

# STATE OF NEW YORK

8939--A

## IN ASSEMBLY

January 30, 2024

Introduced by M. of A. BRONSON, TAYLOR, RAMOS, BENEDETTO, ZACCARO, DINOWITZ, FALL, DICKENS, SEAWRIGHT, SEPTIMO, BURGOS, STERN, L. ROSENTHAL, BURDICK, DURSO, HEVESI, O'DONNELL, REILLY, SIMON, REYES, GLICK, LEE, EPSTEIN, SIMONE, LUNSFORD, THIELE, TAPIA, SHRESTHA, LEVENBERG, GONZALEZ-ROJAS, ALVAREZ, BORES, CARROLL, PIROZZOLO, GIBBS, ARDILA, SHIMSKY, TANNOUSIS, SLATER, DARLING, PAULIN, ZINERMAN, JEAN-PIERRE, DeSTEFANO, McMAHON, SILLITTI, PHEFFER AMATO, CONRAD, COLTON, RIVERA, DE LOS SANTOS, BENDETT -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to preventing the displacement of call center workers who provide call center services for the government in certain circumstances

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The labor law is amended by adding a new article 21-B to  
2 read as follows:

### ARTICLE 21-B

#### PROTECTION OF CALL CENTER WORKERS FROM DISPLACEMENT

##### Section 790. Definitions.

6 791. Terminated call center contract.

7 792. Entering into a call center contract.

8 793. Enforcement.

9 794. No conflict with collective bargaining agreements.

##### § 790. Definitions. As used in this article:

11 1. The term "call center" means a facility or other operation in which  
12 employees receive phone calls or other communications, including elec-  
13 tronic communications for the purpose of providing customer assistance  
14 or for related services supportive of business processes.

15 2. The term "call center contract" means a contract with a govern-  
16 mental body, or a subcontract with an entity that has a contract with a  
17 governmental body, pursuant to which the contractor furnishes call  
18 center services for the benefit of the governmental body.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 3. The term "governmental body" means the state of New York or any  
2 political subdivision thereof, and any public authority or public bene-  
3 fit corporation in the state of New York.

4 4. The term "call center employee" means any person employed to  
5 perform call center services who has been regularly assigned to such  
6 work for a call center contractor on a full or part-time basis for at  
7 least ninety days, except for (a) persons whose work for a call center  
8 is managerial or supervisory; and (b) persons regularly scheduled to  
9 work fewer than four hours per week for the call center.

10 5. The term "entity" means a person, partnership, proprietorship,  
11 association, limited liability company, trust, corporation, firm, joint  
12 venture or enterprise of any kind.

13 6. The term "call center contractor" means an entity (a) that is a  
14 party to a call center contract, and (b) provides call center services  
15 for the benefit of a governmental body, and (c) employs call center  
16 employees or engages a subcontractor or other entity to perform such  
17 call center services and that entity employs call center employees.

18 7. The term "terminating call center contractor" means an entity that  
19 has provided services as a call center contractor pursuant to a call  
20 center contract which is being terminated.

21 8. The term "former call center contractor" means an entity that  
22 provided services as a call center contractor pursuant to a call center  
23 contract which has been terminated, and after termination of that  
24 contractor, a successor call center contractor has performed some or all  
25 of the same services pursuant to a call center contract.

26 9. The term "successor call center contractor" means an entity that,  
27 pursuant to a call center service contract, succeeds to the performance  
28 of call center services previously performed by a terminating call  
29 center contractor.

30 § 791. Terminated call center contract. 1. No less than thirty calen-  
31 dar days before termination of a call center contract in circumstances  
32 where a successor call center contractor will undertake to provide  
33 services that were the subject of the terminating contract, the termi-  
34 nating call center contractor shall provide to the successor call center  
35 contractor a full and accurate list containing the name, address, date  
36 of hire and employment classification of each call center employee whose  
37 work includes providing call center services that were the subject of  
38 the terminating contract. The terminating call center contractor shall  
39 simultaneously post the list in a notice to the call center employees  
40 that also sets forth the rights provided by this article. The posting  
41 shall be in a manner or location reasonably calculated to be seen by  
42 affected employees. The posting may be electronic, provided that if it  
43 is electronic, it must be directed to each affected employee individual-  
44 ly and may not be a general posting on a website. Such notice shall also  
45 be provided to the employees' collective bargaining representative, if  
46 any.

47 2. Upon termination of a call service contract in circumstances in  
48 which services provided under that contract will be performed by a  
49 successor call center contractor, the successor call center contractor  
50 shall retain those call center employees who performed such services for  
51 the former call center contractor immediately prior to termination of  
52 that contract. It shall be considered a material term of the call  
53 center contract that such employees shall be retained for a ninety-day  
54 transition employment period.

55 3. If the successor call center contractor is obligated to retain call  
56 center employees pursuant to subdivision two of this section, but deter-

1 mines that fewer call center employees are required to perform the  
2 services that are the subject of the contract than had been required to  
3 perform such services by the former call center contractor, the succes-  
4 sor call center contractor shall fill the positions that it determines  
5 are needed with the call center employees with the greatest seniority  
6 within job classification; provided, that during the ninety-day transi-  
7 tion period, the successor call center contractor shall maintain a pref-  
8 erential hiring list of those call center employees not retained, and  
9 those on the preferential hiring list shall be given a right of first  
10 refusal to any jobs within their classifications that become available  
11 during that period.

12 4. Except as provided in subdivision three of this section, during the  
13 ninety-day transition period, the successor call center contractor shall  
14 not discharge without cause a call center employee retained pursuant to  
15 this article.

16 5. At the end of the ninety-day transition period, the successor call  
17 center contractor shall perform a written performance evaluation for  
18 each call center employee retained pursuant to this article. If such  
19 employee's performance during the ninety-day transition period is satis-  
20 factory, the successor call center contractor shall offer such employee  
21 continued employment.

22 6. If the successor call center contractor engages a subcontractor or  
23 other entity to perform call center services provided for in a successor  
24 call center contract, that successor call center contractor shall  
25 require the subcontractor or other entity to adhere to all of the obli-  
26 gations of this article.

27 § 792. Entering into a call center contract. 1. Whenever a govern-  
28 mental body shall undertake to procure call center services using a call  
29 center contractor, the governmental body shall ensure that the call  
30 center contract with such entity includes the obligations pursuant to  
31 this article, including, where applicable, the call center contractor's  
32 obligation to retain call center employees of the former call center  
33 contractor. The obligation to retain the terminating call center  
34 contractor's employees shall be considered a material term of the call  
35 center contract and included in the call center contract irrespective of  
36 whether the terminating call center contractor's contract included the  
37 obligations pursuant to this article. Such obligations shall be set  
38 forth in requests for proposals or other solicitations and, in any  
39 event, shall be included in each call center contract. Whether or not  
40 the provisions are included in such contract, the obligations under this  
41 article shall apply to the successor call center contractor whenever  
42 such contractor begins performance on a successor call center contract  
43 on or after the effective date of this article.

44 2. A governmental body intending to enter into a call center service  
45 contract, in circumstances in which such services had theretofore been  
46 performed by call center employees pursuant to a call center contract,  
47 shall require any entity seeking to enter into such contract to demon-  
48 strate that it will establish the worksite for its performance in a  
49 location which is reasonably accessible to the employees who have been  
50 performing such services prior to the solicitation of bids for a succes-  
51 sor call center contract. For the purposes of this section, a worksite  
52 shall be considered reasonably accessible if it is 10 miles or less from  
53 the location of the affected employees' worksite where such employees  
54 performed work-related duties in the course of their employment for the  
55 former call center contractor, provided that any worksite shall not  
56 include an employee's domicile, permanent or temporary, where an employ-

1 ee performs any work-related duty in the course of their employment. The  
2 requirements of this subdivision shall not apply to successor call  
3 center contractors that intend for the work-related duties of the  
4 affected call center employees previously employed by the former call  
5 center contractor to be performed remotely.

6 § 793. Enforcement. If a given governmental entity finds that the  
7 successor call center contractor has committed a material breach of  
8 contract by not retaining the affected call center employees employed by  
9 the former call center contractor for the ninety-day transition period  
10 pursuant to this article within thirty days of the termination of the  
11 former contract, such governmental entity shall notify the state comp-  
12 troller and the successor call center contractor of such breach of  
13 contract and allow the successor call center contractor a period of  
14 thirty days to cure such breach. Such thirty-day cure period shall  
15 commence upon the successor call center contractor's receipt of such  
16 notification. If such breach is not rectified within such period, the  
17 given governmental entity shall notify the state comptroller and termi-  
18 nate the contract with the successor call center contractor, unless the  
19 state comptroller determines that it is in the best interest of the  
20 state to maintain such contract. Additionally, if the breach is not  
21 rectified within the thirty-day cure period, the state comptroller may  
22 deduct amounts sufficient to satisfy the lost wages of the affected call  
23 center employees from payment owed to the successor call center contrac-  
24 tor that has committed the material breach of contract. Such funds shall  
25 be disbursed to satisfy any lost wages suffered by call center employees  
26 affected by the successor call center contractor's failure to retain  
27 such employees.

28 § 794. No conflict with collective bargaining agreements. The  
29 provisions of this article shall not apply to any:

30 1. Successor call center contractor that, on or before the effective  
31 date of a termination of a call center contract, agrees to assume, or to  
32 be bound by, the collective bargaining agreement of the former call  
33 center contractor, provided that the collective bargaining agreement  
34 provides terms and conditions for the discharge or laying off of employ-  
35 ees that are at least as protective of employee rights as those pursuant  
36 to this article; and

37 2. Successor call center contractor whose call center employees will  
38 be accreted to a bargaining unit with a pre-existing collective bargain-  
39 ing agreement, provided that the collective bargaining agreement  
40 provides terms and conditions for the discharge or laying off of employ-  
41 ees that are at least as protective of employee rights as those pursuant  
42 to this article; and

43 3. Former call center contractor that obtains a written commitment  
44 from a successor call center contractor that the successor call center  
45 contractor's call center employees will be covered by a collective  
46 bargaining agreement that provides terms and conditions for the  
47 discharge or laying off of employees that are at least as protective of  
48 employee rights as those pursuant to this article.

49 § 2. Severability. If any provision of this law or the application  
50 thereof to any person or circumstance is held invalid, such invalidity  
51 shall not affect other provisions of the law which can be given effect  
52 without the invalid provision or application, and to this end the  
53 provisions of this article shall be severable.

54 § 3. This act shall take effect immediately.