



Legislation Text

File #: Int 1396-2019, **Version:** *

Int. No. 1396

By Council Members Adams, Lander, Moya, Ayala, Cabrera, Brannan, Eugene, Levine, Menchaca, Rosenthal, Kallos, Reynoso, Van Bramer, Salamanca, Chin, Cohen, Rivera, Treyger, Levin, Ampy-Samuel, Cumbo, Torres, Koslowitz, Rodriguez, Constantinides, Gibson, Powers, Vallone, Rose, Louis and Cornegy

A Local Law to amend the administrative code of the city of New York, in relation to fast food employee layoffs

Be it enacted by the Council as follows:

Section 1. Chapter 12 of title 20 of the administrative code of the city of New York is amended by adding a new subchapter 7 to read as follows:

SUBCHAPTER 7

FAST FOOD EMPLOYEE LAYOFFS

§ 20-1271 Definitions. As used in this subchapter, the following terms have the following meanings:

Bona fide economic reason. The term “bona fide economic reason” means the full or partial closing of operations or technological or organizational changes to the business, resulting in the reduction in volume of production, sales, or profit.

Reduction in hours. The term “reduction in hours” means a reduction in a fast food employee’s hours of work totaling at least 15 percent of the employee’s weekly work schedule.

Layoff. The term “layoff” means any cessation of employment, including discharge, termination, constructive discharge, indefinite suspension or reduction in hours.

§ 20-1272 Prohibition against layoffs not based on bona fide economic reasons. a. A fast food employer shall not layoff a fast food employee absent a bona fide economic reason.

b. A layoff shall not be considered based on bona fide economic reasons unless supported by a fast food

employer's business records showing that the closing, technological or reorganizational changes results in a reduction in volume of production, sales, or profit.

c. Layoffs based on bona fide economic reasons shall be done in reverse order of seniority according to the length of service of fast food employees in the restaurant or store where the termination is to occur, computed in accordance with subdivision d of this section, so that employees senior in length of service shall be retained the longest and reinstated first.

d. For purposes of this subchapter, seniority of a fast food employee shall mean ranking based on length of service, computed as provided in this subdivision. Length of service shall be computed from the first date of employment, including any probationary period, unless such service has been interrupted by an absence from the payroll of more than six months, in which case length of service shall be computed from the date of restoration to the payroll. Length of service of a fast food employee shall be deemed not to have been interrupted if such absence was the result of military service, illness, educational leave, leave authorized by law, discharge without just cause or in violation of any local, state or federal law

§ 20-1273 Private cause of action. In addition to remedies that may be ordered pursuant to section 20-1211, a court of competent jurisdiction shall also order reasonable attorney's fees and costs for violations of this subchapter.

§ 20-1274 Arbitration. a. Except as otherwise provided by law, any person claiming to be aggrieved by a fast food employer's violation of this subchapter may bring an arbitration proceeding, including on a class or collective basis, for back pay and benefits and other damages, including punitive damages, for reinstatement, restoration of hours, and other injunctive relief, and for such other remedies as may be appropriate. In an arbitration proceeding brought pursuant to this section, if the arbitrator finds in favor of the plaintiff, it shall award such person, in addition to other relief, reasonable attorney's fees and costs.

b. An arbitration demand, and any amendments thereto, must be served on the fast food employer at any of the employer's business addresses by regular mail, electronic mail, or private mail service, and must include

a general description of the alleged violation(s) but need not reference the precise section(s) alleged to have been violated.

c. The parties to an arbitration proceeding shall jointly select the arbitrator from a panel of arbitrators, the number of which shall be determined by the office, chosen by a committee of eight participants established by the office comprised of:

1. Two fast food employees;
2. Two fast food employee advocates;
3. Two fast food employers; and
4. Two fast food employer advocates.

d. If an insufficient number of fast food employees, fast food employee advocates, fast food employers or fast food employer advocates agree to participate in the committee pursuant to subdivision c of this section, the office shall select individuals to fill the requisite number of openings on the committee.

e. If the committee pursuant to subdivision c of this section is unable to select a sufficient number of arbitrators for the panel as determined by the office, the office shall select the remaining arbitrators.

f. If the parties are unable to agree on an arbitrator, the office shall select an arbitrator from the panel.

g. The office shall provide translation services to any party requiring such services for the arbitration hearing.

h. The arbitration hearing shall be held at a location designated by the office. Such arbitration shall be subject to the labor arbitration rules established by the american arbitration association.

i. If a fast food employee brings an arbitration proceeding, arbitration shall be the exclusive remedy for the layoff not based on bona fide economic reasons dispute and there is no right to bring or continue a private cause of action or administrative complaint under this chapter, unless such arbitration proceeding has been withdrawn or dismissed without prejudice.

§ 20-1275 Applicability of Schedule Change Premiums. A fast food employee laid off not based on

bona fide economic reasons shall be entitled to schedule pay premiums pursuant to section 20-1222, as applicable.

§ 20-1276 Exceptions. This subchapter does not:

1. Apply to any fast food employee who is covered by a valid collective bargaining agreement if such agreement expressly waives the provisions of this subchapter and provides comparable or superior benefits for fast food employees.

2. Preempt, limit or otherwise affect the applicability of any provisions of any other law, regulation, requirement, policy or standard.

§ 2. Subdivision a of section 20-1208 of the administrative code of the city of New York, as amended by local law number 69 for the year 2018, is amended to read as follows:

a. For violations of this chapter, the office may grant the following relief to employees or former employees;

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

2. An order directing compliance with the notice and posting of rights and recordkeeping requirements set forth in sections 20-1205 and 20-1206; and

3. For each violation of:

(a) Section 20-1204,

(1) Rescission of any discipline issued, reinstatement of any employee terminated and payment of back pay for any loss of pay or benefits resulting from discipline or other action taken in violation of section 20-1204;

(2) \$500 for each violation not involving termination; and

(3) \$2,500 for each violation involving termination;

(b) Section 20-1221, \$200 and an order directing compliance with section 20-1221;

(c) Section 20-1222, payment of schedule change premiums withheld in violation of section 20-1222 and \$300;

(d) Section 20-1231, payment as required under section 20-1231, \$500 and an order directing compliance with section 20-1231;

(e) Section 20-1241, \$300 and an order directing compliance with section 20-1241;

(f) Subdivision a of section 20-1251, the greater of \$500 or such employee's actual damages; [and]

(g) Subdivisions a and b of section 20-1252, \$300; [and]

(h) Subdivision a or b of section 20-1262, \$500 and an order directing compliance with such subdivision, provided, however, that an employer who fails to provide an employee with the written response required by subdivision a of section 20-1262 may cure the violation without a penalty being imposed by presenting proof to the satisfaction of the office that it provided the employee with the required written response within seven days of the office notifying the employer of the opportunity to cure[.]; and

(i) Section 20-1272, \$500 for each violation, an order directing compliance with section 20-1272 and reinstatement of any fast food employee terminated and payment of back pay for any loss of pay or benefits resulting from the wrongful layoff not based on bona fide economic reasons.

§ 3. Subdivisions a of section 20-1211 of the administrative code of the city of New York, as added by local law number 107 for the year 2017, is amended to read as follows:

§ 20-1211 Private cause of action a. Claims. Any person, including any organization, alleging a violation of the following provisions of this chapter may bring a civil action, in accordance with applicable law, in any court of competent jurisdiction:

1. Section 20-1204;
2. Section 20-1221;
3. Subdivisions a and b of section 20-1222;

4. Section 20-1231;
5. Subdivisions a, b, d, f and g of section 20-1241;
6. Section 20-1251; [and]
7. Subdivisions a and b of section 20-1252; and
8. Section 20-1272.

§ 4. This local law takes effect 180 days after it becomes law, provided further that the director of the office of labor standards may take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such effective date.

MMB
LS # 8321 and LS # 5994
2/7/19; 11:00 a.m.