

STATE OF NEW YORK

3665--A

2019-2020 Regular Sessions

IN SENATE

February 12, 2019

Introduced by Sens. GIANARIS, BIAGGI, SEPULVEDA -- 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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

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

11 b. For the purposes of this section, "inconsistent with business oper-
12 ations" shall mean a determination by the employer based on the follow-
13 ing considerations: (i) the burden on an employer of undue additional
14 costs; (ii) a legitimate or practical detrimental effect on aggregate
15 employee morale unrelated to discrimination or other unlawful employment
16 practices; (iii) a legitimate or practical detrimental effect on the
17 ability of an employer to meet consumer demand; (iv) a significant
18 inability to reorganize work among existing staff; (v) a legitimate or
19 practical inability to recruit additional staff; (vi) a significant
20 detrimental impact on business quality or business performance; (vii) an
21 insufficiency of work during the periods the employee proposes to work;

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

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1 (viii) planned structural changes to the business; and (ix) any other
2 reasons as specified by the commissioner.

3 2. a. An employee may request a flexible working arrangement that
4 meets the needs of both the employer and employee. The employer shall
5 consider and respond to such request pursuant to the provisions of this
6 section.

7 b. The employer shall respond to the request for a flexible working
8 arrangement from the employee, and shall consider the employee's request
9 for a flexible working arrangement and whether the request or a similar
10 arrangement could be granted in a manner that is not inconsistent with
11 its business operations or its legal or contractual obligations. An
12 employer may establish reasonable standards to determine the time,
13 place, and manner in which the employer shall discuss the request pursu-
14 ant to this subdivision.

15 c. The employer shall notify the employee of the decision regarding
16 the request in a reasonably timely manner, but in no cases shall such
17 decision be provided later than forty-five days from receipt of such a
18 request. If the request was submitted in writing, the employer shall
19 state any complete or partial denial of the request in writing, citing
20 the reason as to denying the request.

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

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

27 5. Nothing in this section shall affect any legal rights an employer
28 or employee may have under applicable law to create, terminate, or modi-
29 fy a flexible working arrangement.

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

32 7. a. The commissioner may bring an action against an employer for
33 failure to adhere to the provisions of this section, including injunc-
34 tive relief to enjoin future conduct.

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

39 8. The commissioner shall promulgate rules and regulations for the
40 implementation of this section.

41 § 2. This act shall take effect on the one hundred twentieth day after
42 it shall have become a law.