STATE OF NEW YORK

4973

2021-2022 Regular Sessions

IN SENATE

February 22, 2021

Introduced by Sen. RAMOS -- 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 avoiding displacement of the call center workers providing call center services for the benefit of the government in the event of a change of the contractor

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 780. Definitions.
781. Terminated call center contract.
782. Entering into a call center contract.
783. Remedies.

§ 780. Definitions. For purposes of this article, the following terms shall have the following meanings:

1. Call center. 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. Call center contract. 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. Governmental body. 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.

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

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4. Call center employee. 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 least ninety days, except for: (i) persons whose work for a call center is managerial or supervisory; and (ii) persons regularly scheduled to work fewer than four hours per week for the call center.

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

6. Call center contractor. The term "call center contractor" means an entity (i) that is a party to a call center contract, and (ii) provides call center services for the benefit of a governmental body, and (iii) employs call center employees or engages a subcontractor or other entity to perform such call center services and that entity employees call center employees.

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

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

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

§ 781. Terminated call center contract. 1. No less than thirty calendar days before termination of a call center contract in circumstances where a successor call center contractor will undertake to provide services that were the subject of the terminating contract, the terminating call center contractor shall provide to the successor call center contractor a full and accurate list containing the name, address, date of hire and employment classification of each call center employee whose work includes providing call center services that were the subject of the terminating contract. The terminating call center contractor shall simultaneously post the list in a notice to the call center employees that also sets forth the rights provided by this article. The posting shall be in a manner or location reasonably calculated to be seen by affected employees. The posting may be electronic, provided that if it is electronic, it must be directed to each affected employee individually and may not be a general posting on a website. Such notice shall also be provided to the employees' collective bargaining representative, if any.

2. Upon termination of a call service contract in circumstances in which services provided under such contract will be performed by a successor call center contractor, the successor call center contractor shall retain those call center employees who performed such services for the former call center contractor service immediately prior to termination of such contract. Such employees shall be retained for a ninety-day transition employment period.

3. If the successor call center contractor is obligated to retain call center employees pursuant to subdivision two of this section but deter-

mines that fewer call center employees are required to perform the services that are the subject of the contract than had been performing such services by the former call center contractor, the successor call center contractor shall fill the positions that it determines are needed with the call center employees with the greatest seniority within job classification; provided, however, that during the ninety-day transition period, the successor call center contractor shall maintain a preferential hiring list of those call center employees not retained, and those call center employees on the preferential hiring list shall be given a right of first refusal to any jobs within their classifications that become available during such period.

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

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

6. If the successor call center contractor engages a subcontractor or other entity to perform call center services provided for in a successor call center contract, that successor call center contractor shall require the subcontractor or other entity to adhere to all of the obligations of this article.

§ 782. Entering into a call center contract. 1. Whenever a governmental body shall undertake to procure call center services using a call center contractor, the governmental body shall ensure that the call center contract with such entity includes the obligations set forth in this article, including, where applicable, the call center contractor's obligation to retain call center employees of the former call center contractor. The obligation to retain the terminating call center contractor's employees shall be included in the call center contract irrespective of whether the terminating call center contractor's contract included the obligations set forth in this article. Such obligations shall be set forth in requests for proposals or other solicitations and, in any event, shall be included in each call center contract. Whether or not the provisions are included in such contract, the obligations of this article shall apply to the successor call center contractor whenever such contractor begins performance on a successor call center contract after the effective date of this article.

2. In circumstances in which call center services had theretofore been performed by call center employees pursuant to a call center contract, a governmental body intending to enter into a successor call center service contract shall require any entity seeking to enter into such contract to demonstrate that it will establish the site for its performance in a location which is reasonably accessible to the employees who have been performing such services prior to the solicitation of bids for a successor call center contract. In determining whether the site proffered by a bidder meets the reasonable accessibility standard, the governmental body shall consider the availability of public transportation to retained call center employees and prevailing traffic patterns in and around the proposed site. A site which is within ten miles of, or average travel time by public or private transportation of not more than one-half hour from, the location of the affected employees' work facili-

ty when employed by the former call center contractor shall be presumed to be reasonably accessible unless unusual obstacles to access are present.

§ 783. Remedies. 1. A call center employee who has been discharged or not retained in violation of this article may bring an action in supreme court against a former call center contractor or successor call center contractor, including its subcontractors, or in appropriate circumstances, against both, for violation of any obligation imposed pursuant to this article.

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

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

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

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

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

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

5. (a) The provisions of this article shall not apply to any successor call center contractor that, on or before the effective date of a termination of a call center contract, agrees to assume, or to be bound by, the collective bargaining agreement of the former call center contractor, provided that the collective bargaining agreement provides terms and conditions for the discharge or laying off of employees that are at least as protective of employee rights as those provided in this article; and

(b) The provisions of this article shall not apply to any successor call center contractor whose call center employees will be assigned to a bargaining unit with a pre-existing collective bargaining agreement, provided that the collective bargaining agreement provides terms and conditions for the discharge or laying off of employees that are at least as protective of employee rights as those provided in this article; and

(c) The provisions of this article shall not apply to any former call center contractor that obtains a written commitment from a successor call center contractor that the successor call center contractor's call center employees will be covered by a collective bargaining agreement that provides terms and conditions for the discharge or laying off of employees that are at least as protective of employee rights as those provided in this article.

§ 2. 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 thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof 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 provisions had not been included herein.

§ 3. This act shall take effect immediately.