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Some NYC Employers Must Soon Report Unionization Efforts

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On November 23, 2021, the New York City Council passed a bill requiring certain employers to report unionization efforts amongst their employees when they receive funding from New York City (either directly or indirectly) to develop or improve a property. The bill will take effect 120 days after it is signed into law by Mayor Bill de Blasio, which is expected to occur in the next few days.

Who Does This Law Apply To?

The law ([INT 2456-2021](#)) will apply to New York City retail or food establishments with 10 or more employees, if the establishment:

- Receives financial assistance directly from the city; or
- Is a tenant or leaseholder of an individual or entity that receives financial assistance from the city, and the establishment occupies the property that is being financially assisted by the city.

“Financial Assistance” is defined under the law as assistance provided through a contract with the city to improve or develop land (i.e., a project agreement) that is expected to have a total value of at least \$500,000. This financial assistance may take the form of a cash payment, grant, loan, bond financing, tax increment financing, tax abatement, tax credit,

tax exemption, and notably, a write-down in the market value of a building, land or lease.

An employer performing services pursuant to a contract or subcontract is also an employer under the law if they perform work: (i) for a city financial assistance recipient or a tenant or leaseholder of a city financial recipient, (ii) on a property that is being improved or developed with financial assistance from the city exceeding \$500,000, and (iii) for a period of more than 90 days.

Beginning July 1, 2022, the \$500,000 threshold will be adjusted on July 1 of each calendar year based upon the 12-month percentage increases, if any, in the price index published by the Bureau of Labor Statistics of the United States Department of Labor.

What Does the Law Require an Employer to Do?

Under this new law, a covered employer must report its employees’ unionization efforts within 90 days after the start of the improvement or development project (which is the basis for the city’s financial assistance). Specifically, the law requires an employer to submit a declaration to the city stating: (a) that the employer has entered into or is negotiating one or more Labor Peace Agreements (LPA), or (b) that its employees are not currently represented by a labor organization and that no

labor organization has sought to represent the employees.

Covered employers should be aware of the difference between a LPA and a Collective Bargaining Agreement (CBA). An LPA is an agreement entered into between an employer and a union where the employer agrees not to oppose unionization efforts, and the union (which is attempting to organize the workforce) agrees not to strike or otherwise stop work. An LPA is generally put into place at the commencement of a union's unionization efforts.

On the other hand, a CBA is an agreement or contract between an employer and a union where the union already represents certain employees. The CBA generally governs all terms and conditions of employment and sets forth the rights of both the employer and the union.

Thus, it is important to understand that this law applies at the outset of unionization efforts. If an employer enters into or is even negotiating an LPA, then within 90 days from the beginning of the city-funded improvement or development project, it must report (i) the classes (or types) of employees to whom the LPA applies, (ii) the classes (or types) of employees to whom the LPA does not apply, and (iii) the classes (or types) of employees for which the labor peace agreement negotiations have not yet concluded.

It must be noted that this bill does not apply to any project for which the project agreement

was entered into prior to the bill's effective date, which is 120 days after it is signed into law by Mayor de Blasio.

What is the Penalty For Violating This Law?

If the city's comptroller believes that there has been a violation under the law, it will conduct an investigation and report its findings to the mayor. Then, if the mayor believes that a violation has occurred, it will notify the employer and provide it with an opportunity to cure. If the employer fails to cure the violation, then the mayor may (i) impose sanctions against the employer, (ii) seek contractual remedies provided for in the project agreement, or (iii) declare the employer to be in default of the project agreement.

It is not entirely clear yet what sanctions the city may impose. The law does enable the city to implement more detailed rules and regulations at a future time. Thus, employers should be on the lookout for any future rules and regulations as they relate to possible penalties under the law.

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