

# 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:

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

24 2. An employee may request a flexible working arrangement that meets  
25 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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1 request using the procedures in this section when the employee asks the  
2 employer on an as-needed basis.

3 3. The employer shall discuss the request for a flexible working  
4 arrangement with the employee. The employer and employee may propose  
5 alternative arrangements during the discussion. The employer shall  
6 consider the employee's request for a flexible working arrangement and  
7 whether the request could be granted in a manner that is not inconsis-  
8 ent with its business operations or its legal or contractual obli-  
9 gations.

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

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

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

25 9. a. The commissioner or a representative authorized by the commis-  
26 sioner shall have the power to (i) investigate any complaint regarding a  
27 violation of this section filed by any employee; person or organization  
28 acting on the employee's behalf; or the recognized and certified collec-  
29 tive bargaining agent acting on the employee's behalf; and (ii) examine  
30 and inspect the records of any employer in conjunction with such an  
31 investigation.

32 b. The commissioner may bring an action against an employer for fail-  
33 ure to adhere to the provisions of this section, including injunctive  
34 relief to enjoin future conduct.

35 c. 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 10. The commissioner shall promulgate rules and regulations within one  
40 hundred twenty days of the effective date of this section for the imple-  
41 mentation of this section.

42 § 2. This act shall take effect immediately.