



Legislation Text

File #: Int 0273-2024, Version: *

Int. No. 273

By Council Members Krishnan, Hudson and Restler

A Local Law to amend the administrative code of the city of New York, in relation to the interpretation of the New York city human rights law, and the repeal of paragraph f of subdivision 13 of section 8-107 of such code relating to vicarious liability of employers

Be it enacted by the Council as follows:

Section 1. This local law shall be known and may be cited as the “No exceptions law of 2023”.

§ 2. Legislative findings and purpose. For more than 30 years, the council has enacted local laws directing courts to construe the provisions of the New York city human rights law liberally. Nevertheless, some courts, both at the trial and appellate levels, have resisted these directives. Opinions in *Chauca v. Abraham*, 30 N.Y.3d 325 (2017), *Makinen v. City of New York*, 30 N.Y.3d 81 (2017), and *Krohn v. New York City Police Department*, 2 N.Y.3d 329 (2004), are illustrations of narrow interpretations of the language set forth in the New York city human rights law contrary to the legislative intent, and the council now intends to correct these misinterpretations and reaffirm its intent that the New York city human rights law always be construed liberally for the accomplishment of its uniquely broad and remedial purposes. The purpose of this local law is to emphasize that there are no exceptions to the requirements set forth in section 8-130 of the administrative code of the city of New York and to provide further guidance to direct courts to liberally and independently construe the New York city human rights law in a manner that is maximally protective of civil rights in all circumstances.

§ 3. Section 8-130 of the administrative code of the city of New York is amended by adding new subdivisions (d), (e), (f), (g), and (h) to read as follows:

(d) There are no exceptions to the liberal construction requirements of this section, and any purported exception, whether supposed to arise from common law, a statutory source, or an interpretative doctrine, contravenes the intention of this section.

(e) The failure of this section to repudiate an opinion of a court is not intended to ratify, and shall not be construed as constituting implicit ratification, of any such opinion.

(f) The council repudiates the interpretation of the New York city human rights law in *Krohn v. New York City Police Department*, 2 N.Y.3d 329 (2004). The city’s sovereign immunity as to claims brought under the New York city human rights law was always intended to be waived. The restatement of this intention is found in subdivision a-2 of section 8-502.

(g) The council repudiates the interpretation of the New York city human rights law by the majority opinion in *Chauca v. Abraham*, 30 N.Y.3d 325 (2017). Upon a finding of liability, a plaintiff was always entitled to charge a jury or other finder of fact with considering whether or not to impose punitive damages, in addition to all other forms of relief. The restatement of this intention is found in subdivision a-1 of section 8-502.

(h) The council repudiates the interpretation of the New York city human rights law in *Makinen v. City of New York*, 30 N.Y.3d 81 (2017). Conduct based in whole or in part on mistakenly perceived alcoholism was always intended to be understood as conduct based on perceived disability, and the limitation set forth in paragraph 2

of the definition of disability in section 8-102 does not apply.

§ 4. Section 8-502 of the administrative code of the city of New York is amended by adding new subdivisions a-1 and a-2 following subdivision a, to read as follows:

a-1. A finding of liability for an unlawful discriminatory practice under chapter 1 of this title or an act of discriminatory harassment or violence under chapter 6 of this title, is sufficient by itself to warrant charging a jury or other finder of fact to consider whether to award punitive damages against a covered entity. The fact that a covered entity's act or failure to act was intentional, malicious, or recklessly indifferent to the rights of the plaintiff or plaintiffs is among the aggravating factors that may be considered by a jury or other finder of fact, but the absence of any such factors does not preclude the imposition of punitive damages. When a covered entity is found liable on the basis of its own conduct, punitive damages, if any, shall be assessed on the basis of the covered entity's conduct. When a covered entity is found vicariously liable for the conduct of its employee, agent, or independent contractor, punitive damages, if any, shall be assessed on the bases of (i) the conduct of the person for whose conduct the covered entity is vicariously liable and (ii) the covered entity's own actions and failures to act.

a-2. The city waives immunity and permits the award of punitive damages in respect to all claims brought under subdivision a of this section, including claims brought against the city or its agencies or other instrumentalities.

§ 5. Paragraph (f) of subdivision 13 of section 8-107 of the administrative code of the city of New York is REPEALED.

§ 6. This local law takes effect immediately and is intended to have retroactive applicability; provided, however, that subdivision (f) of section 8-130 of the administrative code of the city of New York, as added by section three of this local law, and subdivision a-2 of section 8-502 of such code, as added by section four of this local law, only apply to claims commenced or continued not less than one year after the effective date of this local law.

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4/4/2023 12:48 PM