STATE OF NEW YORK

8386

IN SENATE

February 18, 2022

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the labor law, in relation to establishing the restaurant and restaurant worker recovery loan program; to amend the state finance law, in relation to establishing the restaurant and restaurant worker recovery fund; making an appropriation therefor; and to provide for the repeal of such provisions upon the expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "restaurant and restaurant worker recovery act of 2022".

§ 2. The labor law is amended by adding a new section 198-f to read as follows:

§ 198-f. Restaurant and restaurant worker recovery loan program. 1. There is established in the department a restaurant and restaurant worker recovery fund loan program for the purposes of supporting restaurants in the state of New York and their employees to survive the financial hardships created by the COVID-19 pandemic by providing loans to qualifying restaurants to assist in covering unanticipated labor costs incurred as a result of the state of emergency that was executed in Executive Order No. 202 on March 7, 2020, and to encourage the provision of a livable wage for restaurant workers who receive gratuities.

2. As used in this section:

(a) "Equity training" means training as described in subdivision five of this section.

(b) "Restaurant and restaurant worker recovery fund" or "fund" means the restaurant and restaurant worker recovery fund created by section ninety-seven-ii of the state finance law.

(c) "Qualifying restaurant" means a restaurant that meets the criteria established in subdivision three of this section.

(d) "Small New York-based restaurant" means a restaurant located within the state that is a small business as defined by section one hundred thirty-one of the economic development law.

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

LBD14650-02-2

3. (a) The department may make loans to qualifying restaurants in the amount of up to fifteen thousand dollars based on a formula and process to be determined by the commissioner.

(b) To be eligible for a loan from the fund, a small New York-based restaurant must meet the following criteria:

(1) the restaurant pays all tipped employees not less than the full minimum hourly wage rate as defined by section six hundred fifty-two of this chapter as evidenced by:

(A) proof that such a policy and practice is in existence at the time of the application for a loan from the fund; or

(B) execution of a sworn affidavit attesting that such a policy and practice shall be instituted in the restaurant within six months of receipt of a loan from the fund; and

(2) the restaurant agrees to participate in equity training, as provided in subdivision five of this section, within six months of receipt of a loan from the fund.

4. (a) A loan made pursuant to the provisions of this section shall be forgiven in its entirety by the commissioner if the following criteria are met:

(1) the restaurant provides proof to the commissioner that it has participated in equity training within six months of receipt of the interest-free loan from the fund; and

(2) the restaurant provides proof of implementation of a policy and practice of paying its tipped employees not less than the full minimum hourly wage rate as defined by section six hundred fifty-two of this chapter and that such policy and practice has been in effect for not less than two years from the date of receipt of the loan from the fund or, alternatively, from the actual date of the implementation of such policy and practice, provided that the implementation of such policy and practice is not greater than six months after receipt of the loan, whichever is later.

(b) If a restaurant that receives a loan under this section fails to meet and continue the requirements for accepting such loan, as set forth under this act and as the commissioner may require, shall be required to pay back the total amount of the loan accepted plus a penalty of three percent the total amount of the loan.

5. (a) The department shall develop an equity training program for owners and managers of qualifying restaurants. In developing such program, the department may utilize existing department resources and programs and/or may consult with organizations that have a history of training employers on best practices to increase wages and teaching gender and racial equity.

(b) The equity training program shall include information and materials pertaining to the best practices with respect to:

(1) raising wages to pay a full minimum wage to all workers profitably;

(2) equitable sharing of tips;

(3) increasing race and gender equity among employees, including:

(i) assessing and overhauling hiring, training, promotion and evaluation practices to ensure equity for women and people of color;

(ii) implicit bias testing and training for management.

(c) Materials provided to persons participating in the equity training shall include:

(1) a calculator that allows employers to input the number of employees and the menu prices at the qualifying restaurant and provides the employer with the best pricing options to increase wages profitably;

(2) three models and case studies of equitable wage/gratuity structures, including one that addresses fair wage and tip sharing, one that addresses service charges, and one that addresses gratuity-free models;

(3) case studies of the bottom-line benefits of increasing equity among employees; and

(4) a model policy to address sexual harassment.

(d) The department shall provide qualifying restaurant owners with technical assistance to help such owners to develop their own wage increase structure.

(e) The department is authorized to expend up to seven hundred fifty thousand dollars for purposes of implementing the equity training described in this subdivision.

6. Nothing in this section shall be construed to modify in any way an employee's right to receive gratuities pursuant to section one hundred ninety-six-d of this article.

7. The commissioner is authorized to promulgate, amend and/or repeal rules and regulations necessary for implementation of the provisions of this section.

§ 3. The state finance law is amended by adding a new section 97-ii to read as follows:

§ 97-ii. Restaurant and restaurant worker recovery fund. There is hereby established in the joint custody of the commissioner of taxation and finance and the comptroller, a special fund to be known as the restaurant and restaurant worker recovery fund. Monies in the fund shall be kept separate from and not commingled with other funds held in the custody of the commissioner of taxation and finance.

2. The fund shall consist of all monies appropriated for its purpose, all monies required by this section or any other provisions of law to be paid into or credited to such fund, and all other money appropriated, credited, or transferred thereto from any other fund or source pursuant to law. Nothing in this section shall prevent the state from receiving grants, gifts or bequests for the purposes of the fund as defined in this section and depositing them into the fund according to law.

3. Monies of the fund shall, after appropriation by the legislature, be made available to the department of labor and shall be expended only for the purposes of loans and equity training through and administrative expenses of the restaurant and restaurant worker recovery fund loan program established by section one hundred ninety-eight-f of the labor law. Monies shall be payable from the fund by the commissioner of taxation and finance on vouchers approved by the commissioner of labor.

4. On or before the first day of February each year, the commissioner of labor shall provide a written report to the governor, the temporary president of the senate, the speaker of the assembly, the chair of the senate finance committee and the chair of the assembly ways and means committee. Such report shall include how the monies of the fund were utilized during the preceding calendar year and shall include:

(a) the amount of money disbursed from the fund;

(b) the recipients of loans from the fund;

(c) the amount awarded to each recipient;

(d) the purposes for which such loans were granted;

(e) the amount of loans that were repaid under the restaurant and restaurant worker recovery fund loan program;

(f) the amount of loans that were forgiven under restaurant and restaurant worker recovery fund loan program; and

(g) a summary financial plan for such monies which shall include estimates of all receipts and all disbursements for the current and succeed-

ing fiscal years, along with the actual results from the prior fiscal year.

§ 4. The sum of fifty million dollars ($50,000,000), or so much thereof as may be available, is hereby appropriated to the department of labor from any moneys in the state treasury in the general fund to the credit of the state purposes account, not otherwise appropriated, and made immediately available, for the purpose of carrying out the provisions of this act. Such moneys shall be payable on the audit and warrant of the comptroller on vouchers certified or approved by the commissioner of labor in the manner prescribed by law.

§ 5. Upon the expiration and repeal of this act, any monies remaining in the restaurant and restaurant worker recovery fund established pursuant to section 97-ii of the state finance law shall be refunded to the state treasury in the general fund to the credit of the state purposes account.

§ 6. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this act, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this act directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid clause, sentence, paragraph, subdivision, section or part had not been included herein.

§ 7. This act shall take effect immediately and shall expire and be deemed repealed July 1, 2025.