

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2021**

No. 51

Introduced by Council Members Kallos, Miller, Lander, Rosenthal, Chin, Louis, Reynoso, Cabrera, Vallone, Dromm, Adams, Maisel, Ayala, Cornegy, Moya, Koo, Barron, Salamanca, Gibson, Gjonaj and Rivera.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to establishing a retirement savings program for certain self-employed individuals and employees of private entities

Be it enacted by the Council:

Section 1. Title 20 of the administrative code of the city of New York is amended by adding a new chapter 14 to read as follows:

CHAPTER 14

SAVINGS ACCESS NEW YORK - BOARD AND PROGRAM FOR PRIVATE SECTOR

EMPLOYEE RETIREMENT SAVINGS

§ 20-1401 Definitions.

§ 20-1402 Reserved.

§ 20-1403 Establishment of the retirement savings program.

§ 20-1404 Certification authorized.

§ 20-1405 Reserved.

§ 20-1406 Reserved.

§ 20-1407 Elements of the retirement savings program.

§ 20-1408 Reserved.

§ 20-1409 Participating employer obligations.

§ 20-1410 Reserved.

§ 20-1411 Information and disclaimers to covered employees, other eligible individuals, and participants.

§ 20-1412 Reserved.

§ 20-1413 Participating employer record retention.

§ 20-1414 Enforcement.

§ 20-1415 Discontinuation of the retirement savings program.

§ 20-1401 Definitions. For purposes of this chapter, the following terms have the following definitions:

Account. The term “account” means an individual retirement savings account established by the retirement savings program.

Administrator. The term “administrator” means any person that has entered into an agreement with the retirement savings board to implement and maintain a retirement savings program or components of such program. More than one person may perform the functions of the administrator, and duties applicable to the administrator shall also apply to persons with whom the administrator contracts to implement such program or components.

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

Covered employee. The term “covered employee” means any employee as defined in subdivision 2 of section 190 of the labor law: (i) who is twenty-one years of age or older; (ii) who is employed for compensation by a covered employer in a position in which he or she is regularly

scheduled to work at least 20 hours per week; and (iii) whose regular duties occur in the city, consistent with any rules promulgated by the retirement savings board pursuant to section 20-1408.

Covered employer. The term “covered employer” means any employer as defined in subdivision 3 of section 190 of the labor law that (i) employs no fewer than five employees whose regular duties occur in the city, consistent with any rules promulgated by the retirement savings board pursuant to section 20-1408; (ii) has employed no fewer than five such employees without interruption for the previous calendar year; (iii) has been in continuous operation for at least two years; and (iv) has not offered or maintained in the preceding two years a retirement plan, provided that an entity described in clauses (i) through (iv) in the definition of “participating employer” shall not constitute a covered employer.

IRA. The term “IRA” means either an individual retirement account or individual retirement annuity established under section 408 (traditional) or 408A (Roth) of the internal revenue code.

Other eligible employer. The term “other eligible employer” means an employer as defined in subdivision 3 of section 190 of the labor law that is authorized to offer the retirement savings program to its employees pursuant to subdivision m of section 20-1405 or any rule promulgated by the retirement savings board pursuant to section 20-1408.

Other eligible individual. The term “other eligible individual” means a self-employed individual or an employee as defined in subdivision 2 of section 190 of the labor law who is not a covered employee: (i) who is twenty-one years of age or older; and (ii) who is permitted to enroll in the retirement savings program pursuant to subdivision l or m of section 20-1405 or pursuant to any rule promulgated by the retirement savings board pursuant to section 20-1408.

Participant. The term “participant” means a covered employee enrolled in the retirement savings program or any other eligible individual who is enrolled in the retirement savings program pursuant to subdivision l or m of section 20-1405 or pursuant to any rule promulgated by the retirement savings board pursuant to section 20-1408.

Participating employer. The term “participating employer” shall mean any covered employer and any other eligible employer that chooses to offer the retirement savings program to its employees pursuant to subdivision m of section 20-1405 or any rule promulgated by the retirement savings board pursuant to section 20-1408; provided that (i) the United States government, (ii) the state of New York, including any office, department, independent agency, authority, institution, association, society or other body of the state including the legislature and the judiciary, (iii) the city or any local government or municipality, or (iv) any public corporation as defined by section 65 of the general construction law shall not constitute a participating employer.

Person. The term “person” means a person as defined in subdivision ten of section 1-112.

Retirement plan. The term “retirement plan” means a qualified retirement plan under section 401(a) of the internal revenue code, section 403(a), section 403(b), section 408(k), or section 408(p) of the internal revenue code; or a savings incentive match plan for employees of small employers (SIMPLE IRA Plan or SIMPLE 401(k) plan); a simplified employee pension (SEP); a salary reduction simplified employee pension (SARSEP); a payroll deduction IRA; or the New York state secure choice savings program established pursuant to section 1301 of the general business law.

Retirement savings board. The terms “retirement savings board” or “board” mean the retirement savings board established by section 20-1402.

Retirement savings program. The terms “retirement savings program” or “program” mean the retirement savings program established pursuant to section 20-1403, which will also be called the “Savings Access New York Retirement Program.”

§ 20-1403 Establishment of the retirement savings program. *Subject to applicable federal and state law, the board, in coordination with the comptroller with respect to the authority described in section 20-1406, shall establish a retirement savings program as set forth by this chapter, either directly or indirectly through agreement with an administrator pursuant to section 20-1405, for the purpose of promoting greater retirement savings for individuals in the New York city private sector. The program shall be designed and operated in a manner that will cause it not to constitute an employee benefit plan within the meaning of section 3(3) of the employee retirement income security act of 1974.*

§ 20-1404 Certification authorized. *Notwithstanding any inconsistent provision of this chapter, the board shall not implement a retirement savings program as set forth by this chapter if:*

a. the board certifies to the mayor and speaker in writing that the state establishes a retirement savings program that requires a substantial portion of employers who would otherwise be covered employers to offer to their employees the opportunity to contribute to accounts through payroll deduction or other method of contribution; or

b. the corporation counsel certifies to the mayor and speaker in writing that there is a substantial likelihood that such program conflicts with, or is preempted by, state or federal law, including the employee retirement income security act of 1974, or constitutes an employee benefit plan under such act; or

c. the director of management and budget and the comptroller each certify to the mayor and speaker in writing that establishment and implementation of such program would create a material risk of a substantial additional monetary liability or obligation for, or an enforceable guarantee by, the city or its agencies, officers or employees, beyond the ordinary costs of administration.

§ 20-1407 Elements of the retirement savings program. *Subject to applicable federal and state law and except as otherwise provided in this chapter, the retirement savings program shall include the following elements:*

a. Allow covered employees and other eligible individuals to contribute to an IRA established under the retirement savings program through payroll deduction or any other method of contribution established by the retirement savings board.

b. Apply to all participating employers.

c. Require all participating employers to offer covered employees the opportunity to contribute to accounts established by the program through payroll deduction or any other method of contribution established by the retirement savings board.

d. Provide for the automatic enrollment of covered employees and allow such employees to opt out of the program.

e. Establish a default contribution rate of five percent of a covered employee's wages, subject to any increase or decrease of such rate authorized by the board pursuant to subdivision k of section 20-1405.

f. Permit a covered employee to change his or her contribution rate and permit any other eligible individual who enrolls in the program to establish a contribution rate as a percent of his

or her wages, which rate such individual may later change, or make lump-sum contributions to the program.

g. Include a process for withdrawals by, and disbursements to, participants and provide participants options for such withdrawals and disbursements, including lump-sum or periodic payments.

h. Take measures to protect the confidentiality of account and participant information.

i. Provide that employers shall not contribute to accounts of participants or endorse or otherwise promote the program in a manner that would cause the program to become an employee benefit plan under the employee retirement income security act of 1974.

j. Maintain, or require the maintenance of, separate records and accounting for each account established pursuant to this chapter.

k. Provide for reports on the status of accounts to be provided to participants no less than once per year and upon request of any participant.

l. Allow participants who have become ineligible to participate in the program to maintain or withdraw account balances or roll over such balances into other retirement accounts, subject to any applicable penalties and limitations established by federal law.

m. Allow participants to terminate participation in the program and maintain or withdraw account balances or roll over such balances into other retirement accounts, subject to any applicable penalties and limitations established by federal law.

n. Refrain from requiring any participating employer to perform any duty or offer any guarantee not otherwise authorized by this chapter. In addition, the board shall not establish any

guarantee by, or duty on behalf of, the city except as otherwise required by law or authorized by this chapter.

o. Allocate administrative fees to IRAs in the program. To the extent consistent with the purpose of this chapter and practicable, all fees required for the administration of the retirement savings program shall be borne by participants or paid through funds received pursuant to subdivision j of section 20-1405.

§ 20-1409 Participating employer obligations. *a. A covered employer shall enroll each of its covered employees in the retirement savings program established by this chapter by a date to be determined by the board.*

b. A participating employer shall be required to remit funds deducted from the earnings of each participant for deposit in the retirement savings program periodically on the earliest practicable date, consistent with rules promulgated by the board pursuant to section 20-1408.

§ 20-1411 Information and disclaimers to covered employees, other eligible individuals, and participants. *In addition to any other information or disclaimers that the board deems appropriate in furtherance of this chapter, the board shall make available to covered employees, other eligible individuals, and participants:*

a. the following information in plain language and in the designated citywide languages, as defined in section 23-1101:

- 1. The benefits and risks associated with enrolling in the retirement savings program;*
- 2. Any applicable procedures regarding contributions to the retirement savings program and procedures regarding opting out of such program;*

3. Any applicable procedures regarding increasing or decreasing the rate or amount of contribution;

4. Options and processes for withdrawing account balances;

5. Any applicable procedures regarding obtaining additional information about the retirement savings program;

6. Any applicable procedures regarding making complaints about non-compliance by covered employers or other concerns regarding the program;

7. Information regarding the right of covered employees, other eligible individuals, and participants to seek financial advice concerning retirement savings from financial advisers, tax advisers, or other qualified individuals; and

8. Fund profiles, including fees, for each of the available investment options; and

b. the following disclaimers in plain language and in the designated citywide languages, as defined in section 23-1101:

1. Participating employers, the retirement savings board and its members, the comptroller, and the city and its representatives are not authorized to provide financial advice;

2. The program is not an employee benefit plan under the employee retirement income security act of 1974;

3. Participating employers, the retirement savings board and its members, the comptroller, and the city and its representatives are not liable for any loss incurred by a participant, as a result of participating in the retirement savings program;

4. *Participating employers, the retirement savings board and its members, the comptroller, and the city and its representatives will not monitor and are not obliged to monitor any participant's eligibility under the internal revenue code to make contributions to an IRA; and*

5. *Neither the program, the principal investment, any return on investment nor any interest rate is guaranteed by participating employers, the retirement savings board or its members, the comptroller, or the city or its representatives except as otherwise required by federal or state law.*

§ 20-1413 Participating employer record retention. *Each participating employer shall retain annual records documenting such employer's compliance with the requirements of this chapter for a period of three years unless otherwise required pursuant to any other law, rule, or regulation, and shall allow the agency or agencies designated by the mayor pursuant to section 20-1402 or 20-1414 to access such records upon request, provided that such access shall be obtained in accordance with applicable law. In addition, such agency or agencies may require a participating employer to provide electronic or paper copies of records upon request.*

§ 20-1414 Enforcement. *a. Designated office or agency. The mayor shall designate an office or agency to enforce sections 20-1409 and 20-1413. For purposes of this section, such office or agency shall be referred to as the "enforcement agency."*

b. Violations and penalties. 1. A participating employer who violates subdivision a or b of section 20-1409 or any rule implementing such subdivisions shall be liable for a civil penalty of not more than \$250 for such violation, provided that the civil penalty for a violation that occurs within two years of any previous violation shall be not more than \$500 for the second violation, and not more than \$1,000 for any subsequent violation within the two-year period. A violation

constitutes a failure to comply with subdivision a or b of section 20-1409 with respect to each covered employee or other eligible individual.

2. Notwithstanding paragraph 1 of this subdivision, a participating employer who violates section 20-1413 or any rule implementing such section shall be liable for a civil penalty of \$100 for each such violation. A violation constitutes a failure to comply with the requirements of such section or any rule implementing such section with respect to each covered employee or other eligible individual.

3. Notwithstanding paragraphs 1 and 2 of this subdivision, an employer, whether participating or non-participating, found to be in violation of any requirement of this chapter not specified in paragraphs 1 and 2 of this subdivision, or of any rule implementing this chapter not specified in such paragraphs, shall be liable for a civil penalty of \$100 for each such violation. A violation constitutes a failure to comply with any such requirement of this chapter or any rule implementing such requirement with respect to each covered employee or other eligible individual.

c. Enforcement. 1. Any covered employee or other eligible individual alleging a violation described in subdivision b of this section may file a complaint with the enforcement agency within one year of the date such employee learned or should have learned of the alleged violation.

2. The enforcement agency 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.

3. The enforcement agency shall keep complainants reasonably notified regarding the status of their complaint.

4. *If, as a result of an investigation of a complaint or an investigation conducted upon its own initiative, the enforcement agency believes that a violation has occurred, it may issue a notice of violation to the participating employer. The notice of violation shall be returnable to the office of administrative trials and hearings. Such office shall have the power to impose the penalties described by subdivision b of this section, and to order any appropriate legal and equitable relief with respect to a covered employee or other eligible individual in furtherance of the purposes of this chapter, provided that the enforcement agency may reserve to itself the power to issue final decisions, determinations and orders, after receiving the recommendation of such office, on matters other than findings of fact.*

5. *The enforcement agency 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 exercise a private right of action pursuant to subdivision d of this section.*

d. Private Right of Action. 1. Any covered employee or other eligible individual alleging a violation described in paragraph 1 or 2 of subdivision b of this section may bring a civil action or proceeding pursuant to this section against a participating employer only when:

(A) such covered employee or other eligible individual has filed a complaint with the enforcement agency pursuant to paragraph 1 of subdivision c of this section arising out of the same facts and circumstances, the enforcement agency has not, within four months, either resolved such complaint with the consent of the complainant or issued a notice of violation, and such employee or individual has withdrawn such complaint;

(B) such covered employee or other eligible individual has filed a complaint with the enforcement agency pursuant to paragraph 1 of subdivision c of this section arising out of the

same facts and circumstances, has opted out of a settlement reached by such agency, and has withdrawn such complaint; or

(C) the enforcement agency has terminated the administrative proceeding prior to a decision of the office of administrative trials and hearings on the merits of the complaint.

2. The remedy in any civil action or proceeding undertaken pursuant to this subdivision may include any appropriate legal or equitable relief with respect to a covered employee or other eligible individual in furtherance of the purposes of this chapter, including recovery of costs and reasonable attorneys' fees.

3. Where the corporation counsel has brought a civil action or proceeding pursuant to subdivision e of this section against a participating employer alleging violations described in subdivision b of this section, a covered employee or other eligible individual shall not bring a civil action or proceeding pursuant to this subdivision, arising out of the same facts and circumstances, against such employer, unless such covered employee or other eligible individual has obtained the consent of the corporation counsel.

e. The corporation counsel may bring a civil action or proceeding against any employer:

1. to impose the civil penalties authorized by subdivision b of this section and compel compliance with this chapter or restrain or prevent any violation described in such subdivision or any continuance of any such violation, and to recover costs and reasonable attorneys' fees; and

2. to obtain any appropriate legal or equitable relief with respect to any covered employee or other eligible individual harmed by any violation described in subdivision b of this section.

§ 20-1415 Discontinuation of the retirement savings program. *a. Notwithstanding any inconsistent provision of this chapter, in the event of the occurrence of the events described in*

subdivision b of this section and after reasonable advance notification to the mayor and speaker, the board and the comptroller shall take all necessary steps to discontinue the retirement savings program established pursuant to this chapter. Such steps shall include, but not be limited to, informing participants of available appropriate investment alternatives, allowing participants to transfer or roll over the balance of their accounts into such other appropriate investment accounts, or otherwise paying out account balances according to participants' instructions, subject to possible penalties and limitations established by federal law.

b. Any of the following events shall serve as a basis for the discontinuation of the retirement savings program:

1. the board certifies to the mayor and speaker in writing that the state has established a retirement savings program that requires a substantial portion of employers who would otherwise be covered employers to offer to their employees the opportunity to contribute to accounts through payroll deduction or other method of contribution; or

2. the corporation counsel certifies to the mayor and speaker in writing that there is a substantial likelihood that such program conflicts with, or is preempted by, state or federal law, including the employee retirement income security act of 1974, or constitutes an employee benefit plan under such act; or

3. the director of management and budget and the comptroller each certify to the mayor and speaker in writing that establishment and implementation of such program would create a material risk of a substantial additional monetary liability or obligation for, or an enforceable guarantee by, the city or its agencies, officers or employees, beyond the ordinary costs of administration.

§ 2. This local law takes effect 90 days after it becomes law, provided that the mayor, the comptroller, the retirement security board, and all other affected agencies may take all actions necessary for the implementation of chapter 14 of title 20 of the administrative code of the city of New York, as added by this local law, prior to such effective date.

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 April 29, 2021 and approved by the Mayor on May 11, 2021.

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. 51 of 2021, Council Int. No. 888-A of 2018 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.