

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:

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

3 § 202-n. Flexible working arrangements for parents and legal guardians
4 during a state or local disaster emergency. 1. Definitions. For the
5 purposes of this section:

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

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

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

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

14 (e) "Flexible working arrangement" shall mean short-term, intermedi-
15 ate, or long-term changes in the employee's regular working arrange-
16 ments, including but not limited to, changes in the number of days or
17 hours worked, changes in the time the employee arrives at or departs
18 from work, remote work, or job-sharing. "Flexible working arrangement"
19 shall not include vacation, routine scheduling of shifts, or another
20 form of employee leave.

21 (f) "Inconsistent with business operations" shall mean a determination
22 by the employer based on the following considerations: (i) the burden on
23 an employer of undue additional costs; (ii) a legitimate or practical
24 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.

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1 nation or other unlawful employment practices; (iii) a legitimate or
2 practical detrimental effect on the ability of an employer to meet
3 consumer demand; (iv) a significant inability to reorganize work among
4 existing staff; (v) a legitimate or practical inability to recruit addi-
5 tional staff; (vi) a significant detrimental impact on business quality
6 or business performance; (vii) an insufficiency of work during the peri-
7 ods the employee proposes to work; (viii) planned structural changes to
8 the business; and (ix) any other reasons as specified by the commission-
9 er.

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

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

30 (c) Where a significant portion, but not all, of the essential func-
31 tions of the position in which the employee is employed can be performed
32 remotely, employers shall consider whether a similar arrangement or a
33 partial remote work arrangement may be granted in a manner that is not
34 inconsistent with its business operations or legal or contractual obli-
35 gations.

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

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

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

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

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

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

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

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

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

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

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

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

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