

STATE OF NEW YORK

7305

2021-2022 Regular Sessions

IN ASSEMBLY

May 5, 2021

Introduced by M. of A. JOYNER -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to preventing the displacement of call center workers who provide call center services for the government in certain circumstances

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 article 21-A to read as follows:

ARTICLE 21-A

PROTECTION OF CALL CENTER WORKERS FROM DISPLACEMENT

Section 777. Definitions.

778. Terminated call center contract.

779. Entering into a call center contract.

780. Remedies.

781. No conflict with collective bargaining agreements.

§ 777. Definitions. As used in this article:

1. The term "call center" means a facility or other operation in which employees receive phone calls or other communications, including electronic communications for the purpose of providing customer assistance or for related services supportive of business processes.

2. The term "call center contract" means a contract with a governmental body, or a subcontract with an entity that has a contract with a governmental body, pursuant to which the contractor furnishes call center services for the benefit of the governmental body.

3. The term "governmental body" means the state of New York or any political subdivision thereof, and any public authority or public benefit corporation in the state of New York.

4. The term "call center employee" means any person employed to perform call center services who has been regularly assigned to such work for a call center contractor on a full or part-time basis for at

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

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1 least ninety days, except for (a) persons whose work for a call center
2 is managerial or supervisory; and (b) persons regularly scheduled to
3 work fewer than four hours per week for the call center.

4 5. The term "entity" means a person, partnership, proprietorship,
5 association, limited liability company, trust, corporation, firm, joint
6 venture or enterprise of any kind.

7 6. The term "call center contractor" means an entity (a) that is a
8 party to a call center contract, and (b) provides call center services
9 for the benefit of a governmental body, and (c) employs call center
10 employees or engages a subcontractor or other entity to perform such
11 call center services and that entity employees call center employees.

12 7. The term "terminating call center contractor" means an entity that
13 has provided services as a call center contractor pursuant to a call
14 center contract which is being terminated.

15 8. The term "former call center contractor" means an entity that
16 provided services as a call center contractor pursuant to a call center
17 contract which has been terminated, and after termination of that
18 contractor, a successor call center contractor has performed some or all
19 of the same services pursuant to a call center contract.

20 9. The term "successor call center contractor" means an entity that,
21 pursuant to a call center service contract, succeeds to the performance
22 of call center services previously performed by a terminating call
23 center contractor.

24 § 778. Terminated call center contract. 1. No less than thirty calen-
25 dar days before termination of a call center contract in circumstances
26 where a successor call center contractor will undertake to provide
27 services that were the subject of the terminating contract, the termi-
28 minating call center contractor shall provide to the successor call center
29 contractor a full and accurate list containing the name, address, date
30 of hire and employment classification of each call center employee whose
31 work includes providing call center services that were the subject of
32 the terminating contract. The terminating call center contractor shall
33 simultaneously post the list in a notice to the call center employees
34 that also sets forth the rights provided by this article. The posting
35 shall be in a manner or location reasonably calculated to be seen by
36 affected employees. The posting may be electronic, provided that if it
37 is electronic, it must be directed to each affected employee individual-
38 ly and may not be a general posting on a website. Such notice shall also
39 be provided to the employees' collective bargaining representative, if
40 any.

41 2. Upon termination of a call service contract in circumstances in
42 which services provided under that contract will be performed by a
43 successor call center contractor, the successor call center contractor
44 shall retain those call center employees who performed such services for
45 the former call center contractor immediately prior to termination of
46 that contract. Such employees shall be retained for a ninety-day tran-
47 sition employment period.

48 3. If the successor call center contractor is obligated to retain call
49 center employees pursuant to subdivision two of this section, but deter-
50 mines that fewer call center employees are required to perform the
51 services that are the subject of the contract than had been required to
52 perform such services by the former call center contractor, the succes-
53 sor call center contractor shall fill the positions that it determines
54 are needed with the call center employees with the greatest seniority
55 within job classification; provided, that during the ninety-day transi-
56 tion period, the successor call center contractor shall maintain a pref-

1 erential hiring list of those call center employees not retained, and
2 those on the preferential hiring list shall be given a right of first
3 refusal to any jobs within their classifications that become available
4 during that period.

5 4. Except as provided in subdivision three of this section, during the
6 ninety-day transition period, the successor call center contractor shall
7 not discharge without cause a call center employee retained pursuant to
8 this article.

9 5. At the end of the ninety-day transition period, the successor call
10 center contractor shall perform a written performance evaluation for
11 each call center employee retained pursuant to this article. If such
12 employee's performance during the ninety-day transition period is satis-
13 factory, the successor call center contractor shall offer such employee
14 continued employment.

15 6. If the successor call center contractor engages a subcontractor or
16 other entity to perform call center services provided for in a successor
17 call center contract, that successor call center contractor shall
18 require the subcontractor or other entity to adhere to all of the obli-
19 gations of this article.

20 § 779. Entering into a call center contract. 1. Whenever a govern-
21 mental body shall undertake to procure call center services using a call
22 center contractor, the governmental body shall ensure that the call
23 center contract with such entity includes the obligations pursuant to
24 this article, including, where applicable, the call center contractor's
25 obligation to retain call center employees of the former call center
26 contractor. The obligation to retain the terminating call center
27 contractor's employees shall be included in the call center contract
28 irrespective of whether the terminating call center contractor's
29 contract included the obligations pursuant to this article. Such obli-
30 gations shall be set forth in requests for proposals or other solicita-
31 tions and, in any event, shall be included in each call center contract.
32 Whether or not the provisions are included in such contract, the obli-
33 gations under this article shall apply to the successor call center
34 contractor whenever such contractor begins performance on a successor
35 call center contract on or after the effective date of this article.

36 2. A governmental body intending to enter into a call center service
37 contract, in circumstances in which such services had theretofore been
38 performed by call center employees pursuant to a call center contract,
39 shall require any entity seeking to enter into such contract to demon-
40 strate that it will establish the site for its performance in a location
41 which is reasonably accessible to the employees who have been performing
42 such services prior to the solicitation of bids for a successor call
43 center contract. In determining whether the site proffered by a bidder
44 meets the reasonable accessibility standard, the governmental body shall
45 consider the availability of public transportation to retained call
46 center employees and prevailing traffic patterns in and around the
47 proposed site. A site which is within ten miles of, or average travel
48 time by public or private transportation of not more than one-half hour
49 from, the location of the affected employees' work facility when
50 employed by the former call center contractor shall be presumed to be
51 reasonably accessible unless unusual obstacles to access are present.

52 § 780. Remedies. 1. A call center employee who has been discharged or
53 not retained in violation of this article may bring an action in the
54 supreme court against a former call center contractor or successor call
55 center contractor, including its subcontractors, or in appropriate

1 circumstances, against both, for violation of any obligation imposed
2 pursuant to this article.

3 2. The court shall have authority to order preliminary and permanent
4 equitable relief, including, but not limited to, reinstatement of any
5 employee who has been discharged or not retained in violation of this
6 article.

7 3. If the court finds that a call center employee has been discharged
8 or not retained in violation of this article, it shall award to the
9 employee:

10 (a) Back pay, and an equal amount as liquidated damages, for each day
11 during which the violation continues, which shall be calculated at a
12 rate of compensation not less than the higher of (i) the average regular
13 rate of pay received by the employee during the six months of the
14 employee's employment in the same occupation classification; or (ii) the
15 final regular rate received by the employee. Back pay shall apply to the
16 period commencing with the date of the discharge or refusal-to-retain
17 through the effective date of any offer of instatement or reinstatement
18 of the employee; and

19 (b) Costs of benefits the former call center contractor or successor
20 call center contractor would have incurred for the employee under such
21 employee's benefit plan; and

22 (c) The employee's reasonable attorney's fees and costs.

23 4. In any such action, the court shall have authority to order the
24 former call center contractor or the successor call center contractor,
25 as applicable, to provide any information required pursuant to this
26 article.

27 § 781. No conflict with collective bargaining agreements. The
28 provisions of this article shall not apply to any:

29 1. Successor call center contractor that, on or before the effective
30 date of a termination of a call center contract, agrees to assume, or to
31 be bound by, the collective bargaining agreement of the former call
32 center contractor, provided that the collective bargaining agreement
33 provides terms and conditions for the discharge or laying off of employ-
34 ees that are at least as protective of employee rights as those pursuant
35 to this article; and

36 2. Successor call center contractor whose call center employees will
37 be accreted to a bargaining unit with a pre-existing collective bargain-
38 ing agreement, provided that the collective bargaining agreement
39 provides terms and conditions for the discharge or laying off of employ-
40 ees that are at least as protective of employee rights as those pursuant
41 to this article; and

42 3. Former call center contractor that obtains a written commitment
43 from a successor call center contractor that the successor call center
44 contractor's call center employees will be covered by a collective
45 bargaining agreement that provides terms and conditions for the
46 discharge or laying off of employees that are at least as protective of
47 employee rights as those pursuant to this article.

48 § 2. Severability. If any provision of this law or the application
49 thereof to any person or circumstance is held invalid, such invalidity
50 shall not affect other provisions of the law which can be given effect
51 without the invalid provision or application, and to this end the
52 provisions of this article shall be severable.

53 § 3. This act shall take effect immediately.