

STATE OF NEW YORK

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R. R. 260

IN ASSEMBLY

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Introduced by M. of A. BRONSON, TAYLOR, RAMOS, BENEDETTO, ZACCARO, DINOWITZ, FALL, DICKENS, SEAWRIGHT, SEPTIMO, BURGOS, STERN, L. ROSENTHAL, BURDICK, DURSO, HEVESI, O'DONNELL, REILLY, SIMON, REYES, GLICK, LEE, EPSTEIN, SIMONE, LUNSFORD, THIELE, TAPIA, SHRESTHA, LEVENBERG, GONZALEZ-ROJAS, ALVAREZ, BORES, CARROLL, PIROZZOLO, GIBBS, ARDILA, SHIMSKY, TANNOUSIS, SLATER, DARLING, PAULIN, ZINERMAN, JEAN-PIERRE, DeSTEFANO, McMAHON, SILLITTI, PHEFFER AMATO, CONRAD, COLTON, RIVERA, DE LOS SANTOS, BENDETT, JACOBSON, MEEKS, J. A. GIGLIO, EACHUS -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Rules -- ordered to a third reading -- amended on the special order of third reading, ordered reprinted as amended, retaining its place on the special order of third reading

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:

1 Section 1. The labor law is amended by adding a new article 21-B to
2 read as follows:

ARTICLE 21-B

PROTECTION OF CALL CENTER WORKERS FROM DISPLACEMENT

Section 790. Definitions.

6 791. Terminated call center contract.

7 792. Entering into a call center contract.

8 793. Enforcement.

9 794. No conflict with collective bargaining agreements.

§ 790. Definitions. As used in this article:

10 1. The term "call center" means a facility or other operation in which
11 employees receive phone calls or other communications, including elec-
12 tronic communications for the purpose of providing customer assistance
13 or for related services supportive of business processes.
14

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

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

5 3. The term "governmental body" means the state of New York or any
6 political subdivision thereof, and any public authority or public bene-
7 fit corporation in the state of New York.

8 4. The term "call center employee" means any person employed to
9 perform call center services who has been regularly assigned to such
10 work for a call center contractor on a full or part-time basis for at
11 least ninety days, except for (a) persons whose work for a call center
12 is managerial or supervisory; and (b) persons regularly scheduled to
13 work fewer than four hours per week for the call center.

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

17 6. The term "call center contractor" means an entity (a) that is a
18 party to a call center contract, and (b) provides call center services
19 for the benefit of a governmental body, and (c) employs call center
20 employees or engages a subcontractor or other entity to perform such
21 call center services and that entity employs call center employees.

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

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

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

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

51 2. Upon termination of a call service contract in circumstances in
52 which services provided under that contract will be performed by a
53 successor call center contractor, the successor call center contractor
54 shall retain those call center employees who performed such services for
55 the former call center contractor immediately prior to termination of
56 that contract. It shall be considered a material term of the call

1 center contract that such employees shall be retained for a ninety-day
2 transition employment period.

3 3. If the successor call center contractor is obligated to retain call
4 center employees pursuant to subdivision two of this section, but deter-
5 mines that fewer call center employees are required to perform the
6 services that are the subject of the contract than had been required to
7 perform such services by the former call center contractor, the succes-
8 or call center contractor shall fill the positions that it determines
9 are needed with the call center employees with the greatest seniority
10 within job classification; provided, that during the ninety-day transi-
11 tion period, the successor call center contractor shall maintain a pref-
12 erential hiring list of those call center employees not retained, and
13 those on the preferential hiring list shall be given a right of first
14 refusal to any jobs within their classifications that become available
15 during that period. Upon determining which employees shall be retained
16 for the ninety-day transition period, the successor call center contrac-
17 tor shall provide a list of such employees to the contracting govern-
18 mental body.

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

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

29 6. If the successor call center contractor engages a subcontractor or
30 other entity to perform call center services provided for in a successor
31 call center contract, that successor call center contractor shall
32 require the subcontractor or other entity to adhere to all of the obli-
33 gations of this article.

34 § 792. Entering into a call center contract. 1. Whenever a govern-
35 mental body shall undertake to procure call center services using a call
36 center contractor, the governmental body shall ensure that the call
37 center contract with such entity includes the obligations pursuant to
38 this article, including, where applicable, the call center contractor's
39 obligation to retain call center employees of the former call center
40 contractor. The obligation to retain the terminating call center
41 contractor's employees shall be considered a material term of the call
42 center contract and included in the call center contract irrespective of
43 whether the terminating call center contractor's contract included the
44 obligations pursuant to this article. Such obligations shall be set
45 forth in requests for proposals or other solicitations and, in any
46 event, shall be included in each call center contract. Whether or not
47 the provisions are included in such contract, the obligations under this
48 article shall apply to the successor call center contractor whenever
49 such contractor begins performance on a successor call center contract
50 on or after the effective date of this article.

51 2. A governmental body intending to enter into a call center service
52 contract, in circumstances in which such services had theretofore been
53 performed by call center employees pursuant to a call center contract,
54 shall require any entity seeking to enter into such contract to demon-
55 strate that it will establish the worksite for its performance in a
56 location which is reasonably accessible to the employees who have been

1 performing such services prior to the solicitation of bids for a succes-
2 sor call center contract. For the purposes of this section, a worksite
3 shall be considered reasonably accessible if it is 10 miles or less from
4 the location of the affected employees' worksite where such employees
5 performed work-related duties in the course of their employment for the
6 former call center contractor, provided that any worksite shall not
7 include an employee's domicile, permanent or temporary, where an employ-
8 ee performs any work-related duty in the course of their employment. The
9 requirements of this subdivision shall not apply to successor call
10 center contractors that intend for the work-related duties of the
11 affected call center employees previously employed by the former call
12 center contractor to be performed remotely.

13 § 793. Enforcement. 1. If a given governmental body finds that the
14 successor call center contractor has committed a material breach of
15 contract by not retaining the affected call center employees employed by
16 the former call center contractor for the ninety-day transition period
17 pursuant to this article within thirty days of the termination of the
18 former contract, such governmental body shall notify the successor call
19 center contractor of such breach of contract, and the successor call
20 center contractor shall have a period of thirty days to cure such
21 breach. Such thirty-day cure period shall commence upon the successor
22 call center contractor's receipt of such notification. If such breach
23 is not rectified within such period, the given governmental body shall
24 notify the state comptroller and terminate the contract with the succes-
25 sor call center contractor, unless such governmental body determines
26 that it is in the best interest of the state to maintain such contract.
27 Additionally, if the breach is not rectified within the thirty-day cure
28 period, the governmental body shall deduct amounts sufficient to remit
29 to the affected call center employees from payment owed to the successor
30 call center contractor and submit a voucher to the state comptroller for
31 such amount to remit to the affected call center employees. The state
32 comptroller may approve such funds as payable to call center employees
33 affected by the successor call center contractor's failure to retain
34 such employees.

35 2. The governmental body shall pay directly to any affected employee
36 the certified amount or amounts shown to be due to such affected employ-
37 ee in any estimate or voucher, thereby discharging the obligation of
38 the contractor or subcontractor to the person receiving such payment to
39 the extent of the amount thereof.

40 § 794. No conflict with collective bargaining agreements. The
41 provisions of this article shall not apply to any:

42 1. Successor call center contractor that, on or before the effective
43 date of a termination of a call center contract, agrees to assume, or to
44 be bound by, the collective bargaining agreement of the former call
45 center contractor, provided that the collective bargaining agreement
46 provides terms and conditions for the discharge or laying off of employ-
47 ees that are at least as protective of employee rights as those pursuant
48 to this article; and

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

55 3. Former call center contractor that obtains a written commitment
56 from a successor call center contractor that the successor call center

1 contractor's call center employees will be covered by a collective
2 bargaining agreement that provides terms and conditions for the
3 discharge or laying off of employees that are at least as protective of
4 employee rights as those pursuant to this article.

5 § 2. Severability. If any provision of this law or the application
6 thereof to any person or circumstance is held invalid, such invalidity
7 shall not affect other provisions of the law which can be given effect
8 without the invalid provision or application, and to this end the
9 provisions of this article shall be severable.

10 § 3. This act shall take effect immediately.