

# STATE OF NEW YORK

388

2023-2024 Regular Sessions

## IN SENATE

(Prefiled)

January 4, 2023

Introduced by Sens. GIANARIS, JACKSON, SEPULVEDA -- 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

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 171 to  
2 read as follows:

3 § 171. Flexible working arrangement. 1. Definitions. a. For the  
4 purposes of this section, "flexible working arrangement" shall mean  
5 intermediate or long-term changes in the employee's regular working  
6 arrangements, including but not limited to, changes in the number of  
7 days or hours worked, changes in the time the employee arrives at or  
8 departs from work, work from home, or job-sharing. "Flexible working  
9 arrangement" shall not include vacation, routine scheduling of shifts,  
10 or another form of employee leave.

11 b. For the purposes of this section, "inconsistent with business oper-  
12 ations" shall mean a determination by the employer based on the follow-  
13 ing considerations: (i) the burden on an employer of undue additional  
14 costs; (ii) a legitimate or practical detrimental effect on aggregate  
15 employee morale unrelated to discrimination or other unlawful employment  
16 practices; (iii) a legitimate or practical detrimental effect on the  
17 ability of an employer to meet consumer demand; (iv) a significant  
18 inability to reorganize work among existing staff; (v) a legitimate or  
19 practical inability to recruit additional staff; (vi) a significant  
20 detrimental impact on business quality or business performance; (vii) an  
21 insufficiency of work during the periods the employee proposes to work;  
22 (viii) planned structural changes to the business; and (ix) any other  
23 reasons as specified by the commissioner.

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

LBD02526-01-3

1     2. a. An employee may request a flexible working arrangement that  
2     meets the needs of both the employer and employee. The employer shall  
3     consider and respond to such request pursuant to the provisions of this  
4     section.

5     b. The employer shall respond to the request for a flexible working  
6     arrangement from the employee, and shall consider the employee's request  
7     for a flexible working arrangement and whether the request or a similar  
8     arrangement could be granted in a manner that is not inconsistent with  
9     its business operations or its legal or contractual obligations. An  
10    employer may establish reasonable standards to determine the time,  
11    place, and manner in which the employer shall discuss the request pursu-  
12    ant to this subdivision.

13    c. The employer shall notify the employee of the decision regarding  
14    the request in a reasonably timely manner, but in no cases shall such  
15    decision be provided later than forty-five days from receipt of such a  
16    request. If the request was submitted in writing, the employer shall  
17    state any complete or partial denial of the request in writing, citing  
18    the reason as to denying the request.

19    3. This section shall not diminish any employment rights or agreements  
20    pursuant to a collective bargaining agreement. An employer may institute  
21    a flexible working arrangement policy that is more generous than is  
22    provided by this section.

23    4. An employer shall not retaliate against an employee exercising his  
24    or her rights under this section.

25    5. Nothing in this section shall affect any legal rights an employer  
26    or employee may have under applicable law to create, terminate, or modi-  
27    fy a flexible working arrangement.

28    6. Nothing in this section shall require an employer to accept the  
29    flexible work arrangement of the employee.

30    7. a. The commissioner may bring an action against an employer for  
31    failure to adhere to the provisions of this section, including injunc-  
32    tive relief to enjoin future conduct.

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

37    8. The commissioner shall promulgate rules and regulations for the  
38    implementation of this section.

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