

STATE OF NEW YORK

6328--A

Cal. No. 530

2023-2024 Regular Sessions

IN SENATE

April 14, 2023

Introduced by Sens. RAMOS, BRESLIN, BROUK, CHU, CLEARE, COONEY, FERNANDEZ, GONZALEZ, GOUNARDES, HARCKHAM, HINCHEY, HOYLMAN-SIGAL, JACKSON, KAVANAGH, MANNION, MARTINEZ, MATTERA, MURRAY, PALUMBO, RIVERA, SALAZAR, SCARCELLA-SPANTON, SERRANO, SKOUFIS, WEBB -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

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.