STATE OF NEW YORK

640

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

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:

Section 1. The labor law is amended by adding a new section 202-n to read as follows:

§ 202-n. Essential workers' bill of rights. 1. For the purposes of this section, "essential worker" means any employee of a business or entity providing essential services or functions during any state disaster emergency declared pursuant to article two-B of the executive law and designated as an essential worker pursuant to any law, rule, regulation or executive order including but not limited to essential health care operations including research and laboratory services; essential infrastructure including utilities, telecommunication, airports and transportation infrastructure; essential manufacturing, including food processing and pharmaceuticals; essential retail including grocery stores and pharmacies; essential services including trash collection, mail, and shipping services; news media; banks and related financial institutions; providers of basic necessities to economically disadvantaged populations; construction; vendors of essential services necessary to maintain the safety, sanitation and essential operations of residences or other essential businesses; vendors that provide essential services or products, including logistics and technology support, child care and services needed to ensure the continuing operation of government agencies and provide for the health, safety and welfare of the public.

2. During a state disaster emergency, all employers of essential workers shall adopt and implement the following essential workers' bill of

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

LBD03488-01-1

rights which shall be distributed to essential workers, made available on each employer's website, and shall include links or information to file a report and seek a response from such employer or the state regarding any unsafe work environment or failure to meet the requirements of this section:

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

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

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

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

(i) "employer" means a formula retail store, large employer, transportation business, or franchisee or subcontractor, and includes any individual, partnership, association, corporation, limited liability company, business trust, legal representative, or any organized group of persons acting as such an employer;

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

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

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

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

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

(vii) "franchisee or subcontractor" means any employer that operates under a franchise agreement with a formula retail store or large employer, or that provides services, including but not limited to janitorial, maintenance, security, staffing, passenger services, food services, or temporary services to a formula retail store, large employer, or transportation business.

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

(i) hazard payments for its essential workers. An employer of essential workers shall make such hazard payments at the direction of the

commissioner. Such payment shall be a percentage or a fixed dollar amount, as prescribed by the commissioner, provided, however, no hazard payment shall exceed twenty-five thousand dollars in any year for any essential worker earning less than two hundred thousand dollars per year or five thousand dollars for any essential worker earning more than two hundred thousand dollars. Such payments shall be in addition to and shall not be part of an essential worker's basic annual salary, and shall not affect or impair any performance advancement payments, performance awards, longevity payments or other rights or benefits to which an essential worker may be entitled. A hazard payment shall be terminated upon the cessation of the state disaster emergency; and

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

§ 2. This act shall take effect immediately.