.

Core delivery services. The term “core delivery services” means the subset of core services that involves transporting and delivering packages or goods to consumers in the city in the normal course of business, subject to the exceptions in the definition of core services.

Core warehouse services. The term “core warehouse services” means the subset of core services that involves sorting and handling of packages within a last mile facility in the city in the normal course of business, subject to the exceptions in the definition of core services.

Department. The term “department” means the department of consumer and worker protection.

Facility operator. The term “facility operator” means the company that operates the last-mile facility.

Last-mile facility. The term “last-mile facility” means a warehouse, storage facility, or other location that receives goods as part of a delivery supply chain, and from which such goods are delivered either to their final destination to consumers in the city, or to locations in the city designated by the city for the transfer of goods to sustainable modes of transport, as defined by the department of transportation, for final delivery to consumers, or both. The term does not include retail businesses where the majority of the premises are used for

the purposes of the on-site sale of goods to consumers.

Pattern or practice. The term “pattern or practice” means 3 or more violations in any 2-year period in the previous 5 years, or 4 or more violations in the previous 5 years, attributable to the licensee, or any corporate or legal parent or subsidiary thereof, where such subsidiary is dominated and controlled by the licensee.

§ 20-566.1 Licensing of last-mile facilities. a. License required. 1. It shall be unlawful for any person to engage in business as a facility operator without a valid license, as hereinafter prescribed for each place of business wherein such person operates a last-mile facility.

2. It shall be unlawful for a person to permit any premises under such person’s control to be used by any other person in violation of paragraph 1 of subdivision a of this section.

b. License application. 1. In order to obtain or renew a license to engage in business as a last-mile facility, a person shall file an application with the commissioner for a license for each place of business that the applicant desires to use for the operation of a last-mile facility. The application for each license or renewal thereof shall be made upon such form as prescribed by the commissioner and shall contain such information as the commissioner shall require.

2. An applicant for a license or renewal thereof under this section shall disclose to the commissioner any finding by a court of law, any final agency determination, or any ruling by an arbitrator that the applicant violated city, state, or federal law relating to workplace safety, road or highway safety, environmental protection, unfair or deceptive trade practices, or workplace or worker protections., and any additional information that the commissioner deems appropriate.

c. Fee and license term. There shall be an annual fee of \$500 for a license to engage in the business of a last-mile facility at each location where a last-mile facility operates in the city. The term of a license shall be 2 years, after which period the licensee may apply for renewal of the license.

d. Issuance and renewal of license. 1. A license shall be issued or renewed to a person to conduct the

business of a last-mile facility in the city only if:

(a) The applicant for a license or renewal thereof certifies that the applicant meets all the requirements prescribed herein, including subdivision c of section 20-566.2, and any criteria in addition thereto established by the commissioner by rule as deemed necessary to effectuate the purposes of this subchapter; and

(b) The applicant satisfies the commissioner that such certification is true and correct, and that such applicant has not materially misrepresented or concealed any information in the license application, as determined by the commissioner.

2. A last-mile facility license shall not be assignable and shall be valid only for the persons in whose names it is issued and for the transaction of business in the place designated therein and shall at all times be conspicuously displayed at the place for which it is issued.

3. An applicant may seek review, in the office of administrative trials and hearings, of a determination by the commissioner to deny an application for a license or a renewal thereof under this section within 30 days of receiving written notice of such determination.

§ 20-566.2 Revocation or suspension of license. a. Any license may be suspended or revoked by the commissioner, upon due notice and hearing, for the failure of a licensee to comply with any applicable provision of law or any rule duly promulgated by the commissioner.

b. A licensee may seek review, in the office of administrative trials and hearings, of a determination by the commissioner that a license has been suspended or revoked within 30 days of receiving written notice of such determination.

c. Pattern or practice of violations. The commissioner may deny any application for a license or renewal thereof, or revoke or suspend any license, if the applicant or licensee has engaged in a pattern or practice of violations of any city, state, or federal law relating to workplace safety, road or highway safety, environmental protection, unfair or deceptive trade practices, or workplace or worker protections in connection with operating one or more last-mile facilities.

d. For the purpose of this section, the term “violation,” means a finding by a court of law or a final agency determination that the applicant or licensee violated any city, state, or federal law relating to workplace safety, road or highway safety, environmental protection, unfair or deceptive trade practices, or workplace or worker protections.

e. Upon a first instance of a finding of non-compliance with the requirements of this subchapter, the commissioner may grant a licensee or applicant for renewal a period, not to exceed 90 days, to meet the requirements of this chapter prior to suspension, revocation, or denial of renewal of a license.

§ 20-566.3 Direct employment. a. Core warehouse services. Except as otherwise provided in this section, all workers providing core warehouse services at last-mile facilities in the city shall be directly employed by the facility operator.

b. Core delivery services. Except as otherwise provided in this section, workers providing core delivery services on a part-time or full-time basis shall be directly employed by the facility operator. FAs applied to workers providing core delivery services, “part-time” means less than full-time as defined by state law, but more than 4 hours in any 30-day period.

c. Third-party contracts. Except as otherwise provided in this section, contracting with any third parties, including staffing agencies or other subcontractors, for the performance of core delivery services or core warehouse services, is prohibited.

d. Employee retention. In the event that any facility operator is required to terminate a contract such that contracted workers engaged in core services are terminated by the subcontractor, as a result of this subchapter, the facility operator shall offer to rehire those terminated workers as employees, to perform the same work they had previously performed, before offering to hire any other workers as employees. Offers to rehire such terminated workers shall include a preservation of rights, privileges, and benefits under existing collective bargaining or other agreements and terms no lesser than those in effect at the time of the termination.

e. Grace period. This section takes effect on the first day of the twelfth month after the local law that

added this subchapter becomes law. The Commissioner shall grant extensions for facility operators who contract with a third-party agency to supply workers to provide core services otherwise covered by this subchapter, where the contract was in effect prior to the date on which the local law that added this subchapter became law, and such contract binds the contracting parties to performance after the first day of the twelfth month after the date on which the local law that added this subchapter became law. No such extension shall extend later than the earlier of: (i) the end of the relevant contract term; or (ii) the last day of the twenty-fourth month after the local law that added this subchapter becomes law. A facility operator seeking an extension under this subdivision shall apply to the commissioner therefore in the manner required by the commissioner by rule.

§ 20-566.4 Delivery worker record-keeping and safety obligations. a. Notwithstanding any extension granted pursuant to subdivision e of section 20-566.3, this section takes effect on the first day of the twelfth month after the local law that added this subchapter becomes law.

b. It shall be an additional violation for any facility operator who is engaging contracted workers to perform core services to fail to comply with the requirements of this section.

c. Facility operators engaging contracted workers to perform core services shall:

1. Maintain a complete list of the identities of individuals engaged in core delivery services, along with the following information for each worker: name; contact information; proof of commercial auto insurance coverage; driving record, including full list of any moving violations; and records of all routes taken while delivering packages from the last-mile facility.

2. Submit to the commissioner a certification that each driver has the name and contact information of their employer clearly and prominently displayed on their clothes and on their delivery vehicle. The name of the employer shall be displayed more prominently than the name of any other non-employer entity.

3. For each delivery worker retained as a non-employee, the facility operator shall post bond in the amount of \$500,000, to be held by the commissioner in a fund. Such fund shall be made available in the event

any person injured or otherwise harmed in a road incident involving covered delivery workers obtains a judgment against such a delivery worker or their employer.

§ 20-566.5 Notice of termination. A facility operator under this subchapter shall notify an employee of a termination of their employment at least 30 days before such termination becomes effective, as well as upon the effective date of termination. Such notice shall include: (i) a plain language description of the reasons, if any, for termination; (ii) the effective date of the termination; and (iii) all records relied upon to substantiate the termination.

§ 20-566.6 Anti-retaliation. a. A facility operator shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct protected under this subchapter, or protected under any other applicable labor or employment statute under state or federal law, except where prohibited by other applicable law.

b. Any employee who is discharged, threatened with discharge, demoted, suspended, retaliated against, subjected to an adverse action, or in any other manner discriminated against in the terms and conditions of their employment because the employee engaged in any protected conduct shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by those acts of the employer.

c. If an employer engages in any action prohibited by this section within 60 days of the protected activity specified in this section, there shall be a rebuttable presumption in favor of the employee's claim.

§ 20-566.7 Worker training. a. Certification and designation. 1. The department shall establish a process whereby it will certify and designate at least one last-mile facility training organization.

2. In order to become certified as a designated last-mile facility training organization, the organization shall be a not-for-profit organization which meets requirements set forth by the department that shall include, but not be limited to, the following: The last-mile facility training organization shall have experience providing job training and placement services within the city, utilize interactive teaching strategies that engage across

multiple literacy levels, and provide trainers and educators who are culturally competent and fluent in the language or languages that last-mile facility workers understand.

b. Training program requirements. 1. The last-mile facility training organization shall offer a last-mile facility training program that includes no less than 6 hours of training, including live and interactive instruction, on the following elements:

(a) Last-mile facility worker rights and facility operator responsibilities under this subchapter, and under any other provision of applicable law;

(b) How to drive a delivery vehicle safely;

(c) <https://ecode360.com/43905689> How to adhere to quota requirements and aggressive delivery routes while driving defensively;

(d) When and where to make delivery stops along trafficked roads;

(e) How to ensure the safety of pedestrians while making frequent stops;

(f) How to identify bicycle routes and protected bicycle lanes, and how to avoid making stops along such routes and lanes in such a way that might create a safety hazard for pedestrians, cyclists, or workers;

(g) Best ergonomic practices for workers who handle, sort, and move packages;

(h) How to identify potential injuries, heat stress, or repetitive stress, and means to find assistance for physical therapy or other practices to mitigate injuries; and

(i) Guidance on safety with regards to powered industrial trucks, automated and robotic vehicles, hazardous chemicals, and electrical hazards.

2. The last-mile facility training organization may coordinate with a last-mile facility to ensure that training content aligns where appropriate with the facility's policies and procedures. Ultimate discretion regarding training content shall remain with the last-mile facility training organization, subject to requirements set forth by the department.

3. Facility operators shall ensure that all persons providing core services receive training by a last-mile facility training organization within 92 days of their first day of employment, and thereafter once per year. A facility operator shall contract, at the expense of the facility operator, with a certified last-mile facility training organization to conduct, no less than annually, a last-mile facility training program attended by each employee operating out of the last-mile facility. A facility operator shall document compliance with the training requirement set forth in this section by completing and signing a form as required by the department to certify the dates that the training was conducted and the workers who attended.

c. Records. Each facility operator shall retain records sufficient to demonstrate compliance with this section, including a copy of a valid form attesting to compliance with the training program requirements.

§ 20-566.8 Collective bargaining agreements not impaired. Nothing in section 20-566.3, 20-566.4, 20-566.5, 20-566.6, or 20-566.7 shall impair or impede any provision of a valid collective bargaining agreement with a bona fide labor organization, if the agreement contains express and specific waivers for some or all of the barred or required conduct, in exchange for valuable consideration.

§ 20-566.9 Administrative enforcement. a. The commissioner shall enforce the provisions of this subchapter.

b. 1. Any person alleging a violation of this subchapter may file a complaint with the department within 2 years of the date the person knew or should have known of the alleged violation.

2. Upon receiving such a complaint, the department shall investigate it.

3. The department may open an investigation on its own initiative.

4. A person or entity under investigation shall, in accordance with applicable law, provide the department with information or evidence that the department requests pursuant to the investigation. The department may attempt to resolve an investigation concerning a violation of this subchapter through any action authorized by chapter 64 of the charter. Adjudicatory powers pursuant to this subchapter may be exercised by the commissioner or by the office of administrative trials and hearings pursuant to chapter 64 of the charter.

5. The department shall keep the identity of any complainant confidential unless disclosure is necessary to resolve the investigation or is otherwise required by law. The department shall, to the extent practicable, notify such complainant that the department will be disclosing the complainant's identity before such disclosure.

c. The commissioner may promulgate rules necessary and appropriate to the administration of this subchapter.

§ 20-566.10 Remedies for workers. In addition to any remedies otherwise available under any other applicable law, for violations of their rights under this subchapter, workers shall be entitled to the following relief:

1. All compensatory damages and other relief required to make the worker or former worker whole;

2. An order directing compliance with the requirements set forth in this subchapter; and

3. For each violation of:

(a) section 20-566.5,

(1) reinstatement;

(2) reimbursement of 30 days' wages; and

(3) \$500 for each day after the thirtieth day before termination that the facility operator fails to notify the worker of their termination;

(b) section 20-566.6,

(1) for each instance of unlawful retaliation not including discharge from employment: full compensation including wages and benefits lost, \$500 and equitable relief as appropriate; and

(2) for each instance of unlawful discharge from employment: full compensation including wages and benefits lost, \$2,500 and equitable relief, including reinstatement, as appropriate.

§ 20-566.11 Civil penalties. a. For each violation of subdivision a of section 20-566.3, a facility operator is liable for a penalty of \$1,000 per day.

b. For each violation of each of paragraphs 1, 2, and 3 of subdivision c of section 20-566.4, a facility operator is liable for a penalty of \$1,000 per day.

§ 20-566.12 Enforcement by the corporation counsel. The corporation counsel or such other persons designated by the corporation counsel on behalf of the department 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 subchapter, including actions to secure permanent injunctions, enjoining any acts or practices that constitute such violation, mandating compliance with the provisions of this subchapter, or such other relief as may be appropriate.

§ 20-566.13 Private cause of action. a. Any person alleging a violation of section 20-566.3, 20-566.4, 20-

-566.5, or 20-566.6 may bring a civil action, in accordance with applicable law, in any court of competent jurisdiction.

b. Such court may order compensatory, injunctive, and declaratory relief, including the remedies set forth in section 20-566.10, and reasonable attorney's fees and costs.

c. A civil action under this section shall be commenced within 2 years of the date such person knew or should have known of the alleged violation.

d. 1. Any person filing a civil action shall simultaneously serve notice of such action and a copy of the complaint upon the department. Failure to so serve a notice does not adversely affect any person's cause of action.

2. A worker need not file a complaint with the department pursuant to subdivision b of section 20-556.9 before bringing a civil action; however, no person shall file a civil action based on the same facts as a complaint filed with the department pursuant to subdivision b of section 20-556.9 unless such complaint has been withdrawn or dismissed without prejudice to further action.

3. The commencement or pendency of a civil action by a worker does not preclude the department from investigating a facility operator or commencing, prosecuting, or settling a case against a facility operator based on some or all of the same violations.

§ 3. This local law takes effect 120 days after it becomes law, except as otherwise provided by subdivision e of section 20-566.3 and subdivision a of section 20-566.4 of the administrative code of the city of New York, as added by section two of this local law.