

TO: HONORABLE BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee has reviewed “A LOCAL LAW amending Chapter 580 of the Laws of Westchester County in order to enhance the protections provided by the Displaced Service Employees Protection Law.”

Your Committee is aware that the Displaced Service Employees Protection Law protects service workers who, if displaced, would find it difficult to find other employment. This amendment strengthens the existing protections by lowering the threshold for covered contractors from 15 to 5 employees, thus increasing the number of employees protected. It further places the burden of proof on employers to demonstrate their number of employees. The period for which displaced workers must be retained is extended from 60 to 90 days, bringing the Displaced Service Employees Protection Law in line with municipalities such as New York City, Baltimore, the District of Columbia, Los Angeles, Philadelphia, and San Francisco.

Your Committee notes that this amendment also strengthens the Displaced Service Employees Protection Law by giving employees an additional 5 days to respond to employment offers and preventing employers from reducing hours to circumvent the law. Because of issues surrounding the clarity of written offers of employment, a standard offer of employment form is now required to be provided to displaced workers.

Your Committee further notes that this amendment ensures that employees and their collective bargaining representatives are made aware of transfers in the ownership of property in

which they work. Successor employers will be provided with the name and contact information of their employee's collective bargaining representative. Terminated contractors will also be required to provide the name and contact information of the employee's collective bargaining representative to the successor employer. Moreover, posting requirements have been updated to facilitate the flow of information to employees and their collective bargaining representatives. In addition, successor employers will be required to make reasonable efforts to ascertain the number of affected service employees.

Finally, your Committee is advised that this amendment removes the provision that had granted a prevailing defendant attorney's fees as this provision had discouraged litigation by employees fearful of having to pay for their employer's high-priced attorneys. Instead, to encourage employees to bring suit for wages that have been unlawfully withheld according to this amendment, they will now be able to recover liquidated damages in addition to back wages and may seek reinstatement.

Your Committee notes that this amendment will promote the well-being of a substantial workforce population within the County. Your Committee therefore recommends these amendments to the Laws of Westchester County as provided in the attached Local Law.

As you know, this Honorable Board must comply with the requirements of the State Environmental Quality Review Act ("SEQRA") and its implementing regulations, 6 NYCRR Part 617. The Department of Planning has reviewed the applicable SEQRA regulations, and has concluded that since this proposed local law does not constitute an action as defined in section

617.2(b) of 6 NYCRR Part 617. As such, no further environmental review is required. Your Committee has reviewed the annexed SEQRA Status Sheet and concurs with this conclusion.

Your Committee, after careful consideration, recommends the adoption of this Local Law.

Dated: June , 2019
White Plains, New York

COMMITTEE ON

TO: Stacey Dolgin-Kmetz
Chief Deputy County Attorney

FROM: David S. Kvinge, AICP, RLA, CFM
Director of Environmental Planning



DATE: July 16, 2019

SUBJECT: **STATE ENVIRONMENTAL QUALITY REVIEW FOR AMENDMENTS TO
DISPLACED SERVICE WORKERS PROTECTION LAW**

PROJECT/ACTION: Adoption of a local law amending Chapter 580 of the Laws of Westchester County in order to enhance the protections provided by the Displaced Service Employees Protection Law.

With respect to the State Environmental Quality Review Act and its implementing regulations 6 NYCRR Part 617, the Planning Department recommends that no further environmental review is required because the project/action:

DOES NOT MEET THE DEFINITION OF AN “ACTION” AS DEFINED UNDER SECTION 617.2(b)

MAY BE CLASSIFIED AS TYPE II PURSUANT TO SECTION 617.5(c)():

COMMENTS: None

cc: Andrew Ferris, Chief of Staff
Paula Friedman, Assistant to the County Executive
Norma Drummond, Commissioner
Claudia Maxwell, Associate Environmental Planner

RESOLUTION NO. _____-2019

RESOLVED, that this Board hold a public hearing pursuant to Section 209.141(4) of the Laws of Westchester County on Local Law Intro. No. 2019-_____, entitled "A LOCAL LAW amending Chapter 580 of the Laws of Westchester County in order to expand the protections provided by the Displaced Service Employees Protection Law." The public hearing will be held at ____m. on the _____ day of _____, 2019 in the Chambers of the Board of Legislators, 8th Floor, Michaelian Office Building, White Plains, New York. The Clerk of the Board shall cause notice of the time and date of such hearing to be published at least once in one or more newspapers published in the County of Westchester and selected by the Clerk of the Board for that purpose in the manner and time required by law.

LOCAL LAW INTRO NO. -2019

A LOCAL LAW amending Chapter 580 of the Laws of Westchester County in order to enhance the protections provided by the Displaced Service Employees Protection Law.

BE IT ENACTED by the Board of Legislators of the County of Westchester as follows:

Section 1. Chapter 580 of the Laws of Westchester County is hereby amended to read as follows:

Sec. 580.01. Definitions.

- (1) "*Awarding authority*" means any person that awards or enters into a service contract or subcontract to be performed in the County.
- (2) "*Contractor*" means any person, including a subcontractor, who enters into a service contract or subcontract to be performed in whole or in part in the County, provided the contractor employs more than [1]4 service employees anywhere in the United States.
- (3) "*County*" means the County of Westchester.
- (4) "*Covered location*" means a:
 - (a) Private school, college, or university;
 - (b) Institution, such as a museum, convention center, arena, airport, or performance hall;
 - (c) Multi-family residential building or complex with more than one hundred (100) units, except that it shall not include any complex where no individual building has more than six units; or

(d) Commercial or office building or complex occupying more than 100,000 square feet;

(i) “Complex” means aggregated buildings with shared plazas or outdoor or indoor spaces, which have common ownership;

(e) Hospital, nursing care facility or other health care provider.

(5) “Employer” means any person who employs service employees at a covered location.

(6) “Person” means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ persons or enter into a service contract.

(7) “Service contract” means a contract between an awarding authority and a contractor to provide security, janitorial, building maintenance services or non-professional health care services at a covered location in the County.

(8) “Service employee” means an individual employed as:

(a) A [building] service employee, including a janitor, security officer, doorperson, building cleaner, [janitor,] porter, handyperson, superintendent, elevator operator, window cleaner, stationary fireperson, [or]building engineer or a non-professional health care services employee, including but not limited to: food service staff, clerks, medical assistants, receptionists, medical billers or information technology support staff, who has been regularly assigned to a covered location on a full or part-time basis for at least ninety (90) days immediately preceding any transition in employment subject to this section, but does not include:

- (i) A managerial or professional employee;
- (ii) An employee whose regular straight-time hourly wage is more than twenty-five dollars per hour; or
- (iii) An employee who is regularly scheduled to work less than 20 hours per week.

(9) “*Successor employer*” means an employer that:

- (a) Is awarded a service contract to provide, in whole or in part, services that are substantially similar to those provided at any time during the previous 90 days; or
- (b) Has purchased or acquired control of a property located in the County where service employees were employed at any time during the previous ninety 90 days; or
- (c) Terminates a service contract and hires service employees as its direct employees to perform services that are substantially similar within ninety 90 days after a service contract is terminated or cancelled.

Sec. 580.02. Employer obligations.

(1) *Awarding authorities*. At least fifteen (15) days before terminating any service contract or entering into a service contract for work that its own employees had been performing, or selling or transferring any property where service employees are employed, an awarding authority must:

- (a) Request the terminated contractor to give the successor employer a list containing the name, date of hire, [and] job classification of each service

employee working on the service contract and name and contact information of the employee's collective bargaining representative, if any;

(b) Give the successor employer a list containing the name, date of hire, [and] job classification of each service employee currently performing the work to be performed under the service contract and name and contact information of the employee's collective bargaining representative, if any;

(c) Provide written notice to any collective bargaining representative(s) of the affected service employees of the decision to terminate the service contract and/or enter into a new service contract and/or sell or transfer the property; [and]

(d) Ensure that a written notice to all affected service employees describing the pending termination of the service contract, entrance into a service contract, and/or sale or transfer of the property, including the name and address of the awardee, purchaser, or transferee, and the employees' rights provided by this section, are [is] conspicuously posted at any affected work site; and

(e) Provide the affected service employees and their collective bargaining representative with the name and address of any successor employer and/or the purchaser/transferee of the property.

(2) *Successor employers.*

(a) Each successor employer shall take reasonable steps to ascertain the identity of the affected service employee;

(b) Subject to paragraph (d), each successor employer must retain each affected service employee at a covered location for [sixty (60)] ninety (90) days or until its

service contract is terminated, whichever is earlier. No successor employer shall reduce any affected service employee's work hours in order to circumvent the protections contained herein:

(c) Each successor employer shall give each affected service employee a written offer of employment and send a copy to the employee's collective bargaining representative, if any. Each offer must state the date by which the service employee must accept the offer, and the date must be at least [five (5)] ten (10) days after the notice is delivered. Each offer must also state the name, address, and telephone number of the successor employer and the name of the individual who is authorized by the successor employer to make an employment offer. The written offer required by this Section shall be substantially in the form set forth in Section 580.04 in a language in which the employee is fluent. A written offer may be sent via electronic mail;

(d) Each successor employer may retain less than all of the affected service employees during the [sixty (60)] ninety (90)-day transition period if the successor employer:

- (i) Finds that fewer service employees are required to perform the work than the predecessor employer had employed;
 - (ii) Retains service employees by seniority within each job classification;
 - (iii) Maintains a preferential hiring list of those employees not retained;
- and

(iv) Hires any additional service employees from the list, in order of seniority, until all affected service employees have been offered employment;

(e) Except as provided in paragraph (c), a successor employer may not discharge a service employee retained under this section without just cause during the [sixty (60) ninety (90)-day transition period[;].

[(f) The “for cause” protection provided by this section shall no longer apply at the end of the ninety (90) day transition period; provided, however that continued employment may be under the terms and conditions established by the successor employer or as required by state or federal law.]

Sec. 580.03. - Enforcement.

(1) A service employee who has been discharged or otherwise not retained in violation of this Chapter may bring an action in Supreme Court against a successor employer for any violation of any obligation imposed by Section 580.02(2), and against an awarding authority for any violation of any obligation imposed by Section 580.02(1).

(2) The court shall have authority to order injunctive relief to prevent or remedy a violation of any obligation imposed pursuant to this Chapter.

(3) In an action against a successor employer, if the court finds that by reason of a violation of any obligation imposed under Section 580.02, a service employee has been discharged or not retained in violation of this Chapter, it shall award:

(a) Back pay for each day during which the violation continues, 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 employee during the last three years of the employee's employment in the same occupation classification; or

(ii) The final regular rate received by the employee; and

(b) Costs of benefits the successor employer would have incurred for the employee under the successor employer's benefit plan(s); and

(c) An amount equal to back pay as liquidated damages, for each day during which the violation continues; and

(d) Reinstatement.

(4) In an action against an awarding authority, if the Court finds that the awarding authority has failed to comply with any of its obligations under Section 580.02(1), the Court shall award any damages caused by the awarding authority's failure to comply with its obligations.

(5) In any action brought under this Chapter, the Court shall allow the prevailing plaintiff a reasonable attorneys' fee as part of the costs unless special circumstances would render such an award unjust. [In addition, the Court may allow a prevailing defendant to recover attorneys' fees as part of costs upon a finding that the plaintiff's action was frivolous, unreasonable, groundless or brought in bad faith.]

(6) The defendant shall have the burden of proof as to the number of service employees it employs.

(7) The failure to receive a list of affected service employees from the awarding authority shall not constitute a complete defense.

Sec. 580.04. – Notice to displaced worker.

The offer of employment required to be provided to a displaced worker by Section 580.02(2) of this Chapter shall be substantially in the form below:

DATE: _____

TO: (name of employee)

IMPORTANT INFORMATION REGARDING YOUR EMPLOYMENT

We have received information that you are employed by (name of predecessor contractor) and are currently performing work at (address of worksite). (Name of predecessor contractor) has lost its contract with the owners of (address of worksite) and will no longer be providing janitorial, building maintenance or non-professional health care services as of (last day of predecessor contract).

We are (name of successor contractor) and have been hired by the owners of (address of worksite) to provide the same (or janitorial, building maintenance or non-professional health care) service. We are offering you a job with us for a 90 day probationary period starting (first day of successor contract) to perform the same type of work that you have already been doing for (name of predecessor contractor) under the following terms:

Pay rate (per hour): \$ _____

Hours per shift: _____

Total Hours Per Week: _____

Benefits: _____

You must respond to this offer within the next ten (10) days. If you want to continue working at (address of worksite) you must let us know by (mm/dd/yyyy - no later than 5 days prior to the expiration of the predecessor contract or 10 days after the date of this letter if the predecessor contract has already expired). If we do not receive your response by the end of business that day, we will not hire you and you will lose your job. We can be reached at (successor contractor phone number).

The Displaced Service Employees Protection Law, Section 580.02 of the Laws of Westchester County gives you the following rights:

1. You have the right, with certain exceptions, to be hired by our company for the first ninety (90) days that we begin to provide services at (address of worksite).
2. During this 90 day period, you cannot be fired without just cause.
3. If you believe that you have been fired or laid off in violation of the Displaced Service Employees Protection Law, you have the right to institute legal action, and if successful may be awarded back pay, reinstatement, liquidated damages, attorney's fees and court costs.

FROM: (Name of successor contractor)

(Name of authorized representative)

(Address of successor contractor)

(Telephone # of successor contractor)

Sec. 590.05 - Severability.

If any clause, sentence, paragraph, or section of this chapter shall be held invalid by any court of competent jurisdiction, or the application of this chapter to any person or set of circumstances shall be held invalid, such invalidity or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or operation of this chapter directly involved in the controversy in which the judgment shall have been rendered. To further this end, the provisions of this chapter are hereby declared to be severable.

§ 2. This Local Law shall take effect immediately.