

Int. No. 468-A

By Council Members Quinn, Jackson, Reyna, Rivera, Gioia, Gennaro, Addabbo, Palma, Weprin, Yassky, Baez, Brewer, James, Gerson, Perkins, Katz, de Blasio, Martinez, Monserrate, Comrie, Sanders, Barron, Boyland, Clarke, Fidler, Gentile, Gonzalez, Koppell, McMahon, Nelson, Recchia, Sears, Stewart, Vann, Foster, Liu, Reed, Moskowitz, Lopez, Seabrook and The Public Advocate (Gotbaum)

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to requiring employers in certain industries to make prevailing health care expenditures on behalf of their employees.

Be it enacted by the Council as follows:

Section 1. Declaration of legislative findings and intent. In major industries in New York City, including building service, construction, groceries, hotels and industrial laundries, responsible employers have long provided employer-paid health care for their employees and families of such employees. But in recent years, these industries have faced mounting competitive pressure from employers who do not follow the industry standard of providing health care. The Council finds that employers in these industries who do not provide health care are engaging in unfair competition and causing economic injury to the majority of responsible employers who continue to provide such care. The City has a vital interest in preventing a “race to the bottom” where, in an effort to remain competitive, employers abandon their longstanding commitment to providing employer-paid health care, forcing their employees to seek uncompensated care from the City’s already overburdened taxpayer-funded public health care system. Reducing the economic pressure for employers in these industries to eliminate employer-paid health care is important for minimizing the burden on taxpayers and the public health care system, protecting the health, safety and well-being of hardworking New Yorkers and promoting safe conditions and stable growth

in these important industries. Furthermore, research shows that ensuring access to employer-paid health care can strengthen industries by significantly reducing employee turnover and improving employers' ability to recruit and retain employees. To ensure that the cost of providing health care to employees in the industries addressed in this law is not shifted to the taxpayers and the public health care system, and to promote safe conditions and a more stable and reliable workforce for all employers in these important industries, the City must reduce the competitive pressure to eliminate employer-provided health care. The City can reduce these pressures and level the playing field for responsible employers in these industries by requiring that employers make prevailing health care expenditures on behalf of their employees.

§ 2. Chapter 5 of title 22 of the administrative code of the city of New York is hereby amended by adding a new section 22-506 to read as follows:

§ 22-506 a. Short title. This section shall be known and may be cited as the "Health Care Security Act."

b. Definitions. For purposes of this section, the following terms shall have the following meanings:

(1) "Administering agency" means any city agency or agencies as the mayor shall designate.

(2) "Building service employer" means any entity that performs building service, as defined in section 22-505a(1) of the administrative code of the city of New York, in the city in connection with any (i) commercial or institutional building of 100,000 square feet or more or (ii) residential building of 50 units or more; provided, however, that such

term shall not include any grocery employer or other retail store that is a tenant in such a building and that directly employs any person on its payroll to perform building service.

(3) “City” means the city of New York.

(4) “Construction employer” means any entity that performs construction, demolition, renovation or painting services on any project in the city, where such project commences on or after the effective date of the local law that added this section, and involves any (i) commercial or institutional building of 5,000 square feet or more, (ii) residential building of 15 units or more, or (iii) construction, demolition, renovation or painting project for which the value of all building permits totals \$1,000,000 or more during any consecutive two year period.

(5) “Covered employer” means any building service, construction, grocery, hotel or industrial laundry employer operating within the city.

(6) “Covered industry” means the building service, construction, grocery, hotel or industrial laundry industries in the city.

(7) “Employee” means any person who works in the city on a full-time, part-time, temporary, casual, on-call, pool or seasonal basis for a building service, construction, grocery, hotel, or industrial laundry employer, including, but not limited to persons who perform work for such employers as independent contractors or as contingent or contracted workers, and persons made available to work through the services of a temporary employment agency, a building service contractor, or similar entity; provided, however, that the term employee shall not include persons who are managerial, supervisory, or confidential employees, but shall include building superintendents and resident managers.

(8) “Entity” or “Person” means any natural person, corporation, sole proprietorship, partnership, association, joint venture, limited liability company or other legal entity.

(9) “Family of employee” means the spouse or domestic partner as defined in section 3-240 of the administrative code of an employee and each dependent of such employee.

(10) “Grocery employer” means any entity operating a retail store in the city that (i) primarily sells food for off-site consumption and employs more than 35 employees; or (ii) contains 10,000 square feet or more of floor space for the sale of food for off-site consumption, such as a “big box” retail store or warehouse club; provided that when such entity’s workforce fluctuates, it shall be deemed to employ the highest number of employees, including both full-time and part-time employees, that such entity maintains or maintained for any three month period during the current or preceding calendar year; provided further that such term does not include any retail store for which pharmacy sales comprise 50% or more of store sales.

(11) “Health care expenditure” means any amount paid by a covered employer to its employees or to another party on behalf of its employees for the purpose of providing health care services or reimbursing the cost of such services for its employees and/or the families of its employees, including, but not limited to, contributions by such employer to a health savings account as defined under section 223 of the United States internal revenue code on behalf of any of its employees and/or the families of its employees, or reimbursement by such employer to its employees and/or the families of its employees for incurred health care expenses, where such recipients had no entitlement to have

expenses reimbursed under any plan, fund or program maintained by such employer; provided, however, that such term shall not include any payment made directly or indirectly for workers' compensation, Medicare benefits or any other health benefits costs, taxes or assessment that such employer is required to pay pursuant to any federal, state or local law other than this section.

(12) "Health care services" means primary or secondary medical care or services including, but not limited to, (i) inpatient and outpatient hospital services, (ii) physicians' surgical and medical services, (iii) laboratory, diagnostic and x-ray services, (iv) prescription drug coverage, (v) annual physical examinations, (vi) preventative services, (vii) mental health services and (viii) substance abuse treatment services; provided, however, that such term shall not include any medical procedure or treatment which is solely cosmetic.

(13) "Hotel employer" means any entity operating a hotel or motel in the city.

(14) "Industrial laundry employer" means any entity operating a laundry or dry cleaning facility in the city providing laundering or dry cleaning services to industrial, commercial or government establishments, or supplying laundered or dry-cleaned items such as uniforms, industrial work clothing, clean room apparel, mats, rugs, dust control items, table linens, gowns, bed linens, towels or similar items to such establishments.

(15) "Prevailing health care expenditure rate" means the amount of health care expenditure customarily made on behalf of a full-time employee and/or the family of such employee in the same trade or occupation in each covered industry, prorated on an hourly basis.

(16) “Required health care expenditure” means the total health care expenditure that a covered employer is required to make each year for all its employees and/or the families of its employees pursuant to section 22-506(c).

c. Required health care expenditures. (1) Covered employers shall make required health care expenditures on behalf of their employees and/or the families of their employees each year. Required health care expenditures shall be made during the one-year period beginning each July 1 through June 30 of the following year.

(2) The administering agency shall annually determine the prevailing health care expenditure rate for each trade or occupation in each covered industry using procedures and standards similar to those used to calculate prevailing wages and fringe benefits pursuant to sections 230 and 220 of the New York state labor law; provided that where thirty percent or more of the workers employed by covered employers in a particular trade or occupation in the city are covered by a valid collective bargaining agreement for such trade or occupation, the prevailing health care expenditure rate for that trade or occupation in the covered industry shall be equal to the health care expenditure rate as provided under such collective bargaining agreement. Each prevailing healthcare expenditure rate determined pursuant to this subdivision shall be published by the administering agency by March 1 of each year and shall take effect on July 1 of that year and shall remain in effect through June 30 of the following year.

(3) Each covered employer shall determine its required health care expenditure by multiplying the prevailing health care expenditure rate as determined by the administering agency pursuant to this subdivision for such employer’s covered industry by the total number of hours worked that year by all the employees of such employer;

provided that where a covered employer employs employees in more than one trade or occupation, such employer's required health care expenditure shall be determined for each trade or occupation by multiplying the prevailing health care expenditure rate for each trade or occupation by the total number of hours worked that year by the employees of such covered employer in that trade or occupation.

(4) A covered employer shall: (i) maintain an accurate work log that lists, for each employee, such employee's name, trade or occupation and the dates and hours worked by such employee; (ii) provide an employee or such employee's designated representative(s) with access to such employee's work log and payroll records for inspection and copying; (iii) maintain accurate records of health care expenditures and required health care expenditures, and proof of such expenditures each year; provided, however, that covered employers shall not be required to maintain such records in any particular form; (iv) provide a report to the administering agency on an annual basis containing the information required to be maintained pursuant to subparagraphs (i) and (iii) of this paragraph, and such other information as the administering agency shall require. Such report shall be made available to the public without employee names and addresses. A covered employer that is a signatory to a collective bargaining agreement pursuant to which such employer makes prevailing health care expenditures on behalf of its employees and/or the families of its employees may comply with this section as provided in subdivision g.

d. Unlawful retaliation. It shall be unlawful for any covered employer to deprive or threaten to deprive any person of employment, take or threaten to take any reprisal or retaliatory action against any person, or directly or indirectly intimidate, threaten, coerce,

command or influence or attempt to intimidate, threaten, coerce, command or influence any person because such person has taken an action to enforce, inquire about, or inform others about the requirements of this section. Taking adverse action against a person within sixty (60) days of such person's exercise of rights protected under this section shall raise a rebuttable presumption that such action was in retaliation for the exercise of such rights.

e. Penalties. (1) A covered employer that violates this section by making health care expenditures during a given year that fall short of the required health care expenditures for such employer shall pay a civil penalty equal to twice the difference between the two amounts.

(2) A covered employer that violates subdivisions (c)(4) or (d) of this section shall be subject to a civil penalty in the amount of \$250 for each day that such violation occurred or remains unremedied.

(3) When an administering agency determines that a covered employer has violated this section, such agency, in addition to ordering the payment of civil penalties, may take additional action including, but not limited to, requesting that city agencies or departments revoke or suspend any city-issued registration certificates, permits or licenses held by such covered employer, including building permits for any construction, demolition or renovation project on which such covered employer is working, until such time as the violation is remedied.

(4) Except where otherwise specified in this section, civil penalties assessed pursuant to this section shall be paid to the city and deposited into the general fund.

f. Enforcement. (1) The administering agency shall take appropriate action to

enforce this section, including, but not limited to, periodically auditing covered employers to monitor compliance with this section; establishing a system to receive complaints from any person charging that a violation has occurred pursuant to this section; investigating complaints received; and making findings of violations and ordering the payment of civil penalties and any relief as such agency determines may be appropriate. Any enforcement proceedings commenced under this section must be commenced within three years after the date of the occurrence or termination of the alleged violation.

(2) Any person aggrieved by a violation of this section or a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) operating in the same industry as a covered employer may bring an action in any court of competent jurisdiction against a covered employer that violates this section. Where the plaintiff prevails in such an action, the court shall order payment of all civil penalties due pursuant to this section. Seventy-five percent of such recovered civil penalties shall be paid to the city and deposited into the general fund, and twenty-five percent shall be awarded to the plaintiff. The court may issue an injunction enjoining any acts or practices which constitute a violation of this section, or order such other relief as may be appropriate, and shall award to the prevailing plaintiff court costs and reasonable attorney's fees. A civil action commenced under this section must be commenced within three years after the date of the occurrence or termination of the alleged violation.

g. A covered employer that is a signatory to a collective bargaining agreement under which such employer makes prevailing health care expenditures on behalf of its

employees and/or the families of its employees as determined pursuant to this section may fully comply with the requirements of this section by filing annually with the administering agency proof of such collective bargaining agreement and its terms, in a format specified by the administering agency, and shall otherwise be exempt from all other provisions of this section. A covered employer and its employees may agree to modify or waive any of the requirements of this section pursuant to a valid collective bargaining agreement provided that such modification or waiver is set forth expressly and unambiguously in such agreement in a provision that makes express reference to this section; provided, however, that such waiver or modification shall not be permitted for building service employers.

h. Rules. The administering agency shall promulgate rules in accordance with this section and such other rules as may be necessary for the purpose of implementing, construing and carrying out the provisions this section.

§ 3. If any section, subsection, sentence, clause, phrase, or other portion of this local law, including any requirement imposed pursuant to it, is for any reason declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this local law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect ninety days after its enactment into law.

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