

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

No. 1

Introduced by Council Members Adams, Lander, Moya, Ayala, Cabrera, Brannan, Eugene, Levine, Menchaca, Rosenthal, Kallos, Reynoso, Van Bramer, Salamanca, Chin, Cohen, Rivera, Treyger, Levin, Ampry-Samuel, Cumbo, Torres, Koslowitz, Rodriguez, Constantinides, Gibson, Powers, Vallone, Rose, Louis, Cornegy and Barron.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to fast food employee layoffs

Be it enacted by the Council as follows:

Section 1. Section 20-1271 of the administrative code of the city of New York, as added by a local law of the city of New York for the year 2020, relating to wrongful discharge of fast food employees, as proposed in introduction number 1415-A for the year 2019, is amended to add new definitions of "bona fide economic reason," and "seniority" in alphabetical order to read as follows:

Bona fide economic reason. The term "bona fide economic reason" means the full or partial closing of operations or technological or organizational changes to the business in response to the reduction in volume of production, sales, or profit.

Seniority. The term "seniority" means a ranking of employees based on length of service, computed from the first date of work, including any probationary period, unless such service has been interrupted by more than six months, in which case length of service shall be computed from the date that service resumed. An absence shall not be deemed an interruption of service if such

absence was the result of military service, illness, educational leave, leave protected or afforded by law, or any discharge based on a bona fide economic reason or that is in violation of any local, state or federal law, including this subchapter.

§ 2. The definition of "discharge" in section 20-1271 of the administrative code of the city of New York, as added by a local law of the city of New York for the year 2020, relating to wrongful discharge of fast food employees, as proposed in introduction number 1415-A for the year 2019, is amended to read as follows:

Discharge. The term "discharge" means any cessation of employment, including *layoff*, termination, constructive discharge, reduction in hours and indefinite suspension.

§ 3. Subdivision a of section 20-1272 of the administrative code of the city of New York, as added by a local law of the city of New York for the year 2020, relating to wrongful discharge of fast food employees, as proposed in introduction number 1415-A for the year 2019, is amended to read as follows:

a. A fast food employer shall not discharge a fast food employee who has completed such employer's probation period except for just cause *or for a bona fide economic reason.*

§ 4. Subdivision e of section 20-1272 of the administrative code of the city of New York, as added by a local law of the city of New York for the year 2020, relating to wrongful discharge of fast food employees, as proposed in introduction number 1415-A for the year 2019, is amended to read as follows:

e. The fast food employer shall bear the burden of proving just cause *or a bona fide economic reason* by a preponderance of the evidence in any proceeding brought pursuant to this subchapter,

subject to the rules of evidence as set forth in the civil practice law and rules or, where applicable, the common law.

§ 5. Section 20-1272 of the administrative code of the city of New York, as added by a local law of the city of New York for the year 2020, relating to wrongful discharge of fast food employees, as proposed in introduction number 1415-A for the year 2019, is amended to add new subsections g and h:

g. A discharge shall not be considered based on a bona fide economic reason unless supported by a fast food employer's business records showing that the closing, or technological or reorganizational changes are in response to a reduction in volume of production, sales, or profit.

h. Discharges of fast food employees based on bona fide economic reason shall be done in reverse order of seniority in the fast food establishment where the discharge is to occur, so that employees with the greatest seniority shall be retained the longest and reinstated or restored hours first. In accordance with section 20-1241, a fast food employer shall make reasonable efforts to offer reinstatement or restoration of hours, as applicable, to any fast food employee discharged based on a bona fide economic reason within the previous twelve months, if any, before the fast food employer may offer or distribute shifts to other employees or hire any new fast food employees.

§ 6. Sections 20-1273 and 20-1274 of the administrative code of the city of New York, as added by a local law of the city of New York for the year 2020, relating to wrongful discharge of fast food employees, as proposed in introduction number 1415-A for the year 2019, are renumbered 20-1274 and 20-1275 respectively and a new 20-1273 is added to read as follows:

§ 20-1273 Arbitration. a. On or after January 1, 2022, any person or organization representing persons alleging a violation of this subchapter by a fast food employer may bring an arbitration proceeding. In addition, the department may, to the extent permitted by any applicable law including the civil practice law and rules, provide by rule for persons bringing such a proceeding to serve as a representative party on behalf of all members of a class. Such a proceeding must be brought within 2 years of the date of the alleged violation. If the arbitrator finds that the fast food employer violated the provisions of this subchapter, it shall (i) require the fast food employer to pay the reasonable attorneys' fees and costs of the fast food employee, (ii) require the fast food employer to reinstate or restore the hours of the fast food employee, unless the employee waives reinstatement, (iii) require the fast food employer to pay the city for the costs of the arbitration proceeding, and (iv) award all other appropriate equitable relief, which may include back pay, rescission of discipline, in addition to other relief, and such other compensatory damages or injunctive relief as may be appropriate.

b. A person or organization bringing an arbitration proceeding under subdivision a must serve the arbitration demand, and any amendments thereto, on the fast food employer either in person or via certified mail at the current or most recent fast food establishment where each fast food employee named in the arbitration demand is or was employed, or pursuant to the rules for service specified in article 3 of the civil practice law and rules. Such arbitration demand must include a general description of each alleged violation but need not reference the precise section alleged to have been violated.

c. The parties to an arbitration proceeding shall jointly select the arbitrator from a panel of arbitrators. The number of arbitrators on the panel shall be determined by the department. The

arbitrators on the panel shall be chosen by a committee of eight participants established by the department and comprised of:

- 1. Four employee-side representatives, including fast food employees or advocates; and*
- 2. Four employer-side representatives, including fast food employers or advocates.*

d. If an insufficient number of employee-side and employer-side representatives agree to participate in the committee pursuant to subdivision c of this section, the department shall consult with those that have agreed to participate and select individuals to fill the requisite number of openings on the committee.

e. If the committee established pursuant to subdivision c of this section is unable to select a sufficient number of arbitrators for the panel as determined by the department, the department shall select the remaining arbitrators.

f. If the parties are unable to agree on an arbitrator, the department shall select an arbitrator from the panel.

g. The department shall provide interpretation services to any party requiring such services for the arbitration hearing.

h. The arbitration hearing shall be held at a location designated by the department or a location agreed to by the parties and the arbitrator. Except as otherwise provided in this chapter, such arbitration shall be subject to the labor arbitration rules established by the American arbitration association and the rules promulgated by the department to implement this subchapter. In case of a conflict between the rules of the American arbitration association and the rules of the department, the rules of the department shall govern. Any rules promulgated by the department implementing this section shall be consistent with the requirement that in any arbitration

conducted pursuant to this section, the arbitrator shall have appropriate qualifications and maintain personal objectivity, and each party shall have the right to present its case, which shall include the right to be in attendance during any presentation made by the other party and the opportunity to rebut or refute such presentation.

i. If a fast food employee brings an arbitration proceeding, arbitration shall be the exclusive remedy for the wrongful discharge dispute and there shall be no right to bring or continue a private cause of action or administrative complaint under this subchapter, unless such arbitration proceeding has been withdrawn or dismissed without prejudice.

j. Each party shall have the right to apply to a court of competent jurisdiction for the confirmation, modification or vacatur of an award pursuant to article 75 of the civil practice law and rules, as such article applies, pursuant to applicable case law, to review of legally mandated arbitration proceedings in accordance with standards of due process.

§ 7. Subdivision a of section 20-1241 of the administrative code, as added by local law number 106 for the year 2017, is amended to read as follows:

a. 1. Before [hiring] a fast food employer may hire new fast food employees, including hiring through the use of subcontractors, and before a fast food employer may offer or distribute shifts pursuant to paragraph 2 of this subdivision, a fast food employer shall make reasonable efforts to offer reinstatement or restoration of hours, as applicable, to any fast food employee discharged based on a bona fide economic reason within the previous 12 months, provided that the department may define in rules what constitutes sufficient advance notice and a reasonable effort to offer reinstatement or restoration of hours, including with respect to discharged fast food employees who have declined prior offers of reinstatement or restoration of hours.

2. *If the job opening or additional shift is not filled pursuant to paragraph 1 of this subdivision, before a fast food employer may hire new fast food employees, including hiring through the use of subcontractors, a fast food employer shall offer regular shifts or on call shifts that would otherwise be offered to a new fast food employee to the fast food employer's current fast food employees employed at all fast food establishments owned by the fast food employer, or at a subset of such fast food establishments as provided in rules promulgated pursuant to subdivision j of this section. A fast food employer may not transfer fast food employees from locations other than the location where such shifts will be worked or hire new fast food employees, including subcontractors, to perform the work of fast food employees for such shifts, except as provided for in subdivisions f, g and of this section.*

§ 8. This local law takes effect at the same time and in the same manner that a local law for the year 2020 amending the administrative code of the city of New York in relation in relation to wrongful discharge of fast food employees, as proposed in introduction number 1415-A for the year 2019, takes effect, except that the commissioner of the department of consumer and worker protection may take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before 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 December 17, 2020 and approved by the Mayor on January 5, 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. 1 of 2021, Council Int. No. 1396-A of 2019) 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.