

New York City Council Seeks Further Protections for Fast Food Industry Workers

By Felice B. Ekelman, Richard I. Greenberg,

February 26, 2019

Meet the Authors



Felice B. Ekelman

Principal
212-545-4005
Felice.Ekelman@jacksonlewis.com



Richard I. Greenberg

(Rich)
Principal
(212) 545-4080
Richard.Greenberg@jacksonlewis.com

Related Services

Employment Litigation
Hospitality

The New York City Council introduced two bills to extend protections from workplace terminations to fast food employees. These two bills ([Intro 1396](#) and [Intro 1415](#)) are the latest in a series of legislative actions by the City Council relating to the fast food industry.

Fast Food Workers as a Specific Class

The New York City Council began to advocate for extended benefits and protection in December 2016 with [a package of six bills](#) aimed at reforming scheduling and workplace practices in the fast food and retail industries. Mayor Bill de Blasio signed [five of the workplace changes](#) in May 2017, and the protections [took effect](#) in November 2017. The final bill in the original package relating to temporary schedule changes, Intro 1399-A, became law without the Mayor's signature in January 2018.

The Council now seeks to continue its advocacy by extending certain termination protections to fast food workers.

Bona Fide Economic Reason

Introduced on February 13, 2019, Intro 1396 by Council Member Adrienne Adams of Queens prohibits a fast food employer from laying off an employee without a bona fide economic reason. The legislation defines a "bona fide economic reason" as the full or partial closing of operations or technological or organizational changes to the business resulting in the reduction in the volume of production, sales, or profit.

If an employer has a "bona fide economic reason" for a layoff, the layoff must be conducted on a "last in, first out" basis — in reverse order of seniority according to the length of service of employees in the establishment where the termination is to occur. Employees senior in length of service must be retained the longest and reinstated first. The bill specifies how to compute the length of service and accounts for military service, illness, and other absences.

Just Cause

Also introduced on February 13, 2019, Intro 1415 by Council Member Brad Lander of Brooklyn prohibits fast food employers from terminating the employment of an employee without "just cause" generally following progressive discipline.

The fast food employer may not rely on discipline issued more than one year before the purported just cause termination. The requirement to utilize progressive discipline does not preclude an employer from immediately terminating an employee for a sufficiently egregious failure or misconduct constituting just cause. The employer must provide the employee with a written explanation of the just cause termination.

Intro 1415 lays out the following factors for an agency to determine whether a fast

food employee has been terminated for just cause:

1. The fast food employee knew or should have known of the fast food employer's policy, rule, or practice;
2. The fast food employer provided relevant and adequate training to the fast food employee;
3. The fast food employer's policy, rule, or practice was reasonable and applied consistently;
4. The fast food employer undertook a fair and objective investigation; and
5. Any other relevant factors.

The fast food employer would bear the burden of proving just cause by a preponderance of non-hearsay evidence in any proceeding brought under Intro 1415. The agency may not consider any reasons not included in the employer's written explanation of the just cause termination.

Remedies, Penalties, and Exclusions

Both bills provide for arbitration of disagreements over layoff and termination between fast food employers and fast food employees and entitle laid off fast food employees to "schedule change" pay premiums. Further, the bills do not preclude a private right to action. Both bills also provide for fines against employers who violate their provisions.

Consistent with prior industry enactment, the bills do not apply to employees that are covered by a collective bargaining agreement. In addition, Intro 1415 does not apply to any employee who is within a probationary period.

Next Steps

The City Council's Committee on Civil Service and Labor will hold a public hearing on the bills to give stakeholders a chance to comment before the bills can advance to the City Council for a vote. If the bills pass in the City Council, Mayor de Blasio likely will sign them into law. Mayor de Blasio historically has been supportive of increased protections for fast food employees.

These bills are expected to have opposition from the service industry, which continues to see rising operating costs in the city and the state.

The Jackson Lewis Government Relations practice monitors and tracks all legislation introduced in New York and advocates for client positions at all levels of city and state government.

Please contact a Jackson Lewis attorney with any questions about these bills or compliance with current industry requirements.

©2019 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on employment and labor law since 1958, Jackson Lewis P.C.'s 1,000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged and stable, and share our clients' goals to emphasize belonging and respect for the contributions of every employee. For more information, visit <https://www.jacksonlewis.com>.