S T A T E O F N E W Y O R K

6782

I N S E N A T E

February 22, 2016

Introduced by Sen. SANDERS -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law, in relation to displaced building service workers

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

Section 1. Legislative findings and intent. The legislature hereby finds that the volatility of the real estate industry coupled with new trends in the service economy are undermining stable employment relationships and creating a drain on an already over-burdened social services system. At a time of great uncertainty, it is the policy of the state to promote stability in employment for building service workers, which will reduce the need for social services resulting from unemployment, and promote stability in the service industry.

S 2. The labor law is amended by adding a new section 202-n to read as follows:

S 202-N. DISPLACED BUILDING SERVICE WORKERS. 1. FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "BUILDING SERVICE" MEANS WORK PERFORMED IN CONNECTION WITH THE CARE OR MAINTENANCE OF AN EXISTING BUILDING AND INCLUDES, BUT IS NOT LIMITED TO, WORK PERFORMED BY A WATCHMAN, GUARD, DOORMAN, BUILDING CLEANER, PORTER, HANDYMAN, JANITOR, GARDENER, GROUNDSKEEPER, STATIONARY FIREMAN, ELEVATOR OPERATOR AND STARTER, WINDOW CLEANER, AND SUPERINTENDENTS.

(B) "BUILDING SERVICE CONTRACT" MEANS A CONTRACT LET TO ANY COVERED EMPLOYER FOR THE FURNISHING OF BUILDING SERVICES, AND INCLUDES ANY SUBCONTRACTS FOR SUCH SERVICES.

(C) "BUILDING SERVICE CONTRACTOR" MEANS ANY PERSON WHO ENTERS INTO A BUILDING SERVICE CONTRACT.

(D) "BUILDING SERVICE EMPLOYEE" MEANS ANY PERSON EMPLOYED AS A BUILDING SERVICE EMPLOYEE BY A COVERED EMPLOYER WHO HAS BEEN REGULARLY ASSIGNED TO A BUILDING ON A FULL OR PART-TIME BASIS FOR AT LEAST NINETY DAYS IMMEDIATELY PRECEDING ANY TRANSITION IN EMPLOYMENT SUBJECT TO THIS SECTION EXCEPT FOR: (I) PERSONS WHO ARE MANAGERIAL, SUPERVISORY, OR

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

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CONFIDENTIAL EMPLOYEES, PROVIDED THAT THIS EXEMPTION SHALL NOT APPLY TO BUILDING SUPERINTENDENTS OR RESIDENT MANAGERS, (II) PERSONS EARNING IN EXCESS OF TWENTY-FIVE DOLLARS PER HOUR FROM A COVERED EMPLOYER, AND (III) PERSONS REGULARLY SCHEDULED TO WORK FEWER THAN EIGHT HOURS PER WEEK AT A BUILDING.

(E) "COVERED EMPLOYER" MEANS ANY PERSON WHO OWNS OR MANAGES REAL PROPERTY, EITHER ON ITS OWN BEHALF OR FOR ANOTHER PERSON, WITHIN THE STATE, INCLUDING, BUT NOT LIMITED TO, HOUSING COOPERATIVES, CONDOMINIUM ASSOCIATIONS, BUILDING MANAGING AGENTS, AND ANY BUILDING SERVICE CONTRACTOR, PROVIDED, HOWEVER, THAT THE REQUIREMENTS OF THIS SECTION SHALL NOT APPLY TO: (I) RESIDENTIAL BUILDINGS OF LESS THAN FIFTY UNITS, (II) COMMERCIAL OFFICE, INSTITUTIONAL OR RETAIL BUILDINGS OF LESS THAN ONE HUNDRED THOUSAND SQUARE FEET, (III) ANY BUILDING IN WHICH ANY GOVERNMENTAL ENTITY, THE HEAD OR MAJORITY OF MEMBERS OF WHICH ARE APPOINTED BY ONE OR MORE OFFICERS OF THE STATE, OCCUPIES FIFTY PERCENT OR MORE OF THE RENTABLE SQUARE FOOTAGE, OR (IV) TO THE EXTENT THAT SUCH REQUIREMENTS CONFLICT WITH SECTION ONE HUNDRED SIXTY-TWO OF THE STATE FINANCE LAW.

(F) "PERSON" MEANS ANY INDIVIDUAL, PROPRIETORSHIP, PARTNERSHIP, JOINT VENTURE, CORPORATION, LIMITED LIABILITY COMPANY, TRUST, ASSOCIATION, OR OTHER ENTITY THAT MAY EMPLOY PERSONS OR ENTER INTO SERVICE CONTRACTS, BUT SHALL NOT INCLUDE ANY MUNICIPALITY, THE STATE OF NEW YORK, AND THE FEDERAL GOVERNMENT OR ANY OTHER GOVERNMENTAL ENTITY, OR ANY INDIVIDUAL OR ENTITY MANAGING REAL PROPERTY FOR A GOVERNMENTAL ENTITY.

(G) "SUCCESSOR EMPLOYER" MEANS A COVERED EMPLOYER THAT: (I) HAS BEEN AWARDED A BUILDING SERVICE CONTRACT TO PROVIDE, IN WHOLE OR IN PART, BUILDING SERVICES THAT ARE SUBSTANTIALLY SIMILAR TO THOSE PROVIDED UNDER A SERVICE CONTRACT THAT HAS RECENTLY BEEN TERMINATED, OR (II) HAS PURCHASED OR ACQUIRED CONTROL OF A PROPERTY IN WHICH BUILDING SERVICE EMPLOYEES WERE EMPLOYED.

2. (A) NO LESS THAN FIFTEEN CALENDAR DAYS BEFORE TERMINATING ANY BUILDING SERVICE CONTRACT, ANY COVERED EMPLOYER SHALL REQUEST THE TERMINATED CONTRACTOR TO PROVIDE TO THE SUCCESSOR EMPLOYER A FULL AND ACCURATE LIST CONTAINING THE NAME, ADDRESS, DATE OF HIRE, AND EMPLOYMENT OCCUPATION CLASSIFICATION OF EACH BUILDING SERVICE EMPLOYEE CURRENTLY EMPLOYED AT THE SITE OR SITES COVERED BY THE TERMINATED CONTRACT.

(B) NO LESS THAN FIFTEEN CALENDAR DAYS BEFORE TRANSFERRING A CONTROLLING INTEREST IN ANY COVERED BUILDING IN WHICH BUILDING SERVICES EMPLOYEES ARE EMPLOYED, ANY COVERED EMPLOYER SHALL PROVIDE TO THE SUCCESSOR EMPLOYER A FULL AND ACCURATE LIST CONTAINING THE NAME, ADDRESS, DATE OF HIRE, AND EMPLOYMENT OCCUPATION CLASSIFICATION OF EACH BUILDING SERVICE EMPLOYEE CURRENTLY EMPLOYED AT THE SITE OR SITES COVERED BY THE TRANSFER OF CONTROLLING INTEREST.

(C) NO MORE THAN SEVEN CALENDAR DAYS AFTER NOTICE THAT ITS BUILDING SERVICE CONTRACT HAS BEEN TERMINATED, ANY COVERED EMPLOYER SHALL PROVIDE TO THE SUCCESSOR EMPLOYER A FULL AND ACCURATE LIST CONTAINING THE NAME, ADDRESS, DATE OF HIRE, AND EMPLOYMENT OCCUPATION CLASSIFICATION OF EACH BUILDING SERVICE EMPLOYEE EMPLOYED ON THE NOTICE DATE AT THE SITE OR SITES COVERED BY THE TERMINATED BUILDING SERVICE CONTRACT.

(D) WHEN PROVIDING THE NOTICE REQUIRED UNDER THIS SUBDIVISION, EACH COVERED EMPLOYER SHALL ENSURE THAT A NOTICE TO BUILDING SERVICE EMPLOYEES IS POSTED SETTING FORTH THE RIGHTS PROVIDED UNDER THIS SECTION AND WHICH INCLUDES A COPY OF THE LIST PROVIDED UNDER THE PRECEDING PARAGRAPHS, AND THAT SUCH NOTICE IS ALSO PROVIDED TO THE EMPLOYEES' COLLECTIVE BARGAINING REPRESENTATIVE, IF ANY. THE NOTICE AND LIST SHALL BE POSTED IN THE SAME LOCATION AND MANNER THAT OTHER STATUTORILY REQUIRED NOTICES TO EMPLOYEES ARE POSTED AT THE AFFECTED BUILDING OR BUILDINGS.

(E) A SUCCESSOR EMPLOYER SHALL RETAIN FOR A NINETY DAY TRANSITION EMPLOYMENT PERIOD AT THE AFFECTED BUILDING OR BUILDINGS THOSE BUILDING SERVICE EMPLOYEE OR EMPLOYEES OF THE TERMINATED BUILDING SERVICE CONTRACTOR (AND ITS SUBCONTRACTORS), OR OTHER COVERED EMPLOYER, EMPLOYED AT THE BUILDING OR BUILDINGS COVERED BY THE TERMINATED BUILDING SERVICE CONTRACT OR OWNED OR OPERATED BY THE FORMER COVERED EMPLOYER.

(F) IF AT ANY TIME THE SUCCESSOR EMPLOYER DETERMINES THAT FEWER BUILDING SERVICE EMPLOYEES ARE REQUIRED TO PERFORM BUILDING SERVICES AT THE AFFECTED BUILDING OR BUILDINGS THAN HAD BEEN PERFORMING SUCH SERVICES UNDER THE FORMER EMPLOYER, THE SUCCESSOR EMPLOYER SHALL RETAIN THE PREDECESSOR BUILDING SERVICE EMPLOYEES BY SENIORITY WITHIN JOB CLASSIFICATION; PROVIDED, THAT DURING SUCH NINETY DAY TRANSITION PERIOD, THE SUCCESSOR EMPLOYER SHALL MAINTAIN A PREFERENTIAL HIRING LIST OF THOSE BUILDING SERVICE EMPLOYEES NOT RETAINED AT THE BUILDING OR BUILDINGS WHO SHALL BE GIVEN A RIGHT OF FIRST REFUSAL TO ANY JOBS WITHIN THEIR CLASSIFICATIONS THAT BECOME AVAILABLE DURING THAT PERIOD.

(G) EXCEPT AS PROVIDED IN PARAGRAPH (F) OF THIS SUBDIVISION, DURING SUCH NINETY DAY PERIOD, THE SUCCESSOR CONTRACTOR SHALL NOT DISCHARGE WITHOUT CAUSE AN EMPLOYEE RETAINED PURSUANT TO THIS SECTION.

(H) AT THE END OF THE NINETY DAY TRANSITION PERIOD, THE SUCCESSOR EMPLOYER SHALL PERFORM A WRITTEN PERFORMANCE EVALUATION FOR EACH EMPLOYEE RETAINED PURSUANT TO THIS SECTION. IF THE EMPLOYEE'S PERFORMANCE DURING SUCH NINETY DAY PERIOD IS SATISFACTORY, THE SUCCESSOR CONTRACTOR SHALL OFFER THE EMPLOYEE CONTINUED EMPLOYMENT UNDER THE TERMS AND CONDITIONS ESTABLISHED BY THE SUCCESSOR EMPLOYER OR AS REQUIRED BY LAW.

3. (A) A BUILDING SERVICE EMPLOYEE WHO HAS BEEN DISCHARGED OR NOT RETAINED IN VIOLATION OF THIS SECTION MAY BRING AN ACTION IN SUPREME COURT AGAINST A SUCCESSOR CONTRACTOR AND/OR COVERED EMPLOYER FOR VIOLATION OF ANY OBLIGATION IMPOSED PURSUANT TO THIS SECTION.

(B) THE COURT SHALL HAVE AUTHORITY TO ORDER INJUNCTIVE RELIEF TO PREVENT OR REMEDY A VIOLATION OF ANY OBLIGATION IMPOSED PURSUANT TO THIS SECTION.

(C) IF THE COURT FINDS THAT BY REASON OF A VIOLATION OF ANY OBLIGATION IMPOSED PURSUANT TO SUBDIVISION TWO OF THIS SECTION, A BUILDING SERVICE EMPLOYEE HAS BEEN DISCHARGED OR NOT RETAINED IN VIOLATION OF THIS SECTION, IT SHALL AWARD:

(I) BACK PAY FOR EACH DAY DURING WHICH THE VIOLATION CONTINUES, WHICH SHALL BE CALCULATED AT A RATE OF COMPENSATION NOT LESS THAN THE HIGHER OF: (1) THE AVERAGE REGULAR RATE OF PAY RECEIVED BY THE EMPLOYEE DURING THE LAST THREE YEARS OF THE EMPLOYEE'S EMPLOYMENT IN THE SAME OCCUPATION CLASSIFICATION; OR (2) THE FINAL REGULAR RATE RECEIVED BY THE EMPLOYEE.

(II) COSTS OF BENEFITS THE SUCCESSOR EMPLOYER WOULD HAVE INCURRED FOR THE EMPLOYEE UNDER THE SUCCESSOR CONTRACTOR'S OR EMPLOYER'S BENEFIT PLAN OR PLANS.

(III) THE BUILDING SERVICE EMPLOYEE'S REASONABLE ATTORNEYS FEES AND COSTS.

(D) IN ANY SUCH ACTION, THE COURT SHALL HAVE AUTHORITY TO ORDER THE TERMINATED CONTRACTOR OR FORMER EMPLOYER TO PROVIDE THE SUCCESSOR EMPLOYER WITH THE INFORMATION REQUIRED PURSUANT TO SUBDIVISION TWO OF THIS SECTION.

4. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY: (A) TO ANY SUCCESSOR EMPLOYER THAT, ON OR BEFORE THE EFFECTIVE DATE OF THE TRANSFER OF CONTROL FROM A PREDECESSOR COVERED EMPLOYER TO THE SUCCESSOR EMPLOYER OR THE COMMENCEMENT OF SERVICES BY A SUCCESSOR BUILDING SERVICE CONTRACTOR, AGREES TO ASSUME, OR TO BE BOUND BY, THE COLLECTIVE BARGAINING AGREEMENT OF THE PREDECESSOR COVERED EMPLOYER COVERING BUILDING SERVICE EMPLOYEES,

PROVIDED THAT THE COLLECTIVE BARGAINING AGREEMENT PROVIDES TERMS AND CONDITIONS FOR THE DISCHARGE OR LAYING OFF OF EMPLOYEES; OR (B) WHERE THERE IS NO EXISTING COLLECTIVE BARGAINING AGREEMENT AS DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION, TO ANY SUCCESSOR EMPLOYER THAT AGREES, ON OR BEFORE THE EFFECTIVE DATE OF THE TRANSFER OF CONTROL FROM A PREDECESSOR COVERED EMPLOYER TO THE SUCCESSOR EMPLOYER OR THE COMMENCEMENT OF SERVICES BY A SUCCESSOR BUILDING SERVICE CONTRACTOR, TO ENTER INTO A NEW COLLECTIVE BARGAINING AGREEMENT COVERING ITS BUILDING SERVICE EMPLOYEES, PROVIDED THAT THE COLLECTIVE BARGAINING AGREEMENT PROVIDES TERMS AND CONDITIONS FOR THE DISCHARGE OR LAYING OFF OF EMPLOYEES; OR (C) TO ANY SUCCESSOR EMPLOYER WHOSE BUILDING SERVICE EMPLOYEES WILL BE ACCRETED TO A BARGAINING UNIT WITH A PRE-EXISTING COLLECTIVE BARGAINING AGREEMENT, PROVIDED THAT THE COLLECTIVE BARGAINING AGREEMENT PROVIDES TERMS AND CONDITIONS FOR THE DISCHARGE OR LAYING OFF OF EMPLOYEES; OR (D) TO ANY COVERED EMPLOYER THAT OBTAINS A WRITTEN COMMITMENT FROM A SUCCESSOR EMPLOYER THAT THE SUCCESSOR EMPLOYER'S BUILDING SERVICE EMPLOYEES WILL BE COVERED BY A COLLECTIVE BARGAINING AGREEMENT FALLING WITHIN PARAGRAPHS (A), (B), OR (C) OF THIS SUBDIVISION.

S 3. This act shall take effect immediately.