STATE OF NEW YORK

8931

2025-2026 Regular Sessions

IN ASSEMBLY

July 16, 2025

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

AN ACT to amend the labor law, in relation to requiring just cause for employment termination and restricting the use of electronic monitoring for disciplinary purposes

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 37 to read as follows:

ARTICLE 37
WRONGFUL DISCHARGE

Section 1060. Definitions.
1061. Prohibition on wrongful discharge.
1062. Electronic monitoring.
1063. Data access and accuracy.
1064. Arbitration.
1065. Exceptions.

§ 1060. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Constructive discharge" means the voluntary termination of employment by an employee due to a situation created by an act or omission of the employer which a reasonable person would find so intolerable that voluntary termination is the only reasonable alternative. Constructive discharge does not mean voluntary termination because of an employer's refusal to promote the employee or improve wages, responsibilities or other terms and conditions of employment.

2. "Discharge" means any cessation of employment including termination, constructive discharge, resignation, elimination of the position, failure to recall or rehire, layoff, involuntary reduction in hours, or indefinite suspension.

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

LBD11052-01-5

3. a. "Just cause" means any reasonable, job-related grounds for an employee's dismissal based on:

(i) the employee's failure to satisfactorily perform job duties;

(ii) the employee's willful disruption of the employer's operation through act or omission;

(iii) the employee's material or repeated violation of an express provision of the employer's written policies; or

(iv) other legitimate business reasons determined by the employer while exercising reasonable business judgment.

b. The legal use of a consumable product by an employee off the employer's premises during nonworking hours shall not be a legitimate business reason; provided, however, that this paragraph shall not apply to:

(i) the use of a consumable product that affects in any manner an employee's ability to perform job-related employment responsibilities or the safety of other employees;

(ii) an employee who, on a personal basis, has a professional service contract with an employer and the unique nature of the services provided authorizes the employer, as part of the service contract, to limit the use of certain products;

(iii) an employer that is a nonprofit organization that, as one of its primary purposes or objectives, discourages the use of one or more lawful products by the general public; or

(iv) an employer that takes action based on the belief that the employer's actions are permissible under an established substance abuse or alcohol program or policy, professional contract or collective bargaining agreement.

4. "Probation period" means a defined period of time, not to exceed thirty days from the first date of work of an employee, within which employers and employees are not subject to the prohibition on wrongful discharge set forth in section one thousand sixty-one of this article.

5. "Progressive discipline" means a disciplinary system that provides for a graduated range of reasonable responses to an employee's failure to satisfactorily perform such employee's job duties, with the disciplinary measures ranging from mild to severe, depending on the frequency and degree of the failure.

6. "Reduction in hours" means a reduction in an employee's hours of work totaling at least fifteen percent of the employee's regular schedule or fifteen percent of any weekly work schedule.

7. "Seniority" means a ranking of employees based on length of service, computed from the first date of work, including any probationary period, unless such service has been interrupted by more than six months, in which case length of service shall be computed from the date that service resumed. An absence shall not be deemed an interruption of service if such absence was the result of military service, illness, educational leave, leave protected or afforded by law, or any discharge based on a bona fide economic reason or that is in violation of any local, state or federal law, including this article.

8. "Short-term position" means employment pursuant to a written contract that specifies that the position is to end after a specified period of time, not to exceed six months, where the employer can show that the work or need in question is expected to end.

9. "Short-term educational position" means employment with a specific educational purpose pursuant to written contract that specifies that the position is to end after a specified period of time, not to exceed three

years, where the employer can show that the position in question is expected to end.

10. "Leave of absence" means an employee's absence from work for a period of more than five consecutive working days for any reason other than holidays and vacations.

11. "Lost wages" means the gross amount of wages that would have been reported to the internal revenue service as gross income on form W-2 and includes overtime payments, bonuses, and any additional compensation deferred at the option of the employee.

12. "Bona fide economic reason" means the full or partial closing of operations or a technological or organizational change to the business in response to a reduction in volume of production or sales of fifteen percent or more over a period of two quarters either at the establishment where the discharge is to occur or across all establishments owned by the employer within the state, but shall not include elimination of staff redundancy created by a merger or acquisition. Provided, however, that in the construction industry, where work on a project is interrupted, such interruption shall constitute a bona fide economic reason for suspending the employment of employees on the project.

13. "Bona fide labor organization" means a labor union a. in which officers have been elected by secret ballot or otherwise in a manner consistent with federal law; and b. that is free of domination or interference by any employer and has received no improper assistance or support from any employer.

14. "Biometric data" means a physiological, biological or behavioral characteristic, including but not limited to an iris scan, fingerprint, a hand scan, voiceprint and thermal or facial characteristics that can be used alone or in combination with each other, or with other information, to establish an individual's identity.

15. "Biometric technology" means: a. a process or system that captures biometric data of an individual or individuals; and b. a process or system that can assist in verifying or identifying an individual or individuals based on biometric data.

16. "Employee work speed data" means information an employer collects, stores, analyzes or interprets relating to an individual employee or group of employees' pace of work, including, but not limited to, quantities of tasks performed, quantities of items or materials handled or produced, rates or speeds of tasks performed, measurements or metrics of employee performance in relation to a quota, and time categorized as performing tasks or not performing tasks. Employee work speed data shall not include qualitative performance assessments, personnel records or itemized wage statements, except for any content of those records that includes relevant quantitative employee work speed data.

17. "Geofencing technologies" means the use of global positioning system or radio frequency identification technology to create a virtual geographic boundary, enabling software to trigger a response when a device enters or leaves a particular area.

§ 1061. Prohibition on wrongful discharge. 1. An employer shall not discharge an employee who has completed such employer's probation period except for just cause or a bona fide economic reason.

2. In determining whether an employee has been discharged for just cause, the fact finder shall consider, in addition to any other relevant factors, whether:

a. the employee knew or should have known of the employer's policy, rule, practice or performance standard that is the basis for progressive discipline or discharge;

b. the employer provided relevant and adequate training to the employee;

c. the employer's policy, rule, practice or performance standard, including the utilization of progressive discipline, was reasonable and applied consistently;

d. the employer impermissibly relied on electronic monitoring, pursuant to section one thousand sixty-two of this article;

e. the employer disciplined or discharged the employee based on that employee's individual performance, irrespective of the performance of other employees;

f. the employer undertook a fair and objective investigation into the job performance or misconduct; or

g. the employee violated the policy, rule or practice, failed to meet the performance standard or committed the misconduct that is the basis for progressive discipline or discharge.

3. Except where termination is for an egregious failure by the employee to perform their duties, or for egregious misconduct, a termination shall not be considered based on just cause unless:

a. the employer has utilized progressive discipline; provided, however, that employer may not rely on discipline issued more than one year before the purported just cause termination; and

b. the employer had a written policy on progressive discipline in effect at the workplace or job site which was provided to the employee.

4. a. Except where termination is for an egregious failure by the employee to perform their duties, or for egregious misconduct, an employer shall provide fourteen days' notice of any discharge for just cause or bona fide economic reason.

b. Within five days of notice of termination, the employer shall provide a written explanation to the employee of the precise reasons for such employee's discharge including a copy of any materials, personnel records, data or assessments that the employer used to make the discharge decision. If the employer is relying on data collected through electronic monitoring to make the discharge decision, the employer shall also provide any aggregated data collected on employees performing the same or similar functions at the same establishment for the six months prior to the discharge in question.

c. In determining whether an employer had just cause for discharge, a fact finder may not consider any reasons proffered by the employer but not included in the written explanation provided to the employee, as required by paragraph b of this subdivision.

d. Where an employer fails to timely provide a written explanation to an employee, the discharge shall be deemed to not be based on just cause.

5. The employer shall bear the burden of proving just cause or a bona fide economic reason by a preponderance of the evidence in any proceeding brought pursuant to this article, subject to the rules of evidence as set forth in the civil practice law and rules or the common law, where applicable.

6. In any action or proceeding brought pursuant to article three of this chapter, if an employer is found to have unlawfully discharged an employee in violation of this article, relief shall include an order to reinstate or restore the hours of the employee, unless waived by the employee, and, in any such proceeding brought pursuant to article three of this chapter where an employer is found to have unlawfully discharged an employee in violation of this article, the employer shall be ordered to pay the reasonable attorneys' fees and costs of the employee.

7. A discharge shall not be considered based on a bona fide economic reason unless supported by an employer's business records showing that the closing or technological or reorganizational changes are in response to a reduction in volume of production or sales.

8. Discharges of employees based on a bona fide economic reason shall be done in reverse order of seniority, where practicable, so that employees with the greatest seniority shall be retained the longest and reinstated or restored hours first. An employer shall make reasonable efforts to offer reinstatement or restoration of hours, as applicable, to any employee discharged based on a bona fide economic reason within the previous twelve months, if any, before the employer may offer or distribute shifts to other employees or hire any new employees.

§ 1062. Electronic monitoring. 1. a. Employers shall not rely on data collected through electronic monitoring in discharging or disciplining an employee unless the employer can establish before each use that (i) there is no other practical means of tracking or assessing employee performance; (ii) the employer is using the least invasive form of electronic monitoring available; and (iii) the employer previously provided notice to the employee of that monitoring as required by this section.

b. Employers shall not establish the practical necessity for electronic monitoring without previously filing with the department an impartial evaluation from an independent auditor that said electronic monitoring is effective in undertaking its designated task.

c. Employers who have established practical necessity for using data from electronic monitoring for tracking and assessing employee performance pursuant to this subdivision may not rely solely on such data but shall also use other means of assessment such as manager observation or interviewing clients, customers or other employees to solicit feedback.

2. Notwithstanding subdivision one of this section, employers may use data gathered through electronic monitoring:

a. to record the beginning or end of a work shift, meal break, or rest break;

b. for non-employment-related purposes;

c. to discharge or discipline an employee in cases of egregious misconduct or involving threats to the health or safety of other persons; or

d. where required by state or federal law.

3. Notwithstanding subdivision one of this section, employers may not use data for discipline or discharge if such data is gathered using biometric technologies, video or audio recordings within the private home of an employee, apps or software installed on personal devices or geofencing technologies.

4. a. Notwithstanding subdivision one of this section, when discharging or disciplining employees, employers may rely on electronic employee work speed data to determine whether an employee has met a quota, so long as it measures total output over an increment of time that is no shorter than one day.

b. Employers may not discipline or discharge an employee based on failure to meet a daily quota if the employee did not complete their entire shift.

5. a. Notwithstanding subdivision one of this section, employers using electronic monitoring to measure increments of time within a day during which an employee is or is not meeting performance standards may not record or rely on such data in discharging or disciplining an employee unless it is gathered during a periodic performance review and so long

as the employee subject to the performance review has been given at least seven days' advance notice of the exact timing of such review.

b. Such reviews can occur not more than once a quarter and can occur for a duration of time not longer than three hours.

6. An employer or agent thereof that is planning to electronically monitor an employee for the purposes of discipline or discharge shall provide the employee with notice that electronic monitoring shall occur prior to conducting each specific form of electronic monitoring, pursuant to section fifty-two-c of the civil rights law. Notice shall include, at a minimum, the following elements:

a. whether the data gathered through electronic monitoring shall be used to make or inform disciplinary or discharge decisions, and if so, the nature of that decision, including any associated benchmarks or performance standards;

b. whether the data gathered through electronic monitoring shall be used to assess employees productivity performance or to set productivity standards, and if so, how;

c. the names of any vendors conducting electronic monitoring on the employer's behalf;

d. a description of the dates, times, and frequency that electronic monitoring shall occur;

e. an explanation for why there is no other practical means of tracking or assessing employee performance and how the specific monitoring practice is the least invasive means available;

f. notice of the employee's right to access or correct the data; and

g. notice of the administrative and judicial mechanisms available to challenge the use of electronic monitoring.

7. a. Notice of the specific form of electronic monitoring shall be clear and conspicuous. A notice that states electronic monitoring "may" take place or that the employer "reserves the right" to monitor shall not be considered clear and conspicuous.

b. An employer who engages in periodic electronic monitoring of employees for the purposes of discipline or discharge shall inform the affected employees of the specific events which are being monitored at the time the monitoring takes place.

c. Notice of periodic electronic monitoring may be given after electronic monitoring has occurred only if necessary to preserve the integrity of an investigation of illegal activity or protect the immediate safety of employees, customers or the public.

d. An employer shall provide additional notice to employees when an update or change is made to the electronic monitoring or in how the employer is using such electronic monitoring.

8. Employers shall provide a copy of the disclosures required by this section to the department at the time they are required to be disseminated to employees.

§ 1063. Data access and accuracy. 1. An employer shall ensure that any data collected through electronic monitoring pursuant to section one thousand sixty-two of this article that may be used for the purposes of discipline or discharge is accurate and kept up to date, where relevant.

2. A current employee shall have the right to request a copy of employee work speed data that could be used for the purposes of discipline and termination at least once every seven days.

3. a. Employers using electronic monitoring to collect employee work speed data for the purposes of discipline or discharge shall provide employees the opportunity to supplement such data to record any increments of time during which they are not performing work-related tasks

and to record the reason that they are not performing work-related tasks during that time. Such opportunity shall be made available to employees both at the time of data collection and after.

b. Employers shall give employees the option to record reasons for not performing tasks that include, but are not limited to using the restroom, taking meal breaks, injury, illness, fear of injury, disability accommodations, responding to an emergency, complying with local, state or federal laws or exercising workplace rights under local, state or federal laws.

c. An employer that receives an employee request to correct inaccurate data that was collected through electronic monitoring shall investigate and determine whether such data is inaccurate.

d. If an employer, upon investigation, determines that such data is inaccurate, the employer shall:

(i) promptly correct the inaccurate data and inform the employee of the employer's decision and action.

(ii) review and adjust, as appropriate, any disciplinary or discharge decisions that were partially or solely based on the inaccurate data and inform the employee of the adjustment.

(iii) inform any third parties with which the employer shared the inaccurate data, or from which the employer received the inaccurate data, and direct such third party to correct the data, if applicable, and provide the employee with notice of such action.

e. If an employer, upon investigation, determines that the data is accurate, the employer shall inform the employee of the following:

(i) the decision not to amend the data.

(ii) the steps taken to verify the accuracy of the data and the evidence supporting the decision not to amend the data.

§ 1064. Arbitration. 1. On or after January first, two thousand twenty-six, any person or organization representing persons alleging a violation of this article by an employer may bring an arbitration proceeding. In addition, the department may, to the extent permitted by any applicable law including the civil practice law and rules, provide by rule for persons bringing such a proceeding to serve as a representative party on behalf of all members of a class. Such a proceeding shall be brought within two years of the date of the alleged violation. If the arbitrator finds that the employer violated the provisions of this article, such arbitrator shall:

a. require the employer to pay the reasonable attorneys' fees and costs of the employee;

b. require the employer to reinstate or restore the hours of the employee, unless such employee waives reinstatement;

c. require the employer to pay the state for the costs of the arbitration proceeding; and

d. award all other appropriate equitable relief, which may include back pay and rescission of discipline, in addition to other relief, and such other compensatory damages or injunctive relief as may be appropriate.

2. A person or organization bringing an arbitration proceeding under subdivision one of this section shall serve the arbitration demand, and any amendments thereto, on the employer either in person or via certified mail at the current or most recent workplace or job site where each employee named in the arbitration demand is or was employed, or pursuant to the rules for service specified in article three of the civil practice law and rules. Such arbitration demand shall include a general

description of each alleged violation but need not reference the precise section of law alleged to have been violated.

3. The parties to an arbitration proceeding shall jointly select the arbitrator from a panel of arbitrators. The number of arbitrators on the panel shall be determined by the department. The arbitrators on the panel shall be chosen by a committee of eight participants established by the department and comprised of:

a. four employee-side representatives, including employees or advocates; and

b. four employer-side representatives, including employers or advocates.

4. If an insufficient number of employee-side and employer-side representatives agree to participate in the committee pursuant to subdivision three of this section, the department shall consult with those that have agreed to participate and select individuals to fill the requisite number of openings on the committee.

5. If the committee established pursuant to subdivision three of this section is unable to select a sufficient number of arbitrators for the panel, the department shall select the remaining arbitrators.

6. If the parties are unable to agree on an arbitrator, the department shall select an arbitrator for the panel.

7. The department shall provide interpretation services to any party requiring such services for the arbitration hearing.

8. The arbitration hearing shall be held at a location designated by the department or a location agreed upon by the parties and the arbitrator. Except as otherwise provided in this chapter, such arbitration shall be subject to the labor arbitration rules established by the American Arbitration Association and the rules promulgated by the department to implement this article. In case of a conflict between the rules of the American Arbitration Association and the rules of the department, the rules of the department shall govern. Any rules promulgated by the department implementing this section shall be consistent with the requirement that in any arbitration conducted pursuant to this section, the arbitrator shall have appropriate qualifications and maintain personal objectivity, and each party shall have the right to present its case, which shall include the right to be in attendance during any presentation made by the other party and the opportunity to rebut or refute such presentation.

9. If an employee brings an arbitration proceeding, arbitration shall be the exclusive remedy for the wrongful discharge dispute and there shall be no right to bring or continue a private cause of action or administrative complaint under this article, unless such arbitration proceeding has been withdrawn or dismissed without prejudice.

10. Each party shall have the right to apply to a court of competent jurisdiction for the confirmation, modification or vacatur of an award pursuant to article seventy-five of the civil practice law and rules, as such article applies, to review of legally mandated arbitration proceedings in accordance with standards of due process.

§ 1065. Exceptions. This article shall not: 1. apply to any employee who is:

a. currently employed within a probation period;

b. employed in a short-term position and discharged at the end of the contract of employment, provided that the employer does not hire another employee to perform substantially similar work for one hundred eighty days after the end of the short-term contract;

c. in a short-term educational position at the end of the contract of employment; or

d. covered by a valid collective bargaining agreement; or

2. limit or otherwise affect the applicability of any right or benefit conferred upon or afforded to an employee by the provisions of any other law, regulation, rule, requirement, policy or standard including but not limited to any federal, state or local law providing for protections against retaliation or discrimination.

§ 2. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 3. This act shall take effect on the ninetieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.