



Legislation Text

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Int. No. 1926

By Council Members Lander, Kallos, Van Bramer, Chin, Louis, Menchaca, Barron, Levin, Perkins, Reynoso and Ayala

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, and to repeal subdivision f of section 20-913 of such code, relating to exemptions from coverage under the Act, and the undesignated paragraph defining “employee” in section 20-912 of such code

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 199 for the year 2017, is amended by REPEALING the undesignated paragraph defining “employee” and amending the definition of “employer” to read as follows:

"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.

§ 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 providing labor or 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 considered an employee, unless the hiring entity demonstrates that all of the following conditions are satisfied:

1. The person is free from the control and direction of the hiring entity in connection with the performance of the labor or services, both under the contract for the performance of the work and in fact;

2. The person performs labor or services that are outside the usual course of the hiring entity's business;
and

3. The person is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the labor or services performed.

b. Notwithstanding subdivision a, this chapter shall not apply to:

1. A person who performs work as a participant in a work experience program pursuant to section 336-c of the social services law.

2. A person who is 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.

3. A person engaged in a work study program under section 2753 of title 42 of the United States code.

4. A person compensated by or through a qualified scholarship as defined in section 117 of title 26 of

the United States code.

5. An independent contractor who does not qualify as an employee under subdivision a.

6. An hourly professional employee.

§ 3. Subdivision f of section 20-913 of the administrative code of the city of New York is REPEALED.

§ 4. Subdivisions g, h, i and j of section 20-913 of the administrative code of the city of New York are redesignated subdivisions f, g, h and i, respectively.

§ 5. 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.

§ 6. This local law takes effect immediately and is deemed to have been in effect as of January 1, 2020.

SG
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