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Int. No. 758-A

By Council Members Quinn, Addabbo, Jr., Brewer, Clarke, James, Jennings, Liu, Palma, Seabrook, Sears, Stewart, Weprin, Jackson , Martinez, Baez and Dickens

A Local Law to amend the administrative code of the city of New York, in relation to the Health Care Security Act.

Be it enacted by the Council as follows:

Section 1. Subdivision b of section 22-506 of chapter 5 of title 22 of the administrative code of the city of New York is hereby amended to read as follows:

§ 22-506 b. Definitions. For purposes of this section, the following terms shall have the following meanings:

(1) "Active retail floor space" means the floor space in any store operated by a grocery employer that is utilized for the display and sale of food; provided that such term shall not include any storage space, loading dock, food preparation space or eating area designated for the consumption of prepared food.

[(1)](2) "Administering agency" means any city agency, office, department, division, bureau or institution of government, the expenses of which are paid in whole or in part from the city treasury, as the mayor shall designate.

[(2)](3) "City" means the city of New York.

[(3)](4) "Covered employer" means any grocery employer operating in the city. [(4)](5) "Covered industry" means the grocery industry operating in the city.

[(5)](6) "Employee" means any person who is not a family member of a covered employer and who works at any location in the city on a full-time, part-time[, temporary, casual, on-call, pool] or seasonal basis

for any grocery employer[, including, but not limited to persons who perform work for such employers as independent contractors or as contingent or contracted workers, and persons made available to work through the services of a temporary employment agency]; provided[, however,] that such term shall not include persons who are managerial, supervisory or confidential employees; and provided further that such term shall not include persons who are hired to work exclusively for the holiday period from November 1 through December 31.

[(6)](7) "Entity" or "Person" means any natural person, corporation, sole proprietorship, partnership, association, joint venture, limited liability company or other legal entity.

[(7)](8) "Family of employee" means the spouse or domestic partner as defined in section 3-240 of the administrative code of an employee and each dependent child of such employee.

(9) "Family member of a covered employer" means the spouse or domestic partner as defined in section 3-240 of the administrative code of a covered employer and each child, parent, sister or brother of such employer.

[(8)](10) "Fiscal year" means the period from July 1 of each year through June 30 of the following year.

(11) "Food" means nourishment for human consumption.

[(9)](12) "Grocery employer" means any entity operating one or more retail stores in the city that (i) primarily sell food for off-site consumption, where such entity employs [thirty-five]fifty or more employees at any one such store, provided that such entity shall be deemed to employ the highest number of employees that such entity employed at any time during the preceding fiscal year or (ii) contain [10,000]12,500 square feet or more of active retail floor space for the sale of food for off-site consumption, such as a "big box" retail store or warehouse club; provided that such term shall not include any retail store for which pharmacy sales comprise fifty percent or more of store sales.

[(10)](13) "Health care expenditure" means any amount paid by a covered employer to its employees or to another party on behalf of its employees and/or the families of its employees for the purpose of providing

health care services or reimbursing the cost of such services for its employees and/or the families of its employees, including, but not limited to, (i) contributions by such employer to a health savings account as defined under section 223 of the United States internal revenue code [on behalf of any of its employees and/or the families of its employees,]or to any other account having substantially the same purpose or effect without regard to whether such contributions qualify for a tax deduction or are excludable from employee income; (ii) reimbursement by such employer to its employees and/or the families of its employees for incurred health care expenses where such recipients had no entitlement to have expenses reimbursed under any plan, fund or program maintained by such employer; or (iii) contributions by such employer to any New York city health and hospitals corporation facility or federally qualified health center that is located in a borough where such employer operates a store or where the majority of such employer's employees reside, provided that such contributions shall not be designated for a particular individual or group of individuals, notwithstanding anything herein to the contrary; provided, however, that such term shall not include any payment made directly or indirectly for workers' compensation, Medicare benefits or any other health care costs, taxes or assessments that such employer is required to pay pursuant to any federal, state or local law other than this section, or any amount deducted from an employee's wages and not reimbursed by such employer.

[(11)](14) "Health care services" means primary or secondary medical care or services, including, but not limited to, (i) inpatient and outpatient hospital services, (ii) physicians' surgical and medical services, (iii) laboratory, diagnostic and x-ray services, (iv) prescription drug coverage, (v) annual physical examinations, (vi) preventative services, (vii) mental health services or (viii) substance abuse treatment services; provided, however, that such term shall not include any medical procedure or treatment which is solely cosmetic.

[(12)](15) "Prevailing health care expenditure rate" means the amount of health care expenditure customarily made on behalf of a full-time employee and/or the family of such employee in the same trade or occupation in the covered industry, prorated on an hourly basis and calculated pursuant to paragraph 2 of subdivision c of this section.

[(13)](16) "Required health care expenditure" means the total health care expenditure that a covered employer is required to make each year for its employees and/or the families of its employees pursuant to subdivision c of this section.

[(14)](17) "Retaliatory action" means the discharge, suspension, demotion or penalization of, or discrimination or taking other adverse action against, an employee with respect to the terms and conditions of such employee's employment.

§ 2. Paragraphs (1), (3) and (4) of subdivision c of section 22-506 of chapter 5 of title 22 of the administrative code of the city of New York are hereby amended to read as follows:

c. Required health care expenditures. (1) Covered employers shall make required health care expenditures on behalf of their employees and/or the families of their employees each fiscal year, beginning on July 1, 2006. Such expenditures may be made within thirty days after the close of the fiscal year for which such expenditures are required to be made; provided that no health care expenditures may be credited toward more than one fiscal year.

(3) Each covered employer shall annually determine its required health care expenditure by multiplying the prevailing health care expenditure rate as determined by the administering agency pursuant to this subdivision for such employer's covered industry by the total number of hours worked during the fiscal year by all the employees of such employer. A covered employer may use any reasonable methodology to determine (i) the number of hours worked during the fiscal year by its employees; (ii) such employer's required health care expenditure for the fiscal year; and (iii) whether the health care expenditure made by such employer during the fiscal year is at least equal to such employer's required health care expenditure for such year. Each covered employer shall file a concise statement describing such methodology with the administering agency, or if no such agency has been designated, with the city clerk, by April 1 of each year for the following fiscal year.

(4) A covered employer shall (i) maintain an accurate work log that [lists]includes, for each employee, such employee's name, trade or occupation, and the dates and hours or time periods worked by such employee,

provided, however, that covered employers shall not be required to maintain such records in any particular form ; (ii) provide an employee or such employee's designated representative(s) with access to such employee's work log and payroll records for inspection and copying; (iii) maintain accurate records of health care expenditures and required health care expenditures, and proof of such expenditures each year, provided, however, that covered employers shall not be required to maintain such records in any particular form; and (iv) provide a report to the administering agency on an annual basis containing the information required to be maintained pursuant to subparagraphs (i) and (iii) of this paragraph, and such other information as the administering agency shall require. Such report shall be made available to the public upon request without employee names or other personally identifying information. A covered employer that is a signatory to one or more collective bargaining agreements that cover at least seventy-five percent of its employees may comply with this section as provided in subdivision g.

§ 3. Paragraphs (2) and (4) of subdivision f of section 22-506 of chapter 5 of title 22 of the administrative code of the city of New York are hereby amended to read as follows:

(2) Any proceeding to recover any civil penalty authorized pursuant to this [chapter]section shall be commenced by the service of a notice of violation which shall be returnable to the administering agency. The commissioner or other designated person of such administering agency shall, after due notice and an opportunity for a hearing, be authorized to impose the civil penalties prescribed by this section.

(4) Any joint-labor management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (section 175a of title 29 of the United States code) operating in the covered industry or any employee of a covered employer may bring an action in any court of competent jurisdiction against a covered employer that fails to make health care expenditures during the fiscal year at least equal to the required health care expenditure for such employer in violation of this section. Upon a determination of any such violation, the court may award any appropriate [remedy at law or equity]equitable relief to secure compliance with this section and shall award reasonable attorney's fees and costs incurred in maintaining the action to any

complaining party who prevails in any such enforcement action.

§ 4. If any section, subsection, sentence, clause, phrase, or other portion of this local law, including any requirement imposed pursuant to it, is for any reason declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this local law, which remaining portions shall continue in full force and effect.

§ 5. This local law shall take effect immediately or on the date that local law 89 of 2005 takes effect, whichever is later.

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