

# STATE OF NEW YORK

8308

## IN SENATE

May 11, 2020

Introduced by Sen. LIU -- 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 establishing an essential workers' bill of rights

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 202-n to  
2 read as follows:

3 § 202-n. Essential workers' bill of rights. 1. For the purposes of  
4 this section, "essential worker" means any employee of a business or  
5 entity providing essential services or functions during any state disas-  
6 ter emergency declared pursuant to article two-B of the executive law  
7 and designated as an essential worker pursuant to any law, rule, regu-  
8 lation or executive order including but not limited to essential health  
9 care operations including research and laboratory services; essential  
10 infrastructure including utilities, telecommunication, airports and  
11 transportation infrastructure; essential manufacturing, including food  
12 processing and pharmaceuticals; essential retail including grocery  
13 stores and pharmacies; essential services including trash collection,  
14 mail, and shipping services; news media; banks and related financial  
15 institutions; providers of basic necessities to economically disadvan-  
16 tagged populations; construction; vendors of essential services necessary  
17 to maintain the safety, sanitation and essential operations of resi-  
18 dences or other essential businesses; vendors that provide essential  
19 services or products, including logistics and technology support, child  
20 care and services needed to ensure the continuing operation of govern-  
21 ment agencies and provide for the health, safety and welfare of the  
22 public.

23 2. During a state disaster emergency, all employers of essential work-  
24 ers shall adopt and implement the following essential workers' bill of  
25 rights which shall be distributed to essential workers, made available  
26 on each employer's website, and shall include links or information to  
27 file a report and seek a response from such employer or the state

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

LBD16175-03-0

1 regarding any unsafe work environment or failure to meet the require-  
2 ments of this section:

3 (a) all employers shall provide essential workers with adequate  
4 personal protective equipment and products at no cost to such workers,  
5 including but not limited to hand sanitizer, medical or surgical masks,  
6 medical or surgical gloves, disposable gowns and any other equipment or  
7 product identified in emergency regulations promulgated by the commis-  
8 sioner, in consultation with the commissioner of health;

9 (b) all employers shall inform essential workers when an employee has  
10 contracted a disease related to such state disaster emergency and of a  
11 worker's potential exposure to disease; and

12 (c) no employer shall retaliate or discriminate against an essential  
13 worker for reporting any unsafe work environment.

14 3. (a) For the purposes of this subdivision:

15 (i) "employer" means a formula retail store, large employer, transpor-  
16 tation business, or franchisee or subcontractor, and includes any indi-  
17 vidual, partnership, association, corporation, limited liability compa-  
18 ny, business trust, legal representative, or any organized group of  
19 persons acting as such an employer;

20 (ii) "formula retail store" means any employer that operates a retail  
21 sales or restaurant establishment either directly or through franchisees  
22 and that, along with eleven or more other retail sales or restaurant  
23 establishments located in the United States, maintains two or more of  
24 the following features: (A) a standardized array of merchandise, a  
25 standardized facade, a standardized decor and color scheme, a uniform  
26 apparel, standardized signage, a trademark; or (B) a servicemark;

27 (iii) "large employer" means any employer that has annual gross reven-  
28 ue of fifty million dollars or more, but shall not include (A) an  
29 employer whose principal industry is manufacturing; or (B) a not-for-  
30 profit organization. An employer shall be deemed to have annual gross  
31 revenue of fifty million dollars or more if it had revenue at or exceed-  
32 ing that level in any of the past three fiscal or calendar years;

33 (iv) "manufacturing" means the process of working raw materials into  
34 products suitable for use or which gives new shapes, new quality or new  
35 combinations to matter which has already gone through some artificial  
36 process by the use of machinery, tools, appliances, or other similar  
37 equipment;

38 (v) "not-for-profit organization" means an entity exempt from taxation  
39 under section 501(c)(3) of the federal internal revenue code;

40 (vi) "transportation business" means any industry, business, or estab-  
41 lishment operated for the purpose of conveying persons or property from  
42 one place to another whether by rail, highway, air, or water, and all  
43 operations and services in connection therewith; and

44 (vii) "franchisee or subcontractor" means any employer that operates  
45 under a franchise agreement with a formula retail store or large employ-  
46 er, or that provides services, including but not limited to janitorial,  
47 maintenance, security, staffing, passenger services, food services, or  
48 temporary services to a formula retail store, large employer, or trans-  
49 portation business.

50 (b) An employer meeting the requirements of this subdivision shall  
51 also include in its essential workers' bill of rights:

52 (i) hazard payments for its essential workers. An employer of essen-  
53 tial workers shall make such hazard payments at the direction of the  
54 commissioner. Such payment shall be a percentage or a fixed dollar  
55 amount, as prescribed by the commissioner, provided, however, no hazard  
56 payment shall exceed twenty-five thousand dollars in any year for any

1 essential worker earning less than two hundred thousand dollars per year  
2 or five thousand dollars for any essential worker earning more than two  
3 hundred thousand dollars. Such payments shall be in addition to and  
4 shall not be part of an essential worker's basic annual salary, and  
5 shall not affect or impair any performance advancement payments,  
6 performance awards, longevity payments or other rights or benefits to  
7 which an essential worker may be entitled. A hazard payment shall be  
8 terminated upon the cessation of the state disaster emergency; and

9 (ii) payment of the costs of any child care or health care needed by  
10 such essential workers for the duration of the state disaster emergency.

11 § 2. This act shall take effect immediately.