

STATE OF NEW YORK

1188

2021-2022 Regular Sessions

IN SENATE

January 8, 2021

Introduced by Sens. GIANARIS, BIAGGI, JACKSON, 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 arrange-
ments

The People of the State of New York, represented in Senate and Assem-
bly, 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.

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

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

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

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

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

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

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

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

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

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

37 8. The commissioner shall promulgate rules and regulations for the
38 implementation of this section.

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