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Int. No. 316

By Council Members Morano, Paladino and Louis

A Local Law to amend the administrative code of the city of New York, in relation to prohibiting certain employers from considering an individual's vaccination status when making employment decisions

Be it enacted by the Council as follows:

Section 1. Paragraph 3 of subdivision a of section 20-1208 of the administrative code of the city of New York, as amended by local law number 80 for the year 2020, is amended to read as follows:

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;

(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 department that it provided the employee with the required written response within seven days of the department notifying the employer of the opportunity to cure; and

(i) Section 20-1282,

(1) An order directing compliance with such subdivision, 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 20-1282; and

(2) $500 for each violation.

§ 2. Subdivisions a and b of section 20-1211 of the administrative code of the city of New York, subdivision a as amended by local law number 2 for the year 2021 and subdivision b as added by local law number 107 for the year 2017, are amended to read as follows:

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;

7. Subdivisions a and b of section 20-1252; [and]

8. Section 20-1272; and

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9. Section 20-1282.

b. Remedies. Such court may order compensatory, injunctive and declaratory relief, including the following remedies for violations of this chapter:

1. Payment of schedule change premiums withheld in violation of section 20-1222;

2. An order directing compliance with the recordkeeping, information, posting and consent requirements set forth in sections 20-1205, 20-1206 and 20-1221;

3. Rescission of any discipline issued in violation of section 20-1204 or section 20-1282;

4. Reinstatement of any employee terminated in violation of section 20-1204 or section 20-1282;

5. Payment of back pay for any loss of pay or benefits resulting from discipline or other action taken in violation of section 20-1204 or section 20-1282;

6. Other compensatory damages and any other relief required to make the [employee] person whole; and

7. Reasonable attorney's fees.

§ 3. Chapter 12 of title 20 of the administrative code of the city of New York is amended by adding a new subchapter 8 to read as follows:

SUBCHAPTER 8

LIMITATIONS ON USE OF VACCINATION STATUS IN EMPLOYMENT DECISIONS

§ 20-1281 Definitions. As used in this subchapter, the following terms have the following meanings:

Health care entity. The term “health care entity” means a hospital as defined in section 2801 of the public health law; any agency established pursuant to article 36 of the public health law; a hospice as defined in section 4002 of the public health law; an adult care facility under the regulatory authority of the state department of health, as set forth in article 7 of the social services law; and any long-term care facility as defined in section 2191 of the public health law.

Health care entity personnel. The term “health care entity personnel” means all individuals engaged by a health care entity, including employees, contract staff, students, and volunteers, who participate in activities that

could potentially expose other personnel, patients, or residents to an infectious disease.

§ 20-1282 Vaccination not a condition of employment. Except as provided in section 20-1283, an employer shall not, on account of whether an individual has received a vaccination:

1. Represent that any employment or position is not available when in fact it is available;

2. Refuse to hire or employ such individual;

3. Bar or discharge such individual from employment; or

4. Discriminate against such individual in compensation or in terms, conditions, or privileges of employment.

§ 20-1283 Exceptions. The provisions of this subchapter shall not apply:

1. To employer actions affecting health care entity personnel;

2. To vaccination requirements set forth in article 43 of the New York city health code for employees in school-based programs for children under age 6, or a successor provision;

3. To vaccination requirements set forth in article 47 of the New York city health code for employees in child care and shelter-based child supervision programs, or a successor provision;

4. To an employee covered by a valid collective bargaining agreement, including an agreement that is open for negotiation, if (i) such provisions are expressly waived in such collective bargaining agreement and (ii) the agreement addresses employee vaccination requirements;

5. To an employee whose job duties require entering an employer's personal residence;

6. When compliance with this subchapter would conflict with an employer's obligations under the Americans with disabilities act, the public health law, anti-discrimination laws, or any applicable federal or state law or regulation; or

7. When compliance with this subchapter would deprive a person of a right that is protected by the first amendment of the United States constitution.

§ 4. This local law takes effect 180 days after it becomes law.

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