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Please note that businesses are responsible for knowing and complying with the most current laws, including any City Council amendments. The Department of Consumer Affairs (DCA) is not responsible for errors or omissions in this packet. The information is not legal advice. You can only obtain legal advice from a lawyer.

NEW YORK CITY ADMINISTRATIVE CODE

TITLE 20: CONSUMER AFFAIRS

CHAPTER 12: FAIR WORK PRACTICES

SUBCHAPTER 1: GENERAL PROVISIONS

§ 20-1201 Definitions.

As used in this chapter, except as otherwise specifically provided, the following terms have the following meanings:

Chain. The term “chain” means a set of establishments that share a common brand or that are characterized by standardized options for decor, marketing, packaging, products and services.

Director. The term “director” means the director of the office of labor standards established pursuant to section 20-a of the charter.

Employee. The term “employee” means any person covered by the definition of “employee” set forth in subdivision 5 of section 651 of the labor law or by the definition of “employee” set forth in subsection (e) of section 203 of title 29 of the United States code and who is employed within the city and who performs work on a full-time or part-time basis, including work performed in a transitional jobs program pursuant to section 336-f of the social services law, but not including work performed as a participant in a work experience program pursuant to section 336-c of the social services law. Notwithstanding any other provision of this section, the term “employee” does not include any person who is employed by (i) the United States government; (ii) the state of New York, including any office, department, independent agency, authority, institution, association, society or other body of the state, including the legislature and the judiciary; or (iii) the city or any local government, municipality or county or any entity governed by section 92 of the general municipal law or section 207 of the county law.

Employer. The term “employer” means any person or entity covered by the definition of “employer” set forth in subdivision 6 of section 651 of the labor law or any person or entity covered by the definition of “employer” set forth in subsection (d) of section 203 of title 29 of the United States code. Notwithstanding any other provision of this section, the term “employer” does not include (i) the United States government; (ii) the state of New York, including any office, department, independent agency, authority, institution, association, society or other body of the state including the legislature and the judiciary; or (iii) the city or any local government, municipality or county or any entity governed by section 92 of the general municipal law or section 207 of the county law.

Fast food employee. The term “fast food employee” means any person employed or permitted to work at or for a fast food establishment by any employer that is located within the city where such person's job duties include at least one of the following: customer service, cooking, food or drink

preparation, delivery, security, stocking supplies or equipment, cleaning or routine maintenance. The term “fast food employee” does not include any employee who is salaried.

Fast food employer. The term “fast food employer” means any employer that employs a fast food employee at a fast food establishment.

Fast food establishment. The term “fast food establishment” means any establishment (i) that has as its primary purpose serving food or drink items; (ii) where patrons order or select items and pay before eating and such items may be consumed on the premises, taken out or delivered to the customer's location; (iii) that offers limited service; (iv) that is part of a chain; and (v) that is one of 30 or more establishments nationally, including (A) an integrated enterprise that owns or operates 30 or more such establishments in the aggregate nationally or (B) an establishment operated pursuant to a franchise where the franchisor and the franchisees of such franchisor own or operate 30 or more such establishments in the aggregate nationally. The term “fast food establishment” includes such establishments located within non-fast food establishments.

Franchise. The term “franchise” has the same definition as set forth in section 681 of the general business law.

Franchisee. The term “franchisee” means a person or entity to whom a franchise is granted.

Franchisor. The term “franchisor” means a person or entity who grants a franchise to another person or entity.

Integrated enterprise. The term “integrated enterprise” means two or more entities sufficiently integrated so as to be considered a single employer as determined by application of the following factors: (i) degree of interrelation between the operations of multiple entities; (ii) degree to which the entities share common management; (iii) centralized control of labor relations; and (iv) degree of common ownership or financial control.

Office. The term “office” means the office of labor standards established pursuant to section 20-a of the charter.

On-call shift. The term “on-call shift” means any time period other than an employee's regular shift when the employer requires the employee to be available to work, regardless of whether the employee actually works and regardless of whether the employer requires the employee to report to a work location.

Regular shift. The term “regular shift” means a span of consecutive hours starting when an employer requires an employee to report to a work location and ending when such employee is free to leave a work location. Breaks totaling two hours or less are not an interruption of consecutive hours, provided that such breaks do not include time when the employee's work location is closed. “Regular shift” does not include the hours worked by an employee who is called into work while on an on-call shift.

Retail employer. The term “retail employer” means any employer that employs a retail employee at a retail business. The term “retail business” means any entity with 20 or more employees that is engaged primarily in the sale of consumer goods at one or more stores within the city. For the purposes of this definition, “consumer goods” means products that are primarily for personal, household, or family purposes, including but not limited to appliances, clothing, electronics, groceries, and household items. In determining the number of employees performing work for a retail business for compensation, all

employees performing work for compensation on a full-time, part-time or temporary basis shall be counted, provided that where the number of employees who work for an employer for compensation fluctuates, business size may be determined for the current calendar year based upon the average number of employees who worked for compensation per week during the preceding calendar year, and provided further that in determining the number of employees performing work for an employer that is a chain business, the total number of employees in that group of establishments shall be counted.

Retail employee. The term “retail employee” means any employee who is employed by a retail employer.

Schedule change premium. The term “schedule change premium” means money that an employer pays to an employee as compensation for changes the employer makes to the employee's work schedule, including: canceling, shortening or moving to another date and time shifts, including on-call shifts; adding additional hours to shifts already scheduled; adding previously unscheduled shifts to the work schedule; and not requiring employees to report to work during on-call shifts. Such payment is not wages earned for work performed by that employee but rather is in addition to wages.

Work schedule. The term “work schedule” means the regular shifts and on-call shifts that an employer assigns to an employee and includes the dates, times and locations where an employer requires an employee to work.

§ 20-1202 Outreach and education.

The director shall conduct outreach and education about the provisions of this chapter. Such outreach and education shall be provided to employers, employees and members of the public who are likely to be affected by this law.

§ 20-1203 Reporting.

The director shall report annually on the city's website, without revealing identifying information about any non-public matter or complaint, on the effectiveness of its enforcement activities under this chapter.

The report shall include the following information:

- a. Administrative actions.
 1. The number and nature of complaints received;
 2. The results of investigations undertaken, including the number of complaints not substantiated and the number of notices of violations issued;
 3. The number and nature of administrative adjudications;
 4. The number of complaints resolved through mediation or conciliation, if any; and
 5. The average time for a complaint to be resolved.
- b. Civil actions. The number, nature, and outcomes of civil actions commenced by the corporation counsel against employers involving violations under this chapter.

§ 20-1204 Retaliation.

- a. No person shall take any adverse action against an employee that penalizes such employee for, or is reasonably likely to deter such employee from, exercising or attempting to exercise any right protected under this chapter. Taking an adverse action includes threatening, intimidating, disciplining, discharging, demoting, suspending or harassing an employee, reducing the hours or pay of an employee, informing another employer that an employee has engaged in activities protected by this chapter, and discriminating against the employee, including actions related to perceived immigration status or work authorization. An employee need not explicitly refer to this chapter or the rights enumerated herein to be protected from retaliation.

§ 20-1205 Notice and posting of rights.

- a. The director shall publish and make or shall publish and make available notices for employers to post in the workplace or at any job site informing employees of their rights protected under each subchapter of this chapter before the effective date of the local law that added each corresponding subchapter. Such notices shall be made available in a downloadable format on the city's website in accordance with the requirements for language access as described in chapter 11 of title 23. The director shall update such notices if any changes are made to the requirements of this chapter or as otherwise deemed appropriate by the director.
- b. In accordance with the rules of the office, every employer shall conspicuously post at any workplace or job site where any employee works the notices described in subdivision a of this section that are applicable to the particular workplace or job site. Such notices shall be in English and any language spoken as a primary language by at least five percent of employees at that location if the director has made the notice available in that language.

§ 20-1206 Recordkeeping.

- a. Employers shall retain records documenting their compliance with the applicable requirements of this chapter for a period of three years and shall allow the office to access such records and other information, in accordance with applicable law and with appropriate notice, in furtherance of an investigation conducted pursuant to this chapter.
- b. An employer's failure to maintain, retain or produce a record or other information required to be maintained by this chapter and requested by the office in furtherance of an investigation conducted pursuant to this chapter that is relevant to a material fact alleged by the office in a notice of violation issued pursuant to this subchapter creates a rebuttable presumption that such fact is true.

§ 20-1207 Administrative enforcement; jurisdiction and complaint procedures.

- a. Jurisdiction. The director shall enforce the provisions of this chapter.
- b. Complaints and investigations.
 1. Any person, including any organization, alleging a violation of this chapter may file a complaint with the office within two years of the date the person knew or should have known of the alleged violation.
 2. Upon receiving such a complaint, the office shall investigate it.
 3. The office may open an investigation on its own initiative.
 4. A person or entity under investigation shall, in accordance with applicable law, provide the office with information or evidence that the office requests pursuant to the investigation. If, as a result of an investigation of a complaint or an investigation conducted upon its own initiative, the office believes that a violation of this chapter has occurred, the office may attempt to resolve it through any action authorized by section 20-a of the charter. Adjudicatory powers pursuant to this subchapter may be exercised by the director or by the office of administrative trials and hearings pursuant to section 20-a of the charter.
 5. The office shall keep the identity of any complainant confidential unless disclosure is necessary to resolve the investigation or is otherwise required by law. The office shall, to the extent practicable, notify such complainant that the office will be disclosing the complainant's identity before such disclosure.

§ 20-1208 Specific administrative remedies for employees or former employees.

- a. For violations of this chapter, the office may grant the following relief to employees or former employees:
 1. All compensatory damages and other relief required to make the employee or former employee whole;

2. An order directing compliance with the notice and posting of rights and recordkeeping requirements set forth in sections 20-1205 and 20-1206; and
3. For each violation of:
 - (a) Section 20-1204,
 - (1) Rescission of any discipline issued, reinstatement of any employee terminated and payment of back pay for any loss of pay or benefits resulting from discipline or other action taken in violation of section 20-1204;
 - (2) \$500 for each violation not involving termination; and
 - (3) \$2,500 for each violation involving termination;
 - (b) Section 20-1221, \$200 and an order directing compliance with section 20-1221;
 - (c) Section 20-1222, payment of schedule change premiums withheld in violation of section 20-1222 and \$300;
 - (d) Section 20-1231, payment as required under section 20-1231, \$500 and an order directing compliance with section 20-1231;
 - (e) Section 20-1241, \$300 and an order directing compliance with section 20-1241;
 - (f) Subdivision a of section 20-1251, the greater of \$500 or such employee's actual damages;
 - (g) Subdivisions a and b of section 20-1252, \$300; and
 - (h) Subdivision a or b of section 20-1262, \$500 and an order directing compliance with such subdivision, provided, however, that an employer who fails to provide an employee with the written response required by subdivision a of section 20-1262 may cure the violation without a penalty being imposed by presenting proof to the satisfaction of the office that it provided the employee with the required written response within seven days of the office notifying the employer of the opportunity to cure.
- b. The relief authorized by this section shall be imposed on a per employee and per instance basis for each violation.

§ 20-1209 Specific civil penalties payable to the city.

- a. For each violation of this chapter, an employer is liable for a penalty of \$500 for the first violation and, for subsequent violations that occur within two years of any previous violation of this chapter, up to \$750 for the second violation and up to \$1,000 for each succeeding violation.
- b. The penalties imposed pursuant to this section shall be imposed on a per employee and per instance basis for each violation.

§ 20-1210 Enforcement by the corporation counsel.

The corporation counsel or such other persons designated by the corporation counsel on behalf of the office may initiate in any court of competent jurisdiction any action or proceeding that may be appropriate or necessary for correction of any violation issued pursuant to sections 20-1207 through 20-1209, including actions to secure permanent injunctions, enjoining any acts or practices that constitute such violation, mandating compliance with the provisions of this chapter or such other relief as may be appropriate.

§ 20-1211 Private cause of action.

- a. Claims. Any person, including any organization, alleging a violation of the following provisions of this chapter may bring a civil action, in accordance with applicable law, in any court of competent jurisdiction:
 1. Section 20-1204;
 2. Section 20-1221;
 3. Subdivisions a and b of section 20-1222;
 4. Section 20-1231;

5. Subdivisions a, b, d, f and g of section 20-1241;
 6. Section 20-1251; and
 7. Subdivisions a and b of section 20-1252.
- b. Remedies. Such court may order compensatory, injunctive and declaratory relief, including the following remedies for violations of this chapter:
1. Payment of schedule change premiums withheld in violation of section 20-1222;
 2. An order directing compliance with the recordkeeping, information, posting and consent requirements set forth in sections 20-1205, 20-1206 and 20-1221;
 3. Rescission of any discipline issued in violation of section 20-1204;
 4. Reinstatement of any employee terminated in violation of section 20-1204;
 5. Payment of back pay for any loss of pay or benefits resulting from discipline or other action taken in violation of section 20-1204;
 6. Other compensatory damages and any other relief required to make the employee whole; and
 7. Reasonable attorney's fees.
- c. Statute of limitations. A civil action under this section shall be commenced within two years of the date the person knew or should have known of the alleged violation.
- d. Relationship to office action.
1. Any person filing a civil action shall simultaneously serve notice of such action and a copy of the complaint upon the office. Failure to so serve a notice does not adversely affect any plaintiff's cause of action.
 2. An employee need not file a complaint with the office pursuant to subdivision b of section 20-1207 before bringing a civil action; however, no person shall file a civil action after filing a complaint with the office unless such complaint has been withdrawn or dismissed without prejudice to further action.
 3. No person shall file a complaint with the office after filing a civil action unless such action has been withdrawn or dismissed without prejudice to further action.
 4. The commencement or pendency of a civil action by an employee does not preclude the office from investigating the employer or commencing, prosecuting or settling a case against the employer based on some or all of the same violations.

§ 20-1212 Civil action by corporation counsel for pattern or practice of violations.

- a. Cause of action.
1. Where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of this chapter, the corporation counsel may commence a civil action on behalf of the city in a court of competent jurisdiction.
 2. The corporation counsel shall commence such action by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief.
 3. Such action may be commenced only by the corporation counsel or such other persons designated by the corporation counsel.
 4. Nothing in this section prohibits (i) the office from exercising its authority under section 20-1207 through 20-1209, or (ii) a person alleging a violation of this chapter from filing a complaint pursuant to section 20-1207 or a civil action pursuant to section 20-1211 based on the same facts pertaining to such a pattern or practice, provided that a civil action pursuant to this section shall not have previously been commenced.
- b. Investigation. The corporation counsel may initiate any investigation to ascertain such facts as may be necessary for the commencement of a civil action pursuant to subdivision a of this section, and in connection therewith shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents, to administer oaths and to examine such persons as are deemed necessary.

- c. Civil penalty. In any civil action commenced pursuant to subdivision a of this section, the trier of fact may impose a civil penalty of not more than \$15,000 for a finding that an employer has engaged in a pattern or practice of violations of this chapter. Any civil penalty so recovered shall be paid into the general fund of the city.

SUBCHAPTER 6: TEMPORARY CHANGES TO WORK SCHEDULES FOR PERSONAL EVENTS AND PROTECTIONS FROM RETALIATION FOR MAKING SCHEDULE CHANGE REQUESTS

§ 20-1261 Definitions.

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

Business day. The term “business day” means any 24-hour period when an employer requires employees to work at any time.

Caregiver. The term “caregiver” means a person who provides direct and ongoing care for a minor child or a care recipient.

Care recipient. The term “care recipient” means a person with a disability who (i) is a family member or a person who resides in the caregiver's household and (ii) relies on the caregiver for medical care or to meet the needs of daily living.

Minor child. The term “minor child” means a child under the age of 18.

Personal event. The term “personal event” means (i) the need for a caregiver to provide care to a minor child or care recipient; (ii) an employee's need to attend a legal proceeding or hearing for subsistence benefits to which the employee, a family member or the employee's care recipient is a party; or (iii) any circumstance that would constitute a basis for permissible use of safe time or sick time as set forth in section 20-914.

- b. For purposes of this subchapter, the following terms have the same meanings as those set forth in section 20-912: calendar year, child, family member and paid safe/sick time.

§ 20-1262 Required Temporary Changes and Other Requests for Changes to a Work Schedule.

- a. An employer shall grant an employee's request for a temporary change to the employee's work schedule relating to a personal event in accordance with the following provisions, with a temporary change meaning a limited alteration in the hours or times that or locations where an employee is expected to work, including, but not limited to, using paid time off, working remotely, swapping or shifting work hours and using short-term unpaid leave:
 1. On request, the employer must grant a request for a temporary change to the employee's work schedule under this section two times in a calendar year for up to one business day per request. The employer may permit the employee to use two business days for one request, in which case the employer need not grant a second request.
 2. An employee who requests such a change:
 - (a) Shall notify such employee's employer or direct supervisor as soon as the employee becomes aware of the need for a temporary change to the work schedule and shall inform the employer or supervisor that the change is due to a personal event;
 - (b) Shall make a proposal for the temporary change to the work schedule, unless the employee seeks leave without pay; and
 - (c) Need not put the initial request in writing, but as soon as is practicable, and no later than the second business day after the employee returns to work following the

conclusion of the temporary change to the work schedule, the employee must submit the request in writing, indicating the date for which the change was requested and that it was due to the employee's personal event. The employer may require that such request be submitted in electronic form if employees of the employer commonly use such electronic form to request and manage leave and schedule changes. If the employee fails to submit the written request, the employer's obligation to respond in writing pursuant to paragraph 3 of this subdivision is waived.

3. An employer who receives such an initial request shall respond immediately, but need not put such initial response in writing. As soon as is practicable, and no later than 14 days after the employee submits the request in writing, the employer shall provide a written response, which may be in electronic form if such form is easily accessible to the employee. An employer's written response shall include:
 - (a) Whether the employer will agree to the temporary change to the work schedule in the manner requested by the employee, or will provide the temporary change to the work schedule as leave without pay, which does not constitute a denial;
 - (b) If the employer denies the request for a temporary change to the work schedule, an explanation for the denial; and
 - (c) How many requests and how many business days pursuant to this subchapter the employee has left in the calendar year after taking into account the employer's decision contained in the written response.
4. An employer may deny a request for a temporary change to the employee's work schedule relating to a personal event only if the employee has already exhausted the two allotted requests in the calendar year pursuant to paragraph 1 of subdivision a of this section or if an exemption set forth in section 20-1263 applies.
- b. An employee may request, and in so doing is protected by the provisions of subchapter 1 of this chapter, and an employer may grant or deny, a change to a work schedule other than the temporary changes an employer is required to grant under subdivision a of this section. An employee request for such other change to a work schedule and an employer response to such a request shall follow the procedure in paragraphs 2 and 3 of subdivision a of this section to the extent applicable and as set forth in rules promulgated by the director.
- c.
 1. An employee need not use leave accrued under chapter 8 of this title before requesting schedule changes under this subchapter.
 2. Unpaid leave granted for a personal event pursuant to this subchapter does not count toward an employer's obligation to grant leave under chapter 8 of this title.
 3. Leave granted under chapter 8 of this title does not count toward an employer's obligation to grant leave under this section.
 4. Nothing in this subchapter affects an employer's obligation to provide a reasonable accommodation in the form of a change to a work schedule required pursuant to other laws or regulations or to otherwise comply with the requirements of other laws or regulations, including, but not limited to, those requirements contained in title 8.

§ 20-1263 Exemptions.

This subchapter does not:

- a. Apply to any employee who:
 1. Is covered by a valid collective bargaining agreement if such agreement waives the provisions of this subchapter and addresses temporary changes to work schedules;
 2. Has been employed by the employer for fewer than 120 days;
 3. Is employed by any employer whose primary business for which that employee works is the development, creation or distribution of theatrical motion pictures, televised motion pictures, television programs or live entertainment presentations, except for an employee whose primary duty is the performance of office or non-manual work directly related to the

management or general business operations of the employer or the employer's customers and except for an employee whose primary duty is performing routine mental, manual, mechanical or physical work in connection with the care or maintenance of an existing building or location used by the employer; or

4. Works fewer than 80 hours in the city in a calendar year.
- b. Preempt, limit or otherwise affect the applicability of any provisions of any other law, regulation, requirement, policy or standard, other than a collective bargaining agreement, that provides comparable or superior benefits for employees to those required herein.