STATE OF NEW YORK

3665

2019-2020 Regular Sessions

IN SENATE

February 12, 2019

Introduced by Sens. GIANARIS, SEPULVEDA -- 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 flexible working arrangements

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

Section 1. The labor law is amended by adding a new section 171 to read as follows:

§ 171. Flexible working arrangement. 1. Definitions. a. For the purposes of this section, "flexible working arrangement" shall mean intermediate or long-term changes in the employee's regular working arrangements, including but not limited to, changes in the number of days or hours worked, changes in the time the employee arrives at or departs from work, work from home, or job-sharing. "Flexible working arrangement" shall not include vacation, routine scheduling of shifts, or another form of employee leave.

b. For the purposes of this section, "inconsistent with business operations" shall mean a determination by the employer based on the following considerations: (i) the burden on an employer of undue additional costs; (ii) a legitimate or practical detrimental effect on aggregate employee morale unrelated to discrimination or other unlawful employment practices; (iii) a legitimate or practical detrimental effect on the ability of an employer to meet consumer demand; (iv) a significant inability to reorganize work among existing staff; (v) a legitimate or practical inability to recruit additional staff; (vi) a significant detrimental impact on business quality or business performance; (vii) an insufficiency of work during the periods the employee proposes to work; (viii) planned structural changes to the business; and (ix) any other reasons as specified by the commissioner.

2. An employee may request a flexible working arrangement that meets the needs of the employer and employee. The employer shall consider a

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

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request using the procedures in this section when the employee asks the employer on an as-needed basis.

3. The employer shall discuss the request for a flexible working arrangement with the employee. The employer and employee may propose alternative arrangements during the discussion. The employer shall consider the employee's request for a flexible working arrangement and whether the request could be granted in a manner that is not inconsistent with its business operations or its legal or contractual obligations.

4. The employer shall notify the employee of the decision regarding the request in a timely manner. If the request was submitted in writing, the employer shall state any complete or partial denial of the request in writing, citing the reason as to denying the request.

5. This section shall not diminish any employment rights or agreements pursuant to a collective bargaining agreement. An employer may institute a flexible working arrangement policy that is more generous than is provided by this section.

6. An employer shall not retaliate against an employee exercising his or her rights under this section.

7. Nothing in this section shall affect any legal rights an employer or employee may have under applicable law to create, terminate, or modify a flexible working arrangement.

8. Nothing in this section shall require an employer to accept the flexible work arrangement of the employee.

9. a. The commissioner or a representative authorized by the commissioner shall have the power to (i) investigate any complaint regarding a violation of this section filed by any employee; person or organization acting on the employee's behalf; or the recognized and certified collective bargaining agent acting on the employee's behalf; and (ii) examine and inspect the records of any employer in conjunction with such an investigation.

b. The commissioner may bring an action against an employer for failure to adhere to the provisions of this section, including injunctive relief to enjoin future conduct.

c. Any employer who violates the provisions of this section shall forfeit to the people of the state a sum of five hundred dollars for each violation, to be recovered by the commissioner in any legal action taken pursuant to this subdivision.

10. The commissioner shall promulgate rules and regulations within one hundred twenty days of the effective date of this section for the implementation of this section.

§ 2. This act shall take effect immediately.