

Note: New York City businesses must comply with all relevant federal, state, and City laws and rules. All laws and rules of the City of New York, including the Consumer Protection Law and Rules, are available through the Public Access Portal, which businesses can access by visiting www.nyc.gov/dca. The Law and Rules are current as of May 2018.

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**NEW YORK CITY ADMINISTRATIVE CODE
TITLE 22: ECONOMIC AFFAIRS
CHAPTER 5: PRIVATE EMPLOYMENT**

§ 22-507. Displaced Grocery Workers.

- a. For purposes of this section, the following terms shall have the following meanings:

Change in control. The term “change in control” means any sale, assignment, transfer, contribution or other disposition of all or substantially all of the assets of, or a controlling interest in, including by consolidation, merger or reorganization, any grocery establishment.

City. The term “city” means the city of New York.

Department. The term “department” means the department of consumer affairs or any other agency or office designated by the mayor.

Eligible grocery employee. The term “eligible grocery employee” means any person employed by a grocery establishment subject to a change in control, and who has been employed by such establishment on a full-time or a part-time basis for a period of at least six months prior to the effective date of the change in control; provided that such term shall not include persons who are managerial, supervisory or confidential employees or persons who on average regularly worked fewer than eight hours per week during such period.

Grocery establishment. The term “grocery establishment” means any retail store in the city of New York in which the sale of food for off-site consumption comprises fifty percent or more of store sales and that exceeds 10,000 square feet in size, exclusive of any storage space, loading dock, food preparation space or eating area designated for the consumption of prepared food.

Incumbent grocery employer. The term “incumbent grocery employer” means any person that owns or controls a grocery establishment prior to any change in control.

Person. The term “person” means any individual, corporation, sole proprietorship, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality or any other legal or commercial entity, whether domestic or foreign.

Successor grocery employer. The term “successor grocery employer” means any person that owns or controls a grocery establishment after any change in control.

Transitional employment period. The term “transitional employment period” means a 90 day period beginning upon the latter of the effective date of a change in control of a grocery establishment or the end of any period during which such grocery establishment was not open to

the public during its normal business hours.

b. Worker retention; transitional employment period.

1. No less than fifteen calendar days before the effective date of any change in control of a grocery establishment, the incumbent grocery employer shall:
 - (A) provide to the successor grocery employer a full and accurate list containing the name, address, phone number, if known by such incumbent grocery employee, email address, if known by such incumbent grocery employer, date of hire and job category of each eligible grocery employee;
 - (B) post a notice in the same location and manner that other statutorily required notices to employees are posted at such grocery establishment, which shall include:
 - (i) the effective date of such change in control;
 - (ii) the name and contact information for the successor grocery employer;
 - (iii) an explanation of the rights provided pursuant to this section, in a form prescribed by the department; and
 - (iv) the names and job categories of each eligible grocery employee.
 - (C) provide the list and notice required by subparagraphs (A) and (B) of this paragraph to the eligible grocery employees' collective bargaining representatives, if any.
2. A successor grocery employer shall retain each eligible grocery employee for the transitional employment period and, except as provided in paragraph 3 of this subdivision, a successor grocery employer shall not discharge an eligible grocery employee retained pursuant to this section during the transitional employment period without cause.
3. If at any time during the transitional employment period a successor grocery employer determines that it requires fewer eligible grocery employees than were employed by the incumbent grocery employer, such successor grocery employer shall retain such eligible grocery employees by seniority within each job category. During the transitional employment period, the successor grocery employer shall maintain a preferential hiring list of any eligible grocery employees not retained by such successor grocery employer who shall, by seniority within their job category, be given a right of first refusal to any jobs that become available during such period within such job category.
4. A successor grocery employer shall retain written verification of any offer of employment made by such successor grocery employer to any eligible grocery employee for a period of no less than three years from the date such offer was made. Such verification shall include the name, address, date of offer, and job category of each eligible grocery employee.
5. At the end of the transition employment period, a successor grocery employer shall complete a written performance evaluation for each eligible grocery employee retained pursuant to this section and may offer such eligible grocery employee continued employment. A successor grocery employer shall retain a record of the written performance evaluation for a period of no less than three years.

c. Penalties.

1. Any incumbent grocery employer who violates paragraph 1 of subdivision b of this section shall be liable for a civil penalty of not more than \$1,000.
2. Any successor grocery employer who violates paragraph 2 of subdivision b of this section shall be liable for a civil penalty of not more than \$750 for each employee not retained or terminated without cause during the transitional employment period.
3. Any successor grocery employer who violates paragraph 3 of subdivision b of this section for failing to maintain a preferential hiring list of any eligible grocery employees not retained by such successor grocery employer shall be liable for a civil penalty of not more than \$750.
4. Any successor grocery employer who violates paragraph 4 of subdivision b of this section for failing to retain written verification of any offer of employment made by such successor grocery employer to any eligible grocery employee shall be liable for a civil penalty of not more than \$500.

5. Any successor grocery employer who violates paragraph 5 of subdivision b of this section for failing to complete or retain written performance evaluations for each eligible grocery employee retained during the transitional employment period shall be liable for a civil penalty of not more than \$500.

d. Enforcement.

1. Any eligible grocery employee alleging a violation of this section may file a complaint with the department within 180 days of the date such eligible grocery employee knew or should have known of the alleged violation.
 - (A) The department shall investigate any complaint it receives regarding an alleged violation of this section. The department shall maintain confidential the identity of any complainant unless disclosure of such complainant's identity is necessary for resolution of the investigation or otherwise required by law. The department shall, to the extent practicable, notify such complainant that the department will be disclosing his or her identity prior to such disclosure.
 - (B) The department may, at any time after the filing of a complaint, resolve the complaint by any method of dispute resolution, unless such complaint is withdrawn by the complainant.
 - (C) The department shall keep complainants reasonably notified regarding the status of their complaint and any resultant investigation.
 - (D) A proceeding to recover any civil penalty authorized by this section shall be commenced by the service of a notice of violation which shall be returnable to the office of administrative tribunals and hearings. Such office shall have the power to impose the penalties described by paragraphs 1 through 5 of subdivision c of this section and by paragraph 3 of this subdivision.
 - (E) The department may settle a notice of violation at any time prior to the conclusion of an adjudication, provided that any complainant who opts out of such settlement may withdraw his or her complaint and file a private right of action pursuant to paragraph 2 of this subdivision.
2. Any eligible grocery employee alleging a violation of this section may bring a civil action against an incumbent grocery employer for a violation of paragraph 1 of subdivision b of this section or against a successor grocery employer for a violation of paragraphs 2 through 5 of subdivision b of this section only if:
 - (A) such eligible grocery employee has filed a complaint with the department pursuant to paragraph 1 of this subdivision arising out of the same facts and circumstances, the department has not, within 120 days, either resolved such complaint or issued a notice of violation, and such employee has withdrawn such complaint with the department; or
 - (B) such eligible grocery employee has filed a complaint with the department pursuant to paragraph 1 of this subdivision arising out of the same facts and circumstances, has opted out of a settlement reached by the department pursuant to subparagraph (E) of paragraph 1 of this subdivision, and has withdrawn his or her complaint with the department.
3. In addition to the penalties authorized by subdivision c of this section, the remedy in any administrative proceeding or civil action undertaken pursuant to this section may include:
 - (A) three times the pay for each day the eligible grocery employee was discharged or not retained in violation of paragraph 2 of subdivision b of this section, which shall be calculated at a rate of compensation not less than the higher of:
 - (i) the average regular rate of pay received by the eligible grocery employee during the last three years of such eligible grocery employee's employment in the same job category, or
 - (ii) the most recent regular rate received by the eligible grocery employee while employed by either the incumbent grocery employer or the successor grocery employer, regardless whether such employee obtained an alternate source of income that was less than, equal to, or greater than the rate calculated pursuant to this paragraph;
 - (A) the value of the benefits the eligible grocery employee would have received under the successor grocery employer's benefit plan for those days such employee was discharged or was not retained in violation of paragraph 2 of subdivision b of this section;

- (B) an order requiring that the successor grocery employer retain its eligible grocery employees during the transitional employment period, unless an eligible grocery employee is discharged pursuant to paragraph 3 of subdivision b of this section or with cause; and
 - (C) reasonable attorney's fees and costs incurred in maintaining a civil action for a violation of this section, provided the eligible grocery employee is the prevailing party in any such civil action.
- e. The provisions of this section shall not apply to any successor grocery employer that, on or before the effective date of the transfer of control from a predecessor grocery employer to the successor grocery employer, enters into a collective bargaining agreement covering the eligible grocery employees or agrees to assume, or to be bound by, the collective bargaining agreement of the predecessor grocery employer covering the eligible grocery employees, provided that such collective bargaining agreement provides terms and conditions regarding the discharge or laying off of employees.

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RULES OF THE CITY OF NEW YORK
TITLE 6: DEPARTMENT OF CONSUMER AFFAIRS
CHAPTER 7: OFFICE OF LABOR POLICY AND STANDARDS

SUBCHAPTER A: OFFICE OF LABOR POLICY AND STANDARDS

§ 7-101. Definitions.

(a) As used in this subchapter, the following terms have the following meanings:

"Employee" means any person who meets the definition of "employee," as defined by section 20-912 of the Code, "eligible grocery employee," as defined by section 22-507 of the Code, "fast food employee," as defined by section 20-1201 or 20-1301 of the Code, or "retail employee," as defined by section 20-1201 of the Code.

"Employer" means any person who meets the definition of "employer," as defined by section 20-912 of the Code, "successor grocery employer" or "incumbent grocery employer," as defined by section 22-507 of the Code, "fast food employer," as defined by section 20-1201 or 20-1301 of the Code, or "retail employer," as defined by section 20-1201 of the Code.

"Freelancers Law and rules" means Chapter 10 of Title 20 of the Code and subchapter E of this chapter.

"OLPS laws and rules" means chapters 8, 12, and 13 of Title 20 and section 22-507 of the Code and subchapters A, B, D, F, and G of this chapter.

"Transportation Benefits Law and rules" means Chapter 9 of Title 20 of the Code and subchapter C of this chapter.

(b) As used in the OLPS laws and rules, the following terms have the following meanings:

"Code" means the Administrative Code of the City of New York.

"Department" means the New York City Department of Consumer Affairs.

"Director" means the director of the office of labor standards established pursuant to section 20-a of the charter.

"Joint employer" means each of two or more employers who has some control over the work or working conditions of an employee or employees. Joint employers may be separate and distinct individuals or entities with separate owners, managers and facilities. A determination of whether or not a joint employment relationship exists will not often be decided by the application of any single criterion; rather the entire relationship shall be viewed in its totality.

"Office" means the office of labor standards established pursuant to section 20-a of the New York City Charter and referred to as the Office of Labor Policy and Standards.

"Supplements" means all remuneration for employment paid in any medium other than cash, or reimbursement for expenses, or any payments which are not 'wages' within the meaning of the New York State Labor Law, including, but not limited to, health, welfare, non-occupational disability, retirement, vacation benefits, holiday pay, life insurance, and apprenticeship training.

"Temporary help firm" means an employer that recruits and hires its own employees and assigns those employees to perform work or services for another organization to: (i) support or supplement the other organization's workforce; (ii) provide assistance in special work situations including, but not limited to, employee absences, skill shortages, or seasonal workloads; or (iii) perform special assignments or projects.

"Work week" means a fixed and regularly recurring period of 168 hours or seven consecutive 24 hour periods; it may begin on any day of the week and any hour of the day, and need not coincide with a calendar week.

"Written" or "writing" means a hand-written or machine-printed or printable communication in physical or electronic format, including a communication that is maintained or transmitted electronically, such as a text message.

§ 7-102. Construction.

This chapter shall be liberally construed to permit the Office to accomplish the purposes contained in section 20-a of the New York City Charter. The provisions of this subchapter shall not be construed to supersede any other provision of the OLPS laws and rules, the Freelancers Law and rules, or the Transportation Benefits Law and rules.

§ 7-103 Severability.

The rules contained in this chapter shall be separate and severable. If any word, clause, sentence, paragraph, subdivision, section, or portion of these rules or the application thereof to any person, employer, employee, or circumstance is contrary to a local, state or federal law or held to be invalid, it shall not affect the validity of the remainder of the rules or the validity of the application of the rules to other persons or circumstances.

§ 7-104 Complainants and Witnesses.

- (a) All people, regardless of immigration status, may access resources provided by the Office.
- (b) Any person who meets the definition of employee in section 7-101 of this subchapter is entitled to the rights and protections provided by this subchapter to employees and any applicable provision of the OLPS laws and rules, regardless of immigration status.
- (c) The Office shall conduct its work without inquiring into the immigration status of complainants and witnesses.
- (d) The Office shall maintain confidential the identity of a complainant or natural person providing information relevant to enforcement of the OLPS laws and rules and the Transportation Benefits Law and rules, unless disclosure is necessary for resolution of the investigation or matter, or otherwise required by law, and the Office, to the extent practicable, notifies such complainant or natural person that the Office will be disclosing such person's identity before such disclosure.
- (e) For purposes of effectuating subdivision (d) of this section, the Office shall keep confidential any information that may be used to identify, contact, or locate a single person, or to identify an individual in context.

§ 7-105 Joint Employers.

- (a) Joint employers are individually and jointly liable for violations of all applicable OLPS laws and rules and satisfaction of any penalties or restitution imposed on a joint employer for any violation

thereof, regardless of any agreement among joint employers to the contrary.

- (b) A joint employer must count every employee it employs for hire or permits to work, whether joint or not, in determining the number of employees employed for hire or permitted to work for the employer. For example, a joint employer who employs three workers from a temporary help firm and also has three permanent employees under its sole control has six employees for purposes of the OLPS laws and rules.

§ 7-106 Determining Damages Based on Lost Earnings.

- (a) The following provisions apply to the extent necessary in circumstances described in paragraphs (1) and (2) below for the calculation of damages based on lost earnings in an administrative enforcement action:

(1) When an employer pays a flat rate of pay for work performed, regardless of the number of hours actually worked, an employee's hourly rate of pay shall be based on the most recent hourly rate paid to the employee for the applicable pay period, calculated by adding together the employee's total earnings, including tips, commissions, and supplements, for the most recent work week in which no sick time or other leave was taken and dividing that sum by the number of hours spent performing work during such work week or forty hours, whichever amount of hours is less.

(2) If an employee performs more than one job for the same employer or the employee's rate of pay fluctuates for a single job, the hourly rate of pay shall be the rate of pay that the employee would have been paid during the time that employee would have been performing work but for the employee's absence.

- (b) If the methods for calculating the hourly rate described in subdivision (a) produce an hourly rate that is below the full hourly minimum wage, then the employee's lost earnings shall be based on the full hourly minimum wage.

§ 7-107 Required Notices and Postings.

- (a) For any notice created by the Office that is made available on the City's website and that is then required by a provision of the OLPS laws and rules to be provided to an employee or posted in the workplace, an employer must provide and/or post such notice in English and in any language spoken as a primary language by at least five percent of employees at the employer's location, provided that the Director has made the notice available in such language. Employers covered by the Earned Safe and Sick Time Act, chapter 8 of Title 20 of the Code, are required to comply with this subdivision in addition to the requirement pursuant to section 20-919 of the Code that an employer provide the notice of rights in an employee's primary language.
- (b) (1) For any notice that is not created by the Office and made available on the City's website, that is required to be provided to an employee and/or posted in the workplace by a provision of the OLPS laws and rules, an employer must provide and/or post such notice in English and in any language that the employer customarily uses to communicate with the employee.
- (c) (2) For any notice that is not created by the Office and made available on the city's website, that is required to be posted in the workplace by a provision of the OLPS laws and rules, an employer must post such notice in English and in any language that the employer customarily uses to communicate with any of the employees at that location.
- (d) Any notice, policy, or other writing that is required by a provision of the OLPS laws and rules to be personally provided to an employee must be provided by a method that reasonably ensures personal receipt by the employee and that is consistent with any other applicable law or rule that specifically addresses a method of delivery.
- (e) Any notice, policy or, other writing that is required to be posted pursuant to a provision of the OLPS laws and rules must be posted in a printed format in a conspicuous place accessible to employees where notices to employees are customarily posted pursuant to state and federal laws and, except for notices created by the Office, in a form customarily used by the employer to communicate with

employees.

- (f) An employer that places employees to perform work off-site or at dispersed job-sites, such as in private homes, building security posts, or on delivery routes, must comply with any applicable requirement to post a notice, policy or other writing contained in the OLPS laws and rules by providing employees with the required notice personally upon commencement of employment, within fourteen (14) days of the effective date of any changes to the required posting, and upon request by the employee, in addition to the requirements in subdivision (c) of this section.

§ 7-108 Retaliation.

- (a) No person shall take any adverse action against an employee that penalizes an employee for, or is reasonably likely to deter an employee from, exercising or attempting to exercise rights under the OLPS laws and rules or interfere with an employee's exercise of rights under the OLPS laws and rules.
- (b) Taking an adverse action includes, but is not limited to threatening, intimidating, disciplining, discharging, demoting, suspending, or harassing an employee, reducing the hours of pay of an employee, informing another employer than an employee has engaged in activities protected by the OLPS laws and rules, discriminating against the employee, including actions related to perceived immigration status or work authorization, and maintenance or application of an absence control policy that counts protected leave as an absence that may lead to or result in an adverse action.
- (c) An employee need not explicitly refer to a provision of the OLPS laws and rules to be protected from an adverse action.
- (d) The Office may establish a causal connection between the exercise, attempted exercise, or anticipated exercise of rights protected by the OLPS laws and rules and an employer's adverse action against an employee or a group of employees by indirect or direct evidence.
- (e) For purposes of this section, retaliation is established when the Office shows that a protected activity was a motivating factor for an adverse action, whether or not other factors motivated the adverse action.

§ 7-109 Enforcement and Penalties.

- (a) The Office may open an investigation to determine compliance with laws enforced by the Office on its own initiative or based on a complaint, except as otherwise provided by section 20-1309 of Chapter 13 of Title 20 of the Code.
- (b) Whether it was issued in person, via mail, or, on written consent of the employer, email, an employer must respond to a written request for information or records by providing the Office with true, accurate, and contemporaneously-made records or information within the following timeframes, except as provided in subdivision (c) of this section, subdivision (c) of section 20-924 of the Code, section 7-213 of this title or other applicable law:
 - (1) For an initial request for information or records, the employer shall
 - i. Within ten (10) days of the date that the request for information was received by the employer provide the following information, if applicable:
 - A. the employer's correct legal name and business form;
 - B. the employer's trade name or DBA;
 - C. the names and addresses of other businesses associated with the employer;
 - D. the employer's Federal Employer Identification Number;
 - E. the employer's addresses where business is conducted;
 - F. the employer's headquarters and principal place of business addresses;
 - G. the name, phone number, email address, and mailing address of the owners, officers, directors, principals, members, partners and/or stockholders of more than 10 percent of the outstanding stock of the employer business and their titles;
 - H. the name, phone number, email address, and mailing address of the individuals who have operational control over the business;
 - I. the name, phone number, email address, and mailing address of the

§ 7-111 Recordkeeping.

- (a) An employer's failure to maintain, retain, or produce a record that is required to be maintained under the OLPS laws and rules that is relevant to a material fact alleged by the Office in a notice of violation issued pursuant to a provision of the OLPS laws and rules creates a reasonable inference that such fact is true, unless a rebuttable presumption or other adverse inference is provided by applicable law.
- (b) An employer that produces records to the department or Office in response to a request for information affirms that the records produced are true and accurate.

SUBCHAPTER D: DISPLACED GROCERY WORKERS

§ 7-401 Definitions.

(a) As used in this chapter, the following terms have the same meanings as set forth in section 22-507 of the Administrative Code: "change in control," "city," "department," "eligible grocery employee," "grocery establishment," "incumbent grocery employer," "person," "successor grocery employer," and "transitional employment period."

(b) As used in this chapter, the following terms shall have the following meanings:

"Continuous employment" means uninterrupted employment. Separations from employment six months or less in duration for any reason, including, but not limited to, transfer from a grocery establishment that is subject to a change in control to a grocery establishment with the same incumbent grocery employer, paid or unpaid leaves of absence, paid or unpaid time off, and work schedule changes, shall not constitute interruptions in employment.

"Grocery employer" means incumbent grocery employers and successor grocery employers.

"Grocery Worker Retention Act" means section 22-507 of the Administrative Code.

§ 7-402 Eligible Grocery Employees.

(a) For purposes of the definition of "eligible grocery employee" in section 22-507(a) of the Administrative Code, "a period" means "a period of continuous employment."

(b) For purposes of section 22-507(a) of the Administrative Code, "confidential employee" means "confidential employee" as defined in the federal Labor Management Relations Act, 22 U.S.C.A. § 4102(6).

(c) An employee's length of continuous employment at a grocery establishment with the same incumbent grocery employer as the grocery establishment subject to a change in control preceding an employee's transfer to the grocery establishment subject to a change in control shall count towards that employee's continuous employment at the grocery establishment subject to the change in control.

§ 7-403 Determining Seniority.

For purposes of section 22-507(b)(3) of the Administrative Code, an employee attains seniority as a result of that employee's length of continuous employment in the grocery establishment subject to a change in control, regardless of job position and regardless of full-time or part-time status, or, in the case of an employee transferred to a grocery establishment subject to a change in control, that employee's total length of continuous employment in any of the incumbent grocery employer's grocery establishments.

§ 7-404 Recordkeeping.

(a) Grocery employers must retain records demonstrating compliance with the requirements of the Grocery Worker Retention Act for a period of three years unless otherwise required by any other law, rule, or regulation.

(b) Incumbent grocery employers must maintain, in an accessible format, contemporaneous, true, and accurate records that document:

- (1) The list of eligible grocery employees required under section 22-507(b)(1)(A) of the

Administrative Code, the date the list was provided to the successor grocery employer, and written proof that the list was provided to the successor grocery employer; and

(2) The notice of change in control required under section 22-507(b)(1)(B) of the Administrative Code, the date it was posted, and proof of posting.

(c) Successor grocery employers must maintain, in an accessible format, contemporaneous, true, and accurate records that document:

(1) The list of eligible grocery employees received by the successor grocery employer pursuant to section 22-507(b)(1)(A) of the Administrative Code and the date it was received, and the names of those eligible employees retained for the transitional employment period pursuant to section 22-507(b)(2) of the Administrative Code;

(2) The preferential hiring list required under section 22-507(b)(3) of the Administrative Code, the date eligible employees on the preferential hiring list were given the right of first refusal to jobs that become available during the transitional employment period, and proof that the right of first refusal was given; and

(3) The written performance evaluations as required under section 22-507(b)(5) of the Administrative Code.

§ 7-405 Enforcement.

(a) If the grocery employer fails to timely respond to, written request for information or records from the department, a grocery employer must provide the department with access to records and at a mutually agreeable time of day at the employer's place of business.

(b) The department will make two attempts by any combination of letter, email, or telephone to arrange a mutually agreeable time of day for the grocery employer to provide access to its records in accordance with subdivision (b) of this section. If these attempts are not successful, the department may set a time to access records at the grocery employer's place of business during regular business hours, upon two days' notice to the grocery employer.

(c) The grocery employer may cure a notice of violation issued to a grocery employer for failure to provide requested information, records or access to records as required by section 7-405 of this chapter without penalty by producing the requested information or records on or before the first scheduled hearing date.

(d) The department may settle a complaint at any time prior to the conclusion of an adjudication. Prior to settling any complaint filed by an eligible grocery employee pursuant to section 22-507(d)(1), the department shall provide each complainant with notice of the proposed settlement.

(e) A complainant who intends to opt out of a settlement pursuant to section 22-507(d)(1)(E) of the Administrative Code must do so in writing to the department.

(f) A complainant who intends to withdraw his or her complaint with the department pursuant to section 22-507(d)(2) of the Administrative Code must do so in writing to the department prior to bringing a civil action.