§ 23. Flexible benefits program. 1. For purposes of this section, the following terms shall have the following meanings:

a. "Code" shall mean the United States internal revenue code of nineteen hundred eighty-six, as amended, and regulations promulgated thereunder.

b. "Commissioner of labor relations" shall mean the officer of a city having a population of one million or more responsible for the administration of health benefits on behalf of such city and any of the entities set forth in subparagraph two of paragraph c of this subdivision.

c. "Employer" shall mean (1) a city having a population of one million or more, or (2) any one of the following entities: (i) the city university of New York, (ii) the New York city health and hospitals corporation, (iii) the New York city transit authority, (iv) the New York city housing authority, (v) the New York city off-track betting corporation, (vi) the New York city rehabilitation mortgage insurance corporation, (vii) the New York city board of education, or (viii) the New York city school construction authority.

d. "Employee" shall mean any officer or employee of a city having a population of one million or more, or any officer or employee of any of the entities set forth in subparagraph two of paragraph c of this subdivision who are eligible to receive benefits from the New York city employee benefits program.

For purposes of this section, an independent contractor shall not be considered an employee.

e. "Flexible benefits program" shall mean the program established pursuant to this section, qualifying as a cafeteria plan as defined in section one hundred twenty-five of the code or any successor section thereto providing similar benefits, and provided as a part of the employee benefits program administered by the commissioner of labor relations.

f. "Program administrator" shall mean that agent, as determined by the commissioner of labor relations, responsible for the maintenance and management of the flexible benefits program as authorized in subdivision two of this section.

2. Any city having a population of one million or more, acting by the commissioner of labor relations, subject to the approval of the director of the budget of such city, is authorized to establish and implement a flexible benefits program for its employees and the employees of any employer as defined in subparagraph two of paragraph c of subdivision one of this section, consistent with applicable provisions of the code. The commissioner of labor relations is authorized to enter into agreements with persons or entities, on behalf of such city or employer, to act as program administrators of the flexible benefits program. The commissioner of labor relations shall promulgate rules for the appropriate administration of such flexible benefits program.

3. At the request of an employee, the chief fiscal officer of the employer, or the officer responsible for the administration of such employer's payroll, shall, by payroll deduction, adjust the payment of the compensation of such employee as provided in a written statement by the employee in connection with the establishment and maintenance of the flexible benefits program as authorized by subdivision two of this section, and shall transfer the amount so adjusted to the authorized program administrator.

4. Moneys held for employees in any accounts established pursuant to the flexible benefits program, as authorized in subdivision two of this section, shall be held by the program administrator as agent for the participating employee, shall be accounted for separately and shall remain the property of the employer to the extent required by the code. Notwithstanding any law to the contrary, moneys may be paid out of such accounts without any appropriation by law. Any unexpended balances in such accounts at the end of a plan year as that term is defined by the United States internal revenue service shall be returned to the control of the employer to the extent required by the code.

5. To the extent permitted by the code, any salary deduction or deferral to an employee under the flexible benefits program established pursuant to this section shall be considered part of such employee's annual compensation for the purpose of computing pension contributions and retirement benefits by any retirement system or plan to which the employer contributes on behalf of said employee. However, this subdivision shall in no way be construed to supersede the provisions of sections four hundred thirty-one, five hundred twelve and six hundred eight of the retirement and social security law or any other similar provision of law which limits the salary base for computing retirement benefits payable by a public retirement system.