



Legislation Text

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Int. No. 2252

By The Speaker (Council Member Johnson) and Council Members Rosenthal, Riley, Ayala, Ampy-Samuel, Rose, Moya, Gibson, Treyger, Kallos, Grodenchik, Brannan, Van Bramer, Levine, Brooks-Powers, Gennaro, Dinowitz, Cornegy, Reynoso, Chin, Rivera, Salamanca, Cumbo, Koslowitz, Louis, Rodriguez, Vallone and Powers

A Local Law to amend the administrative code of the city of New York, in relation to requiring employers at certain city economic development projects and city human services contractors to enter into labor peace agreements

Be it enacted by the Council as follows:

Section 1. Chapter 1 of title 6 of the administrative code of the city of New York is amended by adding a new section 6-145 to read as follows:

§ 6-145 Labor peace agreements for human services contracts. a. Definitions. For the purposes of this section, the following terms have the following meanings:

City service contract. The term “city service contract” means any written agreement between any entity and a contracting agency whereby a contracting agency is committed to expend or does expend funds and the principal purpose of such agreement is to provide human services where the value of the agreement is greater than the city’s small purchases limit pursuant to section 314 of the charter. This definition shall not include contracts awarded pursuant to the emergency procurement procedure as set forth in section 315 of the charter.

City service contractor. The term “city service contractor” means any entity or person that enters into a city service contract with a contracting agency. An entity shall be deemed a city service contractor for the duration of the city service contract that it receives or performs.

City service subcontractor. The term “city service subcontractor” means any entity or person, including, but not limited to, a temporary services, staffing or employment agency or other similar entity, that is engaged

by a city service contractor to assist in performing any of the services to be rendered pursuant to a city service contract. This definition does not include any contractor or subcontractor that merely provides goods relating to a city service contract or that provides services of a general nature (such as relating to general office operations) to a city service contractor which do not relate directly to performing the services to be rendered pursuant to the city service contract. An entity shall be deemed a city service subcontractor for the duration of the period during which it assists the city service contractor in performing the city service contract.

Comptroller. The term “comptroller” means the comptroller of the city.

Contracting agency. The term “contracting agency” means the city, a city agency, the city council, a county, a borough, or other office, position, administration, department, division, bureau, board, commission, corporation, or an institution or agency of government, the expenses of which are paid in whole or in part from the city treasury or the department of education.

Covered employer. The term “covered employer” means a city service contractor or a city service subcontractor.

Covered employee. The term “covered employee” means an employee of a city service contractor or city service subcontractor that directly renders human services in performance of a city service contract.

Employee. The term “employee” means any person who performs work on a full-time, part-time, temporary or seasonal basis and includes employees, independent contractors, and contingent or contracted workers, including persons made available to work through the services of a temporary services, staffing or employment agency or similar entity.

Entity or Person. The term “entity” or “person” means any individual, sole proprietorship, partnership, association, joint venture, limited liability company, corporation or any other form of doing business.

Human services. The term “human services” means social services including but not limited to day care, foster care, home care, health or medical services, housing and shelter assistance, preventive services, youth services, senior centers, employment training and assistance, vocational and educational programs, legal

services and recreation programs.

Labor organization. The term “labor organization” has the same meaning as set forth in subdivision (5) of section 152 of title 29 of the United States code.

Labor peace agreement. The term “labor peace agreement” means an agreement between a covered employer and a labor organization that represents employees who perform the type(s) of work to be performed pursuant to the city service contract, where such agreement requires that the covered employer and the labor organization and its members agree to the uninterrupted delivery of services to be rendered pursuant to the city service contract and to refrain from actions intended to or having the effect of interrupting such services.

b. Contracting agencies shall require each covered employer to enter into a labor peace agreement with a labor organization that seeks to represent its covered employees for the duration of the city service contract.

c. 1. Prior to the award or renewal of a city service contract, the applicant for award or renewal shall provide to the extent permitted by law the awarding contracting agency a certification containing the following information:

(a) The name, address and telephone number of the chief executive officer of the applicant;

(b) A statement that, if the city service contract is awarded or renewed, the applicant agrees to comply with the requirements of this section, and with all applicable federal, state and local laws;

(c) To the extent permitted by law, a record of any instances during the preceding five years in which the applicant has been found by a court or government agency to have violated federal, state or local laws regulating labor relations, or to the extent permitted by law, in which any government body initiated a judicial action, administrative proceeding or investigation of the applicant in regard to such laws; and

(d) An acknowledgement that a finding by a contracting agency that the applicant has violated the requirements of this section may result in action necessary to ensure continuity of services provided to the city, including cancellation or rescission of the city service contract.

The certification shall be signed under penalty of perjury by an officer of the applicant and shall be

annexed to and form a part of the city service contract. The certification and the city service contract shall be public documents and the contracting agency shall make them available to the public upon request for inspection and copying pursuant to the state freedom of information law.

2. A city service contractor shall each year throughout the term of the city service contract submit to the contracting agency an updated certification, identifying any, if any exist, changes to the current certification.

d. 1. The comptroller shall monitor, investigate and audit the compliance by all contracting agencies, and provide covered employers and employees with the information and assistance necessary to ensure that the provisions of this section are implemented.

2. The mayor or the mayor's designee shall promulgate implementing rules and regulations as appropriate and consistent with this section and may delegate such authority to the comptroller.

3. The comptroller and the mayor shall ensure that the information set forth in the certifications required to be submitted under subdivision c of this section is integrated into and contained in the city's contracting and financial management database established pursuant to section 6-116.2. Such information shall to the extent permitted by law be made available to the public. Provided, however, that the comptroller and the mayor may agree to restrict from disclosure to the public any information from the certifications required under subdivision c of this section that is of a personal nature.

4. The comptroller shall submit annual reports to the mayor and the city council summarizing and assessing the implementation and enforcement of this section during the preceding year and include such information in the summary report on contracts required under section 6-116.2.

e. 1. Contracting agencies shall comply with and enforce the requirements of this section. The requirements of this section shall be a term and condition of any city service contract. No contracting agency may expend city funds in connection with any city service contract that does not comply with the requirements of this section.

2. Every city service contract shall have annexed to it the following materials which shall form a part of

the specifications for and terms of the city service contract:

(a) A provision obligating the city service contractor to comply with all applicable requirements under this section;

(b) The certification required under subdivision c of this section; and

(c) A provision providing that: (i) Failure to comply with the requirements of this section may constitute a material breach by the city service contractor of the terms of the city service contract; (ii) Such failure shall be determined by the contracting agency; and (iii) If, within 30 days after or pursuant to the terms of the city service contract, whichever is longer, the city service contractor and/or subcontractor receives written notice of such a breach, the city service contractor fails to cure such breach, the city shall have the right to pursue any rights or remedies available under the terms of the city service contract or under applicable law, including termination of the contract.

f. 1. Whenever the comptroller has reason to believe that a covered employer or other person has not complied with the requirements of this section, or upon a verified complaint in writing from an interested party, the comptroller shall conduct an investigation to determine the facts relating thereto. Based upon such investigation, hearing and findings, the comptroller shall report the results of such investigation and hearing to the contracting agency, which shall, after providing the covered employer an opportunity to cure any violations, where appropriate issue an order, determination or other disposition. Such disposition may:

(a) Direct the filing or disclosure of any records that were not filed or made available to the public as required by this section;

(b) Direct payment of the sums withheld at the commencement of the investigation and the interest that has accrued thereon to the covered employer; or

(c) Cancel the applicable city service contract upon engaging a city service contractor to provide the services in compliance with this section.

In assessing an appropriate remedy, due consideration shall be given to the size of the covered

employer's business, the covered employer's good faith, the gravity of the violation, the history of previous violations and the failure to comply with recordkeeping, reporting or other requirements.

2. Before issuing an order, determination or any other disposition, the comptroller or contracting agency, as applicable, shall give notice thereof together with a copy of the complaint, or a statement of the facts disclosed upon investigation, which notice shall be served personally or by mail on any person or covered employer affected thereby. The comptroller or contracting agency, as applicable, may negotiate an agreed upon stipulation of settlement or refer the matter to the office of administrative trials and hearings for a hearing and disposition. Such person or covered employer shall be notified of a hearing date by the office of administrative trials and hearings and shall have the opportunity to be heard in respect to such matters.

3. When, pursuant to the provisions of this section, a final disposition has been entered against a covered employer in two instances within any consecutive six year period determining that such covered employer has failed to comply with the requirements of this section, such covered employer, and any principal or officer of such covered employer who knowingly participated in such failure, shall be ineligible to submit a bid on or be awarded any city service contract for a period of five years from the date of the second disposition.

4. In circumstances where a city service contractor fails to perform in accordance with any of the requirements of this section and there is a continued need for the service, a contracting agency may obtain from another source the required service as specified in the original contract, or any part thereof, and may charge the non-performing city service contractor for any difference in price resulting from the alternative arrangements, may assess any administrative charge established by the contracting agency, and may, as appropriate, invoke such other sanctions as are available under the contract and applicable law.

g. The provisions of this section shall not apply to any existing city service contract entered into prior to the enactment of the local law that added this section. Where a city service contract is renewed or extended after the effective date of the local law that added this section, such renewal or extension shall be deemed new city service contracts and shall trigger coverage under this section if the terms of the renewed or extended city

service contract otherwise meet the requirements for coverage under this section.

§ 2. Chapter 1 of title 6 of the administrative code of the city of New York is amended by adding a new section 6-146 to read as follows:

§ 6-146 Labor peace agreements for city economic development projects. a. Definitions. For the purposes of this section, the following terms have the following meanings:

City economic development entity. The term “city economic development entity” means a local development corporation, not-for-profit corporation, public benefit corporation, or other entity that provides or administers economic development benefits and with which the department of small business services serves as a liaison pursuant to paragraph b of subdivision 1 of section 1301 of the charter.

Comptroller. The term “comptroller” means the comptroller of the city.

Covered employer. The term “covered employer” means an employer that is any of the following:

1. A financial assistance recipient;

2. Any tenant, subtenant, leaseholder or subleaseholder of the financial assistance recipient who occupies property improved or developed with financial assistance;

3. Any concessionaire. For purposes of this section, concessionaire shall include any contractor, subcontractor, or tenant operating on property improved or developed with financial assistance; or

4. Any person or entity that contracts or subcontracts with a financial assistance recipient to perform work for a period of more than 90 days on the premises of the financial assistance recipient or on the premises of property improved or developed with financial assistance including but not limited to temporary services or staffing agencies, food service contractors, and other on-site service contractors.

Employee. The term “employee” means any person employed by a covered employer within the city. This definition includes persons performing work on a full-time, part-time, temporary or seasonal basis, and includes employees, independent contractors, and contingent or contracted workers, including persons made

available to work through the services of a temporary services, staffing or employment agency or similar entity. Provided, however, that if the financial assistance is targeted to particular real property, then only persons employed at the real property to which the financial assistance pertains shall be deemed employees.

Entity or Person. The term “entity” or “person” means any individual, sole proprietorship, partnership, association, joint venture, limited liability company, corporation or any other form of doing business.

Financial assistance. The term “financial assistance” means assistance that is provided to a financial assistance recipient for the improvement or development of real property, economic development, job retention and growth, or other similar purposes, and that is provided either (a) directly by the city, or (b) indirectly by a city economic development entity and that is paid in whole or in part by the city, and that at the time the financial assistance recipient enters into a project agreement with the city or city economic development entity is expected to have a total present financial value of one million dollars or more. Financial assistance includes, but is not limited to, cash payments or grants, bond financing, tax abatements or exemptions (including, but not limited to, abatements or exemptions from real property, mortgage recording, sales and use taxes, or the difference between any payments in lieu of taxes and the amount of real property or other taxes that would have been due if the property were not exempted from the payment of such taxes), tax increment financing, filing fee waivers, energy cost reductions, environmental remediation costs, write-downs in the market value of building, land, or leases, or the cost of capital improvements undertaken for the benefit of a project subject to a project agreement. Financial assistance shall include only discretionary assistance that is negotiated or awarded by the city or by a city economic development entity, and shall not include as-of-right assistance, tax abatements or benefits, such as those under the Industrial and Commercial Abatement Program, the J-51 Program, and other similar programs. Any tax abatement, credit, reduction or exemption that is given to all persons who meet criteria set forth in the state or local legislation authorizing such tax abatement, credit, reduction or exemption shall be deemed to be as-of-right (or non-discretionary); further, the fact that any such tax abatement, credit, reduction or exemption is limited solely by the availability of funds to applicants on a first come, first served or

other non-discretionary basis set forth in such state or local law shall not render such abatement, credit, reduction or exemption discretionary. Where assistance takes the form of leasing city property at below-market lease rates, the value of the assistance shall be determined based on the total difference between the lease rate and a fair market lease rate over the duration of the lease. Where assistance takes the form of loans or bond financing, the value of the assistance shall be determined based on the difference between the financing cost to a borrower and the cost to a similar borrower who does not receive financial assistance from the city or a city economic development entity. All determinations of the existence or the amount of financial assistance in a land sale or ground lease transaction shall be based on an independent appraisal acceptable to the city or city economic development entity of the value of the land or ground lease.

Financial assistance recipient. The term “financial assistance recipient” means any entity or person that receives financial assistance, or any assignee or successor in interest of real property improved or developed with financial assistance, including any entity to which financial assistance is conveyed through the sale of a condominium, but shall not include any entity who is exempt under subdivision d of this section.

Labor organization. The term “labor organization” has the same meaning as set forth in subdivision (5) of section 152 of title 29 of the United States code.

Labor peace agreement. The term “labor peace agreement” means an agreement between a covered employer and a labor organization that represents individuals who perform the type(s) of work to be performed on the premises of property improved or developed with financial assistance, where such agreement requires that the covered employer and the labor organization and its members agree to the uninterrupted performance of work on the premises of the property improved or developed with financial assistance and to refrain from actions intended to or having the effect of interrupting such work.

Not-for-profit organization. The term “not-for-profit organization” means an entity that is either incorporated as a not-for-profit corporation under the laws of the state of its incorporation or exempt from federal income tax pursuant to subdivision c of section 501 of the United States internal revenue code.

Project agreement. The term “project agreement” means a written agreement between the city or a city economic development entity and a financial assistance recipient pertaining to a project. A project agreement shall include an agreement to lease property from the city or a city economic development entity.

Small business cap. The term “small business cap” means three million dollars; provided that, beginning in 2015 and each year thereafter, the small business cap shall be adjusted contemporaneously with the living wage rate and using the methodology set forth in paragraph (9) of subdivision b of section 6-134.

b. Financial assistance recipients shall require each covered employer operating on the premises of property improved or developed with financial assistance to enter into a labor peace agreement with a labor organization that seeks to represent its employees.

c. The requirements of this section shall apply for the term of the financial assistance or for 10 years, whichever is longer, from the date of commencement of the project subject to a project agreement or the date the project subject to a project agreement commences operations, whichever is later.

d. The requirements established under this section shall not apply to the following entities or persons except with respect to the reporting requirements set forth in paragraph 2 of subdivision e of this section:

1. Any otherwise covered employer that is an entity that has annual consolidated gross revenues that are less than the small business cap or the revenues of which are included in the consolidated gross revenues of an entity having annual consolidated gross revenues that are less than the small business cap, in each case calculated for the fiscal year preceding the fiscal year in which the project agreement is entered into and determined in accordance with generally accepted accounting principles.

2. Any otherwise covered employer that is a not-for-profit organization.

3. Any otherwise covered employer whose principal industry conducted at the project location is manufacturing, as defined by the North American Industry Classification System.

4. Any otherwise covered employer operating on the premises of a project where residential units

comprise more than 75% of the project area, and no less than 75% of the residential units are affordable for families earning less than 125% of the area median income.

5. Any otherwise covered employer operating on the premises of a project where residential units comprise more than 75% of the project area, and all of the residential units are subject to rent regulation.

e. 1. Each financial assistance recipient shall provide to the comptroller and the city or city economic development entity that executed the project agreement an annual certification, executed under penalty of perjury, confirming notification to all covered employers operating on its premises that such employers must comply with all requirements of this section, providing the names, addresses and telephone numbers of such employers, and affirming its obligation to assist the city to investigate and remedy non-compliance of such employers. Where there are multiple covered employers operating on the premises of a financial assistance recipient, each covered employer shall, prior to commencing work at such premises, provide a statement agreeing to comply with the requirements of this section. All statements shall be certified by the chief executive or chief financial officer of the covered employer, or the designee of any such person. A violation of any provision of such certified statements shall constitute a violation of this section by the party committing the violation of such provision.

2. An otherwise covered employer that qualifies for an exemption from the requirements of this section under subdivision d of this section shall provide a statement, executed under penalty of perjury, certifying that such employer qualifies for an exemption and specifying the basis for that exemption. Such an employer shall update or withdraw such statement on a timely basis if its eligibility for the claimed exemption should change.

3. The city or city economic development entity that executed the project agreement shall maintain for four years all certifications submitted pursuant to this subdivision and make them available for public inspection.

f. 1. The comptroller shall monitor covered employers' compliance with the requirements of this

section. Whenever the comptroller has reason to believe there has been a violation of this section, or upon a verified complaint in writing from an interested party, the comptroller shall conduct an investigation to determine the facts relating thereto. Based upon such investigation, hearing and findings, the comptroller shall report the results of such investigation and hearing to the mayor or the mayor's designee, who shall, after providing the covered employer an opportunity to cure any violations, where appropriate issue an order, determination or other disposition. Such disposition may:

(a) Direct the filing or disclosure of any records that were not filed or made available to the public as required by this section;

(b) Direct payment of the sums withheld at the commencement of the investigation and the interest that has accrued thereon to the financial assistance recipient; and

(c) Declare ineligible to receive financial assistance or prohibit from operating as a covered employer on the premises of a financial assistance recipient or on real property improved or developed with financial assistance any person against whom a final disposition has been entered in two instances within any consecutive six year period determining that such person has failed to comply with the requirements of this section.

In assessing an appropriate remedy, due consideration shall be given to the gravity of the violation, the history of previous violations, the good faith of the covered employer and the failure to comply with recordkeeping, reporting or other requirements.

2. Before issuing an order, determination or any other disposition, the mayor or the mayor's designee shall give notice thereof, together with a copy of the complaint, which notice shall be served personally or by mail on any person affected thereby. The mayor or the mayor's designee may negotiate an agreed upon stipulation of settlement or refer the matter to the office of administrative trials and hearings for a hearing and disposition. Such covered employer shall be notified of a hearing date by the office of administrative trials and hearings, or other appropriate tribunal, and shall have the opportunity to be heard in respect to such matters.

3. Upon determining that a covered employer is not in compliance, and where no cure is effected and approved by the mayor or the mayor's designee, the city or city economic development entity shall take such actions against such covered employer as may be appropriate and provided for by law, rule or contract, including but not limited to: (i) declaring the financial assistance recipient who has committed a violation in default of the project agreement; (ii) imposing sanctions; and (iii) recovering from such covered employer the financial assistance disbursed or provided to such covered employer, including but not limited to requiring repayment of any taxes or interest abated or deferred.

g. The provisions of this section shall not apply to any financial assistance that was provided prior to the enactment of the local law that added this section, nor shall they apply to any project agreement that was entered into or to any project for which an inducement resolution was adopted in furtherance of entering into a project agreement prior to the enactment of the local law that added this section, except that extension, renewal, amendment or modification of such project agreement occurring on or after the enactment of the local law that added this section that results in the grant of any additional financial assistance to the financial assistance recipient shall make the financial assistance recipient and any other covered employers operating on the premises of the financial assistance recipient or at the real property improved or developed with financial assistance subject to the requirements of this section.

§ 3. This local law does not apply to city service contracts entered into or projects authorized or financial assistance awarded prior to the effective date of this local law. This local law shall not be applied in a manner that interferes with contracts or agreements entered into by the city or a city economic development entity before the effective date of this local law.

§ 4. This local law takes effect 90 days after it becomes law.

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