STATE OF NEW YORK

8070

2023-2024 Regular Sessions

IN ASSEMBLY

September 27, 2023

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

AN ACT to amend the labor law, in relation to protections and rights afforded to delivery network company workers

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-B to read as follows:

ARTICLE 21-B
DELIVERY NETWORK COMPANIES

Section 790. Definitions.
790-a. Deactivation requirements.
790-b. Right to challenge deactivation.
790-c. Notice of deactivation.
790-d. Access to records substantiating deactivation.
790-e. Affirmative production of records.
790-f. Notice of rights.
790-g. Network company records.
790-h. Retaliation prohibited.
790-i. Rulemaking authority.
790-j. Enforcement power and duties.
790-k. Violation.
790-l. Investigation.

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

1. "Adverse action" means reducing compensation; garnishing tips or gratuities; temporarily or permanently denying or limiting access to work, incentives, or bonuses; offering less desirable work; terminating; deactivating; threatening; penalizing; retaliating; engaging in unfair immigration-related practices; filing a false report with a government agency; or discriminating against any person for any reason.

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

LBD13223-01-3

2. "Deactivate" or "deactivation" means the blocking of a DNC worker's access to a DNC's digital network, prohibiting a DNC worker from accepting any future DNC orders for such DNC, or other material restriction of a DNC worker's access to such DNC's digital network. The term "deactivation" shall not include a temporary suspension lasting less than forty-eight hours.

3. "Deactivation policy" means a DNC's policy for measures to be taken prior to implementing the deactivation of a DNC worker adopted pursuant to subdivision one of section seven hundred ninety-a of this article.

4. "Deactivation challenge procedure" means a procedure under which a DNC worker may challenge their deactivation under section seven hundred ninety-b of this article.

5. (a) "Delivery network company" or "DNC" means a person, corporation, partnership, sole proprietorship, or other entity that is operating in New York state exclusively using a digital network to connect DNC customers with DNC workers who provide delivery for orders of products made via a digital network.

(b) "Delivery network company" shall not include:

(i) a transportation network company, as defined by section sixteen hundred ninety-one of the vehicle and traffic law; or

(ii) a restaurant, or restaurant chain, that enables customers to place orders for food using a digital network that was created specifically for use by customers of such restaurant or restaurant chain.

6. "Delivery network company customer" or "DNC customer" means an individual or other entity who uses a delivery network company's digital network to request a DNC order.

7. "Delivery network company order" or "DNC order" means the pickup and delivery of products by a DNC worker to a DNC customer through the use of a DNC's digital network:

(a) beginning when a DNC worker accepts a DNC customer's request for such pickup and delivery of such products through such digital network;

(b) continuing while the DNC worker transports such products; and

(c) ending when the DNC worker delivers such products to such DNC customer, or to such DNC customer's requested delivery location.

8. "Delivery network company worker" or "DNC worker" means an individual who has entered into an agreement with a DNC to pickup and deliver DNC orders for compensation.

9. "Digital network" means any system or service offered or utilized by a delivery network company that enables DNC orders to be delivered by DNC workers, including but not limited to a smartphone application or online website.

10. "Discrimination" means any of the unlawful discriminatory practices described in section two hundred ninety-six of the executive law.

11. "Egregious misconduct" means an action or behavior by a DNC worker that: (a) endangers the physical safety of a DNC customer, a third party, a DNC, or an animal; (b) intentionally causes economic harm to a DNC customer, a third party, or a DNC; (c) is threatening, harassing, or abusive to a DNC customer, a third party, or a DNC; or (e) constitutes a misdemeanor or felony under the laws of this state.

12. "Products" shall include, but not be limited to, prepared foods, packaged foods, alcoholic and non-alcoholic beverages, and other goods.

13. "Unwarranted deactivation" shall mean a deactivation in violation of section seven hundred ninety-a of this article.

§ 790-a. Deactivation requirements. 1. A delivery network company shall adopt a policy for measures to be taken prior to implementing the deactivation of a DNC worker. Such policy shall be reasonably related to

such DNC's safe and efficient operations. Policies including any of the following shall not be in compliance with this subdivision:

(a) Any rule or policy that would result in a deactivation based on a DNC worker's availability to work or number of hours worked;

(b) Any policy that would result in a deactivation based on a DNC worker's acceptance or rejection of any individual DNC order, or any number or proportion of DNC orders;

(c) Any policy that would result in a deactivation based on a DNC worker's cancellation of a DNC order with reasonable cause, as shall be defined by such DNC;

(d) Any policy that would result in a deactivation based on a DNC worker contacting such DNC;

(e) Any policy that would result in a deactivation based solely on a quantitative metric derived from aggregate customer ratings of a DNC worker's performance;

(f) Any policy that would result in a deactivation based on statements by a DNC worker regarding compensation and/or working conditions made to customers, other DNC workers, other DNCs, the media, public officials, and/or the public; or

(g) Any policy that would result in a deactivation based on a DNC worker asserting their legal rights.

2. A delivery network company shall provide each DNC worker a copy of its deactivation policy before allowing such DNC worker to accept any DNC orders for such DNC. Such deactivation policy shall be written in plain language in the language selected by the DNC worker as such DNC worker's primary language. Such deactivation policy shall be made available to any former DNC worker of a DNC for no less than three years after deactivation of such DNC worker.

3. A delivery network company shall conduct a fair and objective investigation, as determined by the commissioner, prior to the deactivation of any DNC worker. Such investigation shall be sufficiently thorough to justify such deactivation and demonstrate an unbiased and neutral view of facts collected. If such DNC worker refuses to participate in such investigation or provide relevant information, such DNC may complete such investigation based on available sources of information. Such DNC shall demonstrate by a preponderance of the evidence that such DNC worker violated such DNC's deactivation policy prior to deactivation of such DNC worker. A DNC shall apply its deactivation policy in a consistent manner.

4. Deactivation of a DNC worker by a DNC shall be in violation of this article if such deactivation is intended to or results in discrimination.

5. Notwithstanding the provisions of this section, a delivery network company shall be authorized to immediately deactivate a DNC worker if such deactivation is required to comply with any applicable court order or local, state, or federal law or regulation, or where such DNC worker has engaged in egregious misconduct. In the case of egregious misconduct by a DNC worker, a DNC may deactivate such DNC worker before conducting the investigation required pursuant to subdivision three of this section. In such a case, such investigation shall not take longer than fourteen days. If such investigation is delayed due to extraordinary circumstances, such DNC shall provide such DNC worker with written notice that such investigation is delayed, the reason for such delay, and the date on which the completion of such investigation is anticipated.

§ 790-b. Right to challenge deactivation. 1. A delivery network company shall not subject a DNC worker to an unwarranted deactivation.

2. A DNC worker shall have the right to challenge their deactivation through an internal deactivation challenge procedure.

3. A DNC shall create an internal deactivation challenge procedure that shall be available to DNC workers immediately upon their deactivation, and up to ninety days after such deactivation.

4. A DNC's deactivation challenge procedure shall be available to its DNC workers in writing, in a format that is readily accessible, and in English and any language that such DNC knows or has reason to know is the primary language of such DNC worker. Such deactivation challenge procedure shall be available to DNC workers and former DNC workers for up to three years after their deactivation. The commissioner may prescribe the form and content of a DNCs deactivation challenge procedures.

5. A DNC shall review and respond to a DNC worker's challenge to deactivation within fourteen days of receiving such challenge. Such response shall include a written statement that shall include at least one of the following:

(a) Evidentiary substantiation of such deactivation pursuant to section seven hundred ninety-d of this article, and substantive responses to questions or claims made by such DNC worker in such challenge;

(b) Any extraordinary circumstances necessitating a delayed timeline for response, and an anticipated date for a response either substantiating such deactivation or reinstating such DNC worker; or

(c) A determination that such DNC worker did not violate the DNC's deactivation policy and therefore shall be reinstated.

6. In addition to pursuing an internal challenge to deactivation under this section, a DNC worker shall have a right to file a complaint with the department or bring a civil action for violation of the requirements of this article upon receiving the DNC's initial response to an internal challenge, or fourteen days after initiating such challenge, whichever comes first. A DNC worker may pursue all avenues of relief available within three years of the alleged violation, or as tolled pursuant to section seven hundred ninety-l of this article.

§ 790-c. Notice of deactivation. 1. Except as provided under subdivision three of this section, a delivery network company shall provide a DNC worker with a notice of deactivation no later than fourteen days prior to such deactivation, as well as on the date of such deactivation. Such notice of deactivation shall include a written statement of the following:

(a) The reasons for such deactivation;

(b) The effective date of such deactivation;

(c) Any and all records relied upon to substantiate such deactivation pursuant to section seven hundred ninety-d of this article;

(d) The length of such deactivation;

(e) A description of the steps such DNC worker can take to remedy such deactivation;

(f) A notice of such DNC worker's right to challenge such deactivation under section seven hundred ninety-b of this article; and

(g) Any other information required by the commissioner.

2. A DNC shall provide notices of deactivation in a form and manner that shall be designated by the department.

3. For deactivations involving egregious misconduct, a DNC shall provide the DNC worker with a notice of deactivation no later than the effective date of such deactivation.

§ 790-d. Access to records substantiating deactivation. 1. Pursuant to subdivision three of this section, upon notice of deactivation, a DNC shall provide a DNC worker with the records relied upon by such DNC to substantiate such deactivation, unless contrary to local, state, or federal law. Such records shall include, but not be limited to, the date, time, and location of all incidents supporting the decision for such deactivation, records of all evidence considered in such decision, and a certified statement from an individual at such DNC with authority to reinstate such DNC worker, attesting that such records are true and accurate to such individual's knowledge.

2. If a DNC obtains records substantiating a deactivation, after implementing such deactivation, such records shall be provided to the deactivated DNC worker as soon as practicable, but no later than fourteen days from the date such records were obtained.

3. If a DNC worker challenges a deactivation pursuant to subdivision two of section seven hundred ninety-b of this article, all records of such challenge and any responses shall be provided to such DNC worker within fourteen days of such challenge or response.

4. If the records substantiating a deactivation involve information related to a DNC customer or a third party, and the DNC reasonably believes such information could compromise such DNC customer or third party's safety, such DNC shall take measures to anonymize such information. If a complaint from a DNC customer or third party is the sole basis for a deactivation, the DNC may provide a summary description of the records substantiating such deactivation. The commissioner may promulgate rules or regulations regarding the measures that shall be taken to summarize records pursuant to this subdivision.

5. DNCs shall establish an accessible system for DNC workers to access their receipts for each DNC order accepted, performed, and/or cancelled by such DNC worker. Such receipts shall be accessible on such DNC's digital network. Such receipts shall be available to a DNC worker for no less than three years after deactivation.

6. DNCs shall retain the records required by this section for no less than three years.

7. If a DNC fails to disclose adequate records to a DNC worker as required under this section, there shall be a presumption, rebuttable by clear and convincing evidence, that such DNC violated this article for the relevant periods and for each DNC worker for whom records were not disclosed in a timely manner.

§ 790-e. Affirmative production of records. 1. Each delivery network company shall affirmatively transmit to the department such records as shall be required by the commissioner, on at least a quarterly basis beginning at the end of the first quarter next succeeding the effective date of this section, until July first, two thousand twenty-seven, and at least once every six months thereafter. The commissioner shall have the authority to require such aggregated or disaggregated records deemed necessary, appropriate, or convenient to administer, evaluate, and enforce the provisions of this article. The commissioner may require that such records be aggregated and produced as a distribution at defined percentiles. The commissioner may create data production requirements of general applicability for all DNCs, in addition to requirements for specific categories of DNCs.

2. Records for production pursuant to subdivision one of this section shall include, but not be limited to:

(a) Records regarding the number of deactivations initiated by a DNC;

(b) Records regarding the most common reasons for deactivation;

(c) The number of DNC workers that challenge their deactivation, and the forum in which such DNC workers pursue such challenges;

(d) The number of DNC workers reinstated after deactivation, the length of such DNC worker's deactivation prior to reinstatement, and the length of service of such DNC workers prior to deactivation;

(e) The DNC's deactivation policy;

(f) The DNC's internal deactivation challenge procedure, including the available methods of contact for deactivated DNC workers to initiate a challenge; and

(g) Any other records the commissioner determines are material and necessary to effectuate the purposes of this article.

3. The commissioner shall issue requirements governing the submission format, security, and privacy protocols relating to the submission of DNC records.

§ 790-f. Notice of rights. 1. A DNC shall affirmatively provide to each DNC worker a written notice of their rights established under this article. The department may create and distribute a model of such notice of rights in English and other languages. Such notice of rights shall be provided in a form and manner sufficient to inform DNC workers of their rights under this article.

2. DNCs shall affirmatively provide each DNC worker with the written notice of rights required under subdivision one of this section within one month of the effective date of this article, and for DNC workers hired after the effective date of this article, within twenty-four hours after the completion of such DNC worker's first DNC order that involved performing services in the state.

3. DNCs shall provide the notice of rights required under subdivision one of this section to each DNC worker no less than annually.

4. The notice of rights required to be provided by a DNC pursuant to subdivision one of this section shall include, but not be limited to, information on:

(a) The right to challenge an unwarranted deactivation through such DNC's internal deactivation challenge procedure and/or through other avenues pursuant to section seven hundred ninety-b of this article;

(b) The policy describing the deactivation challenge procedure pursuant to section seven hundred ninety-b of this article;

(c) The right to fourteen days' notice of an impending deactivation, except in the case of egregious misconduct;

(d) The right to access any and all records relied upon by the DNC to substantiate deactivation pursuant to section seven hundred ninety-d of this article;

(e) The right to be protected from retaliation for exercising in good faith the rights protected by this article; and

(f) The right to file a complaint with the department pursuant to section seven hundred ninety-l of this article or bring a civil action for violation of the requirements of this article.

5. DNCs shall provide the notice of rights required by subdivision one of this section in an electronic format that is readily accessible to DNC workers. Such notice of rights shall be made available to DNC workers via such DNC's digital network or via email, in English and any language such DNC knows or has reason to know is the primary language of such DNC workers. The commissioner may promulgate rules and/or regu-

lations regarding the form and content of such notice of rights, the manner of its distribution, and required languages.

6. DNCs shall establish an accessible system for DNC workers to understand their eligibility to challenge a deactivation based on the policy developed pursuant to section seven hundred ninety-a of this article. Such system shall be available to DNC workers via such DNC's digital network. Such system shall be available to DNC workers for no less than three years after deactivation. The commissioner may issue rules defining reasonable criteria or requirements for such system to ensure that DNC workers have sufficient information to understand when they are covered by this article, including, but not limited to, notice of coverage by this article, the number of DNC orders completed or cancelled by such DNC worker in the prior one hundred eighty days, and such DNC worker's receipts and/or payment disclosures for each DNC order performed or cancelled in the prior one hundred eighty days.

§ 790-g. Network company records. 1. A delivery network company shall retain records that document compliance with this article for each DNC worker, including, at a minimum, a compliance file for each deactivation of a DNC worker. The commissioner may make requirements regarding the form, format, and content of such records. The compliance file for each deactivation of a DNC worker required pursuant to this subdivision shall include, but not be limited to:

(a) The deactivation notice provided to such DNC worker pursuant to section seven hundred ninety-c of this article;

(b) The date of completion of investigation;

(c) Whether such deactivation involved egregious misconduct, and, if so, the egregious misconduct at issue;

(d) Whether such deactivation was the result of discrimination;

(e) The number of DNC orders completed by such DNC worker in the one hundred eighty days prior to such deactivation;

(f) The date of any deactivation challenge made by such DNC worker, if such a challenge was made;

(g) All responses made by such DNC to a deactivation challenge made by such DNC worker, if such a challenge was made; and

(h) Any other records the commissioner shall require.

2. A DNC shall retain the records required under subdivision one of this section for no less than three years.

3. If a DNC fails to retain adequate records required under this section, there shall be a presumption, rebuttable by clear and convincing evidence, that such DNC violated the provisions of this article for the relevant periods and for each DNC worker for whom records were not retained.

§ 790-h. Retaliation prohibited. 1. No DNC, or any other person acting on behalf of such DNC, shall interfere with, restrain, deny, or attempt to deny the exercise of any right protected under this article.

2. No DNC shall take any adverse action against any person because such person has exercised in good faith the rights protected under this article, or because such person has:

(a) Made inquiries about the rights protected under this article;

(b) Informed others about their rights under this article;

(c) Informed such DNC, legal counsel, a union or other similar organization, or any other person about an alleged violation of this article;

(d) Filed an oral or written complaint with the department or brought a civil action for an alleged violation of this article;

(e) Cooperated with the department in an investigation of an alleged violation of this article;

(f) Testified in a proceeding under or related to this article; or

(g) Refused to participate in an activity that would result in a violation of this article or of any local state, or federal law.

3. No DNC shall communicate to a person exercising their rights under this article, directly or indirectly, the willingness to inform a government worker that such person is not lawfully in the United States, or to report, or to make an implied or express assertion of a willingness to report, suspected citizenship or immigration status of a DNC worker or family member of a DNC worker to a federal, state, or local agency.

4. It shall be a rebuttable presumption of retaliation in violation of this section if a DNC takes an adverse action against a person within ninety days of such person's exercise of rights protected under this article. Such DNC may rebut such presumption with clear and convincing evidence that such adverse action was taken for a permissible purpose.

5. Proof of retaliation in violation of this section shall be sufficient upon a showing that a DNC has taken an adverse action against a person and such person's exercise of rights under this article was a motivating factor in such adverse action, unless such DNC can prove that such adverse action would have been taken in the absence of such exercise of rights.

6. The protections under this section shall apply to any person who mistakenly but in good faith alleges a violation of this article.

§ 790-i. Rulemaking authority. The commissioner shall be authorized to promulgate, repeal, or amend any rule or regulation necessary to effectuate the provisions of this article.

§ 790-j. Enforcement power and duties. The department shall have the power to administer and enforce the provisions of this article and shall have such powers and duties conferred upon it under this article, and as otherwise necessary and proper in the performance of such powers and duties.

§ 790-k. Violation. The failure of a delivery network company to comply with any requirement under this article shall be a violation of this article.

§ 790-l. Investigation. 1. The department shall have the power to investigate any suspected or alleged violation of this article. The department may prioritize investigations of workforces deemed by the department as vulnerable to violations of this article. The department may initiate an investigation under this article in situations including, but not limited to, if the commissioner has reason to believe that a violation is likely to be made by a DNC or class of DNCs because either the workforce contains significant numbers of DNC workers who are vulnerable to violations of this article, as determined by the commissioner, or the workforce is unlikely to report information regarding such violations. Additionally, an investigation may be initiated by the department pursuant to a report or complaint submitted by a DNC worker or any other person.

2. Any DNC worker may report an alleged violation of this article to the department. The department shall encourage reporting pursuant to this subdivision by taking the following measures:

(a) The department shall keep confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of a DNC worker or other person reporting a violation of this article, except as necessary to enforce the provisions of this article;

(b) The department may require a DNC to post or otherwise notify other DNC workers that the department is conducting an investigation under

this article, in a form and manner, and in languages as prescribed by the department;

(c) The department may certify the eligibility of persons for U Visas under the provisions of 8 U.S.C. § 1184(p) and 8 U.S.C. § 1101(a)(15)(U).

3. An investigation of an alleged violation under this article conducted by the department shall commence within three years of such alleged violation. To the extent permitted by law, the applicable statute of limitations for civil actions shall be tolled during any investigation of a violation under this article and any administrative enforcement proceeding under this article based upon the same facts. For the purposes of this subdivision, an investigation by the department shall be deemed to begin upon the date the department receives a report of an alleged violation of this article, or upon the date when the department provides notice to a DNC that an investigation of an alleged violation of this article has begun, whichever is sooner.

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law.