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NYC Expands Scope of Displaced Building Service Workers Protection Act

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Background

In 2002, Mayor Bloomberg signed the New York City Displaced Building Service Workers Protection Act ("DBSWPA" or "Act") into law. The DBSWPA significantly affects companies' labor and employment considerations during the sale or transfer of commercial or residential property, or when changing building service contractors.

The original DBSWPA required successor building owners, managers, and contractors to offer employment to the pre-existing employees for a 90-day period. During this transition period, employees are retained, evaluated, and if found satisfactory, offered continued employment. Until the 90-day period expires, employees can only be terminated for cause or if the successor employer "determines that fewer building service employees are required to perform building services." N.Y.C. Admin. Code § 22-505. Chicago, Philadelphia, San Francisco, Los Angeles, Washington D.C., and several other cities have all enacted similar worker retention laws.

Major Expansion of DBSWPA

On May 10, 2016, Mayor de Blasio signed a bill, introduced in November 2015 and passed by the City Council in April 2016, which modified the DBSWPA in several ways – mainly expanding the Act's coverage. The new law, Local Law 58, takes effect immediately.

The amended law increases the number and types of employees covered by the Act:

- The definition of "covered employers" now includes commercial lessees or tenants with more than 35,000 square feet of space. The law previously only applied to owners, managers and contractors. Therefore, if a large commercial tenant terminates a third party contract to directly hire its building service workers or if it outsources the work to a new contractor, the tenant must comply with the Act.

- The previous exemption for buildings in which the New York City government leases more than 50% of the space in the building has been eliminated. The Council proposed removing the exemption to hold the City to similar standards to which it holds private sector employers.
- Security officer and fire safety director job titles are now explicitly covered by the Act's coverage. Although the DBSWPA did not previously specifically exempt those positions, the Council removed any ambiguity as to whether those types of employees are covered by the Act.
- The salary cap for employees covered by the Act is increased to $35 per hour (from $25) and will be annually adjusted for inflation by the Mayor's office.

The Act also now clearly covers insourcing and outsourcing of building service work by the building owner. In other words, building owners or managers that decide to provide building services in-house or outsourcing the work to a contractor will be subject to the Act's provisions. The Council amended the Act in this way to ensure that building owners and managers cannot escape the Act's requirements by simply hiring the building service workers directly or contracting the work out to a third party – which was a potential loophole before the amendments.

The new law also expands the remedies for violations of the Act, adding the granting of reinstatement as a possible remedy in addition to ordering injunctive relief. The Act also now authorizes courts to award back pay commencing with the date of discharge or refusal-to-retain until the employee is offered instatement or reinstatement, in addition to liquidated damages (equal to back pay).

Implications for Owners, Managers, and Tenants

With this major expansion of the DBSWPA, it is essential that all building owners, managers, and large tenants understand their obligations to building service workers. In particular, large tenants – who were never previously covered by the Act – should tread especially carefully. Prior to any sale, transfer, building service contract termination, insource, outsource, or any other change of the employing entity, the successor employer should know its obligations under the Act before taking over, or risk incurring substantial liability under the Act's expanded remedies. Covered employers that fail to comply with the Act may be required to reinstate the discharged employee(s) and provide double back pay (back pay plus liquidated damages). Therefore, it is critical that the broad range of organizations now considered "Covered Employers" understand the Act's mandates in order to avoid learning about its requirements *after* the execution of a business deal.

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