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I N   A S S E M B L Y

April 7, 2014

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Introduced by M. of A. ROZIC, BARRETT, BUCHWALD, CLARK, GOTTFRIED,  
HIKIND, ROBINSON, ROSENTHAL -- Multi-Sponsored by -- M. of A. BRENNAN,  
GLICK, HEASTIE, MAYER, RIVERA -- read once and referred to the Commit-  
tee on Labor

AN ACT to amend the labor law, in relation to flexible working arrange-  
ments

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1     Section 1. The labor law is amended by adding a new section 171 to  
2     read as follows:  
3     S 171. FLEXIBLE WORKING ARRANGEMENTS. 1. A. AN EMPLOYEE MAY REQUEST A  
4     FLEXIBLE WORKING ARRANGEMENT THAT MEETS THE NEEDS OF THE EMPLOYER AND  
5     EMPLOYEE. THE EMPLOYER SHALL CONSIDER A REQUEST USING THE PROCEDURES IN  
6     THIS SECTION WHEN THE EMPLOYEE ASKS THE EMPLOYER ON AN AS-NEEDED BASIS.  
7     B. AS USED IN THIS SECTION, "FLEXIBLE WORKING ARRANGEMENT" SHALL MEAN  
8     INTERMEDIATE OR LONG-TERM CHANGES IN THE EMPLOYEE'S REGULAR WORKING  
9     ARRANGEMENTS, INCLUDING BUT NOT LIMITED TO, CHANGES IN THE NUMBER OF  
10    DAYS OR HOURS WORKED, CHANGES IN THE TIME THE EMPLOYEE ARRIVES AT OR  
11    DEPARTS FROM WORK, WORK FROM HOME, OR JOB-SHARING.  
12    C. "FLEXIBLE WORKING ARRANGEMENT" SHALL NOT INCLUDE VACATION, ROUTINE  
13    SCHEDULING OF SHIFTS, OR ANOTHER FORM OF EMPLOYEE LEAVE.  
14    2. THE EMPLOYER SHALL DISCUSS THE REQUEST FOR A FLEXIBLE WORKING  
15    ARRANGEMENT WITH THE EMPLOYEE IN GOOD FAITH. THE EMPLOYER AND EMPLOYEE  
16    MAY PROPOSE ALTERNATIVE ARRANGEMENTS DURING THE DISCUSSION. THE EMPLOYER  
17    SHALL CONSIDER THE EMPLOYEE'S REQUEST FOR A FLEXIBLE WORKING ARRANGEMENT  
18    AND WHETHER THE REQUEST COULD BE GRANTED IN A MANNER THAT IS NOT INCON-  
19    SISTENT WITH ITS BUSINESS OPERATIONS OR ITS LEGAL OR CONTRACTUAL OBLI-  
20    GATIONS.  
21    3. AS USED IN THIS SECTION, "INCONSISTENT WITH BUSINESS OPERATIONS"  
22    SHALL INCLUDE:  
23    A. THE BURDEN ON AN EMPLOYER OF UNDUE ADDITIONAL COSTS;  
24    B. A LEGITIMATE OR PRACTICAL DETRIMENTAL EFFECT ON AGGREGATE EMPLOYEE  
25    MORALE UNRELATED TO DISCRIMINATION OR OTHER UNLAWFUL EMPLOYMENT PRAC-  
26    TICES;

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

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1 C. A LEGITIMATE OR PRACTICAL DETRIMENTAL EFFECT ON THE ABILITY OF AN  
2 EMPLOYER TO MEET CONSUMER DEMAND;

3 D. A SIGNIFICANT INABILITY TO REORGANIZE WORK AMONG EXISTING STAFF;

4 E. A LEGITIMATE OR PRACTICAL INABILITY TO RECRUIT ADDITIONAL STAFF;

5 F. A SIGNIFICANT DETRIMENTAL IMPACT ON BUSINESS QUALITY OR BUSINESS  
6 PERFORMANCE;

7 G. AN INSUFFICIENCY OF WORK DURING THE PERIODS THE EMPLOYEE PROPOSES  
8 TO WORK; AND

9 H. PLANNED STRUCTURAL CHANGES TO THE BUSINESS.

10 4. THE EMPLOYER SHALL NOTIFY THE EMPLOYEE OF THE DECISION REGARDING  
11 THE REQUEST IN A TIMELY MANNER. IF THE REQUEST WAS SUBMITTED IN WRITING,  
12 THE EMPLOYER SHALL STATE ANY COMPLETE OR PARTIAL DENIAL OF THE REQUEST  
13 IN WRITING, CITING THE REASON AS TO DENYING THE REQUEST.

14 5. THIS SECTION SHALL NOT DIMINISH ANY EMPLOYMENT RIGHTS OR AGREEMENTS  
15 PURSUANT TO A COLLECTIVE BARGAINING AGREEMENT. AN EMPLOYER MAY INSTITUTE  
16 A FLEXIBLE WORKING ARRANGEMENT POLICY THAT IS MORE GENEROUS THAN IS  
17 PROVIDED BY THIS SECTION.

18 6. THE STATE DIVISION OF HUMAN RIGHTS SHALL BE RESPONSIBLE FOR THE  
19 ENFORCEMENT OF THIS SECTION BY RESTRAINING PROHIBITED ACTS, CONDUCTING  
20 CIVIL INVESTIGATIONS, AND OBTAINING ASSURANCES OF DISCONTINUANCE IN  
21 ACCORDANCE WITH THE PROCEDURES ESTABLISHED IN THIS SECTION. AN INVESTI-  
22 GATION AGAINST AN EMPLOYER SHALL NOT BE A PREREQUISITE FOR BRINGING AN  
23 ACTION. THE STATE DIVISION OF HUMAN RIGHTS MAY AWARD INJUNCTIVE RELIEF.  
24 THERE SHALL BE NO PRIVATE RIGHT OF ACTION TO ENFORCE THIS SECTION. ANY  
25 EMPLOYER MAY APPEAL ANY DECISION OR ORDER OF THE DIVISION IN ACCORDANCE  
26 WITH THE PROVISIONS OF SECTION TWO HUNDRED NINETY-EIGHT OF THE EXECUTIVE  
27 LAW.

28 7. AN EMPLOYER SHALL NOT RETALIATE AGAINST AN EMPLOYEE EXERCISING HIS  
29 OR HER RIGHTS UNDER THIS SECTION.

30 8. NOTHING IN THIS SECTION SHALL AFFECT ANY LEGAL RIGHTS AN EMPLOYER  
31 OR EMPLOYEE MAY HAVE UNDER APPLICABLE LAW TO CREATE, TERMINATE, OR MODI-  
32 FY A FLEXIBLE WORKING ARRANGEMENT.

33 9. NOTHING IN THIS SECTION SHALL REQUIRE AN EMPLOYER TO ACCEPT THE  
34 FLEXIBLE WORK ARRANGEMENT OF THE EMPLOYEE.

35 S 2. This act shall take effect immediately.