STATE OF NEW YORK

5065

2021-2022 Regular Sessions

IN SENATE

February 23, 2021

Introduced by Sen. PERSAUD -- 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 arrangements for parents and legal guardians when day care centers and schools are closed during a state or local disaster emergency

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. Flexible working arrangements for parents and legal guardians during a state or local disaster emergency. 1. Definitions. For the purposes of this section:

(a) "School-aged child" shall mean a child or children enrolled in 3-k or pre-kindergarten through twelfth grade.

(b) "Day care-aged child" shall mean a child enrolled in a day care center.

(c) "Parent" shall mean a biological, foster, or adoptive parent, a legal guardian, or other person who stands in loco parentis to a school-aged child or children.

(d) "Employer" shall mean all employers within the state.

(e) "Flexible working arrangement" shall mean short-term, intermediate, or long-term changes in the employee's regular working arrangements, including but not limited to, changes in the number of days or hours worked, changes in the time the employee arrives at or departs from work, remote work, or job-sharing. "Flexible working arrangement" shall not include vacation, routine scheduling of shifts, or another form of employee leave.

(f) "Inconsistent with business operations" shall mean a determination by the employer based on the following considerations: (i) the burden on an employer of undue additional costs; (ii) a legitimate or practical detrimental effect on aggregate employee morale unrelated to discrimi-

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

LBD09531-06-1

nation or other unlawful employment practices; (iii) a legitimate or practical detrimental effect on the ability of an employer to meet consumer demand; (iv) a significant inability to reorganize work among existing staff; (v) a legitimate or practical inability to recruit additional staff; (vi) a significant detrimental impact on business quality or business performance; (vii) an insufficiency of work during the periods the employee proposes to work; (viii) planned structural changes to the business; and (ix) any other reasons as specified by the commissioner.

2. Presumption of entitlement for parents and legal guardians to work remotely when day care centers and schools are closed due to a state or local disaster emergency. (a) Notwithstanding any other provision of law to the contrary, an employee shall be entitled to work remotely where the essential functions of the employee's position can be performed remotely and (i) the employee is the parent of a school-aged child or day care-aged child or children; (ii) the school or day care center attended by such school-aged child or day care-aged child or children has been closed pursuant to an order of a public official due to a state or local disaster emergency, regardless of whether there will be virtual or remote instruction or instruction has been suspended; and (iii) the purpose of working remotely is to be able to supervise or otherwise provide care for such school-aged child or day care-aged child or children.

(b) There shall be a rebuttable presumption that an employee can perform work remotely if such employee has already performed work remotely for two consecutive pay periods, or two weeks, whichever is less time, in the current or immediately preceding calendar year. The presumption may be rebutted by evidence showing that the employee cannot perform essential duties remotely.

(c) Where a significant portion, but not all, of the essential functions of the position in which the employee is employed can be performed remotely, employers shall consider whether a similar arrangement or a partial remote work arrangement may be granted in a manner that is not inconsistent with its business operations or legal or contractual obligations.

3. Right of parents and legal guardians to request flexible working arrangements when day care centers or schools are closed due to a state or local disaster emergency. (a) Notwithstanding any other provision of law to the contrary, an employee may request a flexible working arrangement that meets the needs of both the employer and employee where: (i) the employee is a parent of a school-aged or day care-aged child or children; (ii) the school or day care center attended by such school-aged child or day care-aged child or children has been closed pursuant to an order of a public official due to a state or local disaster emergency, regardless of whether there will be virtual or remote instruction or instruction has been suspended; and (iii) the purpose of the flexible working arrangement is to be able to supervise or otherwise provide care for such school-aged child or day care-aged child or children.

(b) Nothing in this subdivision shall be construed to require an employer to accept the flexible work arrangement requested by the employee.

(c) The employer shall respond to the request for a flexible working arrangement from the employee, and shall consider the employee's request for a flexible working arrangement and whether the request or a similar arrangement could be granted in a manner that is not inconsistent with its business operations or its legal or contractual obligations.

4. (a) Nothing in this section shall be construed to prohibit an employer from requiring an employee to request a remote work arrangement or flexible working arrangement sufficiently in advance of when such remote work or flexible working arrangement would commence. An employer may establish reasonable standards to determine the time, place, and manner in which the employee shall request a remote work or flexible working arrangement pursuant to this section.

(b) An employer shall respond to the request for a remote work or flexible working arrangement pursuant to this section in a reasonably timely manner, but in no case shall such decision be provided later than fourteen days from receipt of a request. If such request was submitted in writing, the employer shall state any complete or partial denial of the request in writing, citing the reason as to denying such request.

5. Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any collective bargaining agreement.

6. Nothing in this section shall be deemed to affect any legal rights an employer or employee may have under applicable law to create, terminate, or modify a remote work or flexible working arrangement.

7. No employer or his or her agent, or the officer or agent of any corporation, partnership, or limited liability company, or any other person, shall discharge, threaten, penalize, or in any other manner discriminate or retaliate against any employee because such employee has exercised his or her rights afforded under this section.

8. (a) The commissioner may bring an action against an employer for failure to adhere to the provisions of this section, including injunctive relief to enjoin future conduct.

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

9. The commissioner shall promulgate rules and regulations for the implementation of this section.

§ 2. Nothing in this act shall be construed to prevent a locality from enacting and enforcing local laws or ordinances which meet or exceed the standards or requirements set forth in this act.

§ 3. This act shall take effect on the thirtieth day after it shall have become a law; provided, however, that effective immediately employees may begin the process of requesting remote work or flexible working arrangements pursuant to this act.