

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

No. 2

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

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to wrongful discharge of fast food employees

Be it enacted by the Council as follows:

Section 1. Chapter 12 of title 20 of the administrative code of the city of New York is amended by adding a new subchapter 7 to read as follows:

SUBCHAPTER 7

WRONGFUL DISCHARGE OF FAST FOOD EMPLOYEES

§ 20-1271 Definitions. As used in this subchapter, the following terms have the following meanings:

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

Just cause. The term “just cause” means the fast food employee’s failure to satisfactorily perform job duties or misconduct that is demonstrably and materially harmful to the fast food employer’s legitimate business interests.

Probation period. The term “probation period” means a defined period of time, not to exceed 30 days from the first date of work of a fast food employee, within which fast food employers and fast food employees are not subject to the prohibition on wrongful discharge set forth in section 20-1272.

Progressive discipline. The term “progressive discipline” means a disciplinary system that provides for a graduated range of reasonable responses to a fast food employee’s failure to satisfactorily perform such fast food employee’s job duties, with the disciplinary measures ranging from mild to severe, depending on the frequency and degree of the failure.

Reduction in hours. The term “reduction in hours” means a reduction in a fast food employee’s hours of work totaling at least 15 percent of the employee’s regular schedule or 15 percent of any weekly work schedule.

§ 20-1272 Prohibition on wrongful discharge. a. A fast food employer shall not discharge a fast food employee who has completed such employer’s probation period except for just cause.

b. In determining whether a fast food employee has been discharged for just cause, the fact-finder shall consider, in addition to any other relevant factors, whether:

1. The fast food employee knew or should have known of the fast food employer’s policy, rule or practice that is the basis for progressive discipline or discharge;

2. The fast food employer provided relevant and adequate training to the fast food employee;

3. The fast food employer’s policy, rule or practice, including the utilization of progressive discipline, was reasonable and applied consistently;

4. The fast food employer undertook a fair and objective investigation into the job performance or misconduct; and

5. *The fast food employee violated the policy, rule or practice or committed the misconduct that is the basis for progressive discipline or discharge.*

c. Except where termination is for an egregious failure by the employee to perform their duties, or for egregious misconduct, a termination shall not be considered based on just cause unless (1) the fast food employer has utilized progressive discipline; provided, however, that the fast food employer may not rely on discipline issued more than one year before the purported just cause termination, and (2) the fast food employer had a written policy on progressive discipline in effect at the fast food establishment and that was provided to the fast food employee.

d. Within 5 days of discharging a fast food employee, the fast food employer shall provide a written explanation to the fast food employee of the precise reasons for their discharge. In determining whether a fast food employer had just cause for discharge, the fact-finder may not consider any reasons proffered by the fast food employer but not included in such written explanation provided to the fast food employee.

e. The fast food employer shall bear the burden of proving just cause 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.

f. In any action or proceeding brought pursuant to sections 20-1207, 20-1211, or 20-1273, if a fast food employer is found to have unlawfully discharged a fast food employee in violation of this subchapter the relief shall include an order to reinstate or restore the hours of the fast food employee, unless waived by the fast food employee, and, in any such proceeding brought pursuant to 20-1211 or 20-1273 where a fast food employer is found to have unlawfully discharged a fast

food employee in violation of this subchapter, the fast food employer shall be ordered to pay the reasonable attorneys' fees and costs of the fast food employee.

§ 20-1273 Applicability of schedule change premiums. A discharged fast food employee who loses a shift on a work schedule as a result of discharge, including employees whose employment is terminated for any reason, shall be entitled to schedule change premiums for each such lost shift pursuant to section 20-1222.

§ 20-1274 Exceptions. This subchapter shall not:

a. Apply to any fast food employee who is currently employed within a probation period;

b. Limit or otherwise affect the applicability of any right or benefit conferred upon or afforded to a fast food employee by the provisions of any other law, regulation, rule, requirement, policy or standard including but not limited to any federal, state or local law providing for protections against retaliation or discrimination.

§ 2. Subdivision b of section 20-1208 of the administrative code of the city of New York, as added by local law number 107 for the year 2017, is relettered as subdivision c and a new subdivision b is added to read as follows:

b. For each violation of section 20-1272, the department shall order reinstatement or restoration of hours of the fast food employee, unless waived by the fast food employee. The department may, in addition, grant the following relief: \$500 for each violation, an order directing compliance with section 20-1272, rescission of any discipline issued, payment of back pay for any loss of pay or benefits resulting from the wrongful discharge, and any other equitable relief as may be appropriate.

§ 3. Subdivisions a of section 20-1211 of the administrative code of the city of New York, as added by local law number 107 for the year 2017, is 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; [and]
7. Subdivisions a and b of section 20-1252; *and*
8. *Section 20-1272.*

§ 4. Subdivisions c of section 20-1211 of the administrative code of the city of New York as added by local law number 107 for the year 2017, and subdivision d of such section, as amended by local law number 80 for the year 2020, are relettered as subdivisions d and e, respectively, and a new subdivision c is added to read as follows:

c. For each violation of section 20-1272, the court shall order reinstatement or restoration of hours of the fast food employee, unless waived by the fast food employee, and shall order the fast food employer to pay the reasonable attorneys' fees and costs of the fast food employee. The court may, in addition, grant the following relief: \$500 for each violation, an order directing compliance with section 20-1272, rescission of any discipline issued, payment of back pay for any

loss of pay or benefits resulting from the wrongful discharge, punitive damages, and any other equitable relief as may be appropriate.

§ 5. Subdivision a of section 20-1212 of the administrative code of the city of New York, as added by local law number 107 for the year 2017, and as amended by local law number 80 for the year 2020, is amended to read as follows:

a. Cause of action.

1. Where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of this chapter, the corporation counsel may commence a civil action on behalf of the city in a court of competent jurisdiction.

2. The corporation counsel shall commence such action by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, *relief for employees set forth in section 20-1208*, civil penalties *set forth in section 20-1209*, and any other appropriate relief.

3. Such action may be commenced only by the corporation counsel or such other persons designated by the corporation counsel.

4. Nothing in this section prohibits (i) the department from exercising its authority under section 20-1207 through 20-1209, or (ii) a person alleging a violation of this chapter from filing a complaint pursuant to section 20-1207 or a civil action pursuant to section 20-1211, *or requesting an arbitration proceeding pursuant to section 20-1273* based on the same facts pertaining to such a pattern or practice, provided that a civil action pursuant to this section shall not have previously been commenced.

§ 6. Subdivisions a and b of section 20-1221 of the administrative code of the city of New York, as added by local law number 107 for the year 2017, are amended to read as follows:

a. *A fast food employer shall have scheduling practices that provide each fast food employee with a regular schedule that is a predictable, regular set of recurring weekly shifts the employee will work each week.* No later than when a new fast food employee receives such employee's first work schedule, a fast food employer shall provide such employee with a [good faith estimate in writing setting forth] *written copy of their regular schedule including the number of hours a fast food employee can expect to work per week for the duration of the employee's employment and the expected [dates]days, times and locations of those hours. A fast food employer shall comply with sections 20-1241 and subdivision h of section 20-1272 before adding shifts to the regular schedule of a new or current fast food employee.* If a long-term or indefinite change is made to the [good faith estimate] *regular schedule*, the fast food employer shall provide an updated [good faith estimate] *copy of the regular schedule in writing* to the affected employee as soon as possible and before such employee receives the first work schedule following the change. *A fast food employer may not reduce the total hours in a fast food employee's regular schedule by more than 15% from the highest total hours contained in such employee's regular schedule at any time within the previous 12 months, unless the employee has previously consented to or requested such reduction in writing, or the reduction was consistent with the restrictions on discharges pursuant to subchapter 7 of this title.*

b. A fast food employer shall provide a fast food employee with written notice of a work schedule containing regular shifts and on-call shifts on or before the employee's first day of work. For all subsequent work schedules, the fast food employer shall provide such notice no later than

14 days before the first day of any new schedule. Such work schedule shall span a period of no less than seven days and contain all anticipated regular shifts and on-call shifts that the employee will work or will be required to be available to work during the work schedule. *The regular shifts and on-call shifts in any work schedule shall not vary by more than 15% from the shifts on the employee's regular schedule, unless the employee consented to or requested such changes in writing, or the change was consistent with the restrictions on discharges pursuant to subchapter 7 of this title.*

§ 7. This local law takes effect 180 days after it becomes law, except that section two of this local law and the authority of the department of consumer and worker protection to enforce the provisions of this local law pursuant to section 20-1207 of the administrative code of the city of New York take effect 240 days after this local law becomes law, and provided 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. 2 of 2021, Council Int. No. 1415-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.