

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2016**

No. 11

Introduced by Council Members Miller, Johnson, Kallos, Lander, Chin, Rosenthal, King, Levine, Constantinides, Dromm, Williams, Menchaca, Ferreras-Copeland, Rodriguez, Torres, Koslowitz, Lancman, Levin, Richards, Barron, Van Bramer, Mealy, Dickens, Eugene, Maisel, Mendez, Koo, Gibson, Treyger and Ulrich.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to requiring successor employers in the grocery industry to retain eligible employees for a transitional employment period.

Be it enacted by the Council as follows:

Section 1. Subdivision e of section 2203 of the charter of the city of New York, as amended by local law number 7 for the year 2014, is amended to read as follows:

(e) The commissioner shall have all powers as set forth in:

(1) chapter 8 of title 20 of the administrative code relating to the receipt, investigation, and resolution of complaints thereunder regarding earned sick time, and the power to conduct investigations regarding violation of such chapter upon his or her own initiative; *and*

(2) section 22-507 of the administrative code relating to the receipt, investigation, and resolution of complaints thereunder regarding the retention of grocery workers, and the power to conduct investigations regarding violations of such section upon his or her own initiative.

§ 2. Title 22 of the administrative code of the city of New York is amended by adding a new section 22-507 to read as follows:

§ 22-507 *Displaced Grocery Workers.* a. *For purposes of this section, the following terms shall have the following meanings:*

Change in control. The term “change in control” means any sale, assignment, transfer, contribution or other disposition of all or substantially all of the assets of, or a controlling interest in, including by consolidation, merger or reorganization, any grocery establishment.

City. The term “city” means the city of New York.

Department. The term “department” means the department of consumer affairs or any other agency or office designated by the mayor.

Eligible grocery employee. The term “eligible grocery employee” means any person employed by a grocery establishment subject to a change in control, and who has been employed by such establishment on a full-time or a part-time basis for a period of at least six months prior to the effective date of the change in control; provided that such term shall not include persons who are managerial, supervisory or confidential employees or persons who on average regularly worked fewer than eight hours per week during such period.

Grocery establishment. The term “grocery establishment” means any retail store in the city of New York in which the sale of food for off-site consumption comprises fifty percent or more of store sales and that exceeds 10,000 square feet in size, exclusive of any storage space, loading dock, food preparation space or eating area designated for the consumption of prepared food.

Incumbent grocery employer. The term “incumbent grocery employer” means any person that owns or controls a grocery establishment prior to any change in control.

Person. The term “person” means any individual, corporation, sole proprietorship, partnership, limited partnership, limited liability partnership, limited liability company, business

trust, estate, trust, association, joint venture, agency, instrumentality or any other legal or commercial entity, whether domestic or foreign.

Successor grocery employer. The term “successor grocery employer” means any person that owns or controls a grocery establishment after any change in control.

Transitional employment period. The term “transitional employment period” means a 90 day period beginning upon the latter of the effective date of a change in control of a grocery establishment or the end of any period during which such grocery establishment was not open to the public during its normal business hours.

b. Worker retention; transitional employment period.

1. No less than fifteen calendar days before the effective date of any change in control of a grocery establishment, the incumbent grocery employer shall:

(A) provide to the successor grocery employer a full and accurate list containing the name, address, phone number, if known by such incumbent grocery employee, email address, if known by such incumbent grocery employer, date of hire and job category of each eligible grocery employee;

(B) post a notice in the same location and manner that other statutorily required notices to employees are posted at such grocery establishment, which shall include:

(i) the effective date of such change in control;

(ii) the name and contact information for the successor grocery employer;

(iii) an explanation of the rights provided pursuant to this section, in a form prescribed by the department; and

(iv) the names and job categories of each eligible grocery employee.

(C) provide the list and notice required by subparagraphs (A) and (B) of this paragraph

to the eligible grocery employees' collective bargaining representatives, if any.

2. A successor grocery employer shall retain each eligible grocery employee for the transitional employment period and, except as provided in paragraph 3 of this subdivision, a successor grocery employer shall not discharge an eligible grocery employee retained pursuant to this section during the transitional employment period without cause.

3. If at any time during the transitional employment period a successor grocery employer determines that it requires fewer eligible grocery employees than were employed by the incumbent grocery employer, such successor grocery employer shall retain such eligible grocery employees by seniority within each job category. During the transitional employment period, the successor grocery employer shall maintain a preferential hiring list of any eligible grocery employees not retained by such successor grocery employer who shall, by seniority within their job category, be given a right of first refusal to any jobs that become available during such period within such job category.

4. A successor grocery employer shall retain written verification of any offer of employment made by such successor grocery employer to any eligible grocery employee for a period of no less than three years from the date such offer was made. Such verification shall include the name, address, date of offer, and job category of each eligible grocery employee.

5. At the end of the transition employment period, a successor grocery employer shall complete a written performance evaluation for each eligible grocery employee retained pursuant to this section and may offer such eligible grocery employee continued employment. A successor grocery employer shall retain a record of the written performance evaluation for a period of no less than three years.

c. Penalties.

1. Any incumbent grocery employer who violates paragraph 1 of subdivision b of this section shall be liable for a civil penalty of not more than \$1,000.

2. Any successor grocery employer who violates paragraph 2 of subdivision b of this section shall be liable for a civil penalty of not more than \$750 for each employee not retained or terminated without cause during the transitional employment period.

3. Any successor grocery employer who violates paragraph 3 of subdivision b of this section for failing to maintain a preferential hiring list of any eligible grocery employees not retained by such successor grocery employer shall be liable for a civil penalty of not more than \$750.

4. Any successor grocery employer who violates paragraph 4 of subdivision b of this section for failing to retain written verification of any offer of employment made by such successor grocery employer to any eligible grocery employee shall be liable for a civil penalty of not more than \$500.

5. Any successor grocery employer who violates paragraph 5 of subdivision b of this section for failing to complete or retain written performance evaluations for each eligible grocery employee retained during the transitional employment period shall be liable for a civil penalty of not more than \$500.

d. Enforcement.

1. Any eligible grocery employee alleging a violation of this section may file a complaint with the department within 180 days of the date such eligible grocery employee knew or should have known of the alleged violation.

(A) The department shall investigate any complaint it receives regarding an alleged violation of this section. The department shall maintain confidential the identity of any

complainant unless disclosure of such complainant's identity is necessary for resolution of the investigation or otherwise required by law. The department shall, to the extent practicable, notify such complainant that the department will be disclosing his or her identity prior to such disclosure.

(B) The department may, at any time after the filing of a complaint, resolve the complaint by any method of dispute resolution, unless such complaint is withdrawn by the complainant.

(C) The department shall keep complainants reasonably notified regarding the status of their complaint and any resultant investigation.

(D) A proceeding to recover any civil penalty authorized by this section shall be commenced by the service of a notice of violation which shall be returnable to the office of administrative tribunals and hearings. Such office shall have the power to impose the penalties described by paragraphs 1 through 5 of subdivision c of this section and by paragraph 3 of this subdivision.

(E) The department may settle a notice of violation at any time prior to the conclusion of an adjudication, provided that any complainant who opts out of such settlement may withdraw his or her complaint and file a private right of action pursuant to paragraph 2 of this subdivision.

2. Any eligible grocery employee alleging a violation of this section may bring a civil action against an incumbent grocery employer for a violation of paragraph 1 of subdivision b of this section or against a successor grocery employer for a violation of paragraphs 2 through 5 of subdivision b of this section only if:

(A) such eligible grocery employee has filed a complaint with the department pursuant to paragraph 1 of this subdivision arising out of the same facts and circumstances, the department

has not, within 120 days, either resolved such complaint or issued a notice of violation, and such employee has withdrawn such complaint with the department; or

(B) such eligible grocery employee has filed a complaint with the department pursuant to paragraph 1 of this subdivision arising out of the same facts and circumstances, has opted out of a settlement reached by the department pursuant to subparagraph (E) of paragraph 1 of this subdivision, and has withdrawn his or her complaint with the department.

3. In addition to the penalties authorized by subdivision c of this section, the remedy in any administrative proceeding or civil action undertaken pursuant to this section may include:

(A) three times the pay for each day the eligible grocery employee was discharged or not retained in violation of paragraph 2 of subdivision b of this section, which shall be calculated at a rate of compensation not less than the higher of:

(i) the average regular rate of pay received by the eligible grocery employee during the last three years of such eligible grocery employee's employment in the same job category, or

(ii) the most recent regular rate received by the eligible grocery employee while employed by either the incumbent grocery employer or the successor grocery employer, regardless whether such employee obtained an alternate source of income that was less than, equal to, or greater than the rate calculated pursuant to this paragraph;

(B) the value of the benefits the eligible grocery employee would have received under the successor grocery employer's benefit plan for those days such employee was discharged or was not retained in violation of paragraph 2 of subdivision b of this section;

(C) an order requiring that the successor grocery employer retain its eligible grocery employees during the transitional employment period, unless an eligible grocery employee is discharged pursuant to paragraph 3 of subdivision b of this section or with cause; and

(D) reasonable attorney's fees and costs incurred in maintaining a civil action for a violation of this section, provided the eligible grocery employee is the prevailing party in any such civil action.

e. The provisions of this section shall not apply to any successor grocery employer that, on or before the effective date of the transfer of control from a predecessor grocery employer to the successor grocery employer, enters into a collective bargaining agreement covering the eligible grocery employees or agrees to assume, or to be bound by, the collective bargaining agreement of the predecessor grocery employer covering the eligible grocery employees, provided that such collective bargaining agreement provides terms and conditions regarding the discharge or laying off of employees.

§ 3. If any subsection, sentence, clause, phrase or other portion of this local law 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 the local law that added this section, which remaining portions shall remain in full force and effect.

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

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on January 19, 2016 and approved by the Mayor on February 8, 2016.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 11 of 2016, Council Int. No. 632-B of 2015) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council and approved by the Mayor.

STEPHEN LOUIS, Acting Corporation Counsel.