

# No Temporary Relief for NYC Hotels from Severance Law

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As previously discussed [here](#), the New York City Council passed a law at the end of last year requiring certain hotels in the City to pay eligible employees weekly severance payments for up to 30 weeks.

There were swift legal challenges to the law, claiming that it was preempted by the NLRA and ERISA and unconstitutional. Late last week, in the first opinion to address the legal merits of such claims, the U.S. District Court for the Southern District of New York denied a motion for a preliminary injunction filed by one of New York City's many hotels rocked by the COVID-19 pandemic in an attempt to delay enforcement of this new "Severance Law". Despite the existence of a collective bargaining agreement that provides for bargained-for severance benefits, the court determined that the plaintiff hotel did not show a likelihood of success on the merits of its claim that the Severance Law is preempted and unconstitutional.

## ***Recap of NYC Severance Law***

The key provisions of the law are as follows:

- Enacted in October 2021, the Severance Law ([2397-2021](#)) requires operators of hotels that had at least 100 rooms on March 1, 2020 to pay their employees severance if: (1) the hotel closed to the public and has not recalled at least 25% of the employees it employed on March 1, 2020; or (2) the hotel underwent a mass layoff after March 1, 2020 that resulted in the loss of work by at least 75% of employees during any 30-day period.
- Employer hotels must provide severance payments to employees for up to 30 weeks in the amount of \$500 per week, or up to a total of \$15,000.
- Any severance pay provided to a covered employee under the law will be *in addition* to any severance or other pay already paid or owed to the employee.
- When an employee is recalled or when a hotel that was once closed reopens and recalls at least 25% of its employees, an employer's obligation to provide severance ends.

- Finally, the law provides a private right of action for employees to enforce their right to severance pay under the law, allowing employees to seek double damages as well as attorneys' costs and fees.

### ***Court Denies Hotel's Motion for Preliminary Injunction***

In November 2021, plaintiff hotel owner filed suit in the U.S. District Court for the Southern District of New York against the City of New York, Mayor Bill De Blasio, and the New York City Council Members who voted in favor of the Severance Law. The complaint alleges the law is preempted by ERISA, the NLRA and New York state labor law. The complaint also alleges that the law is unconstitutional in violation of the Contracts Clause, the Due Process Clause, and the Equal Protection Clause of the U.S. Constitution. The plaintiff filed a preliminary injunction to prevent the City and other parties from enforcing the law and imposing the onerous severance obligations.

In denying the motion for preliminary relief, the court held that the plaintiff failed to show a likelihood of success on the merits on any of its federal claims:

- ***NLRA Preemption:*** The court rejected plaintiff's argument that the law would require an employer to modify the existing collective bargaining agreement with unionized hotel employees, explaining that the statutory severance obligations under the law merely supplement the contractual severance obligations. In rejecting the severance argument, the court remarked that "preemption is not a license for courts to close political routes to workplace protections simply because those protections may also be the subject of collective bargaining."
- ***ERISA Preemption:*** The court also held that the law was not preempted under ERISA because the law does not require employer hotels to establish an employee benefit *plan* through the creation of an ongoing administrative program to deliver the mandated severance benefits.
- ***Contracts Clause:*** The court found that the plaintiff did not establish that the law operated a substantial impairment of any contractual relationship, reasoning that the plaintiff employer's expectation that it would not have to pay more in severance than that which may be required under the collective bargaining agreement was not a reasonable expectation given the fact that the hotel industry is highly regulated.
- ***Due Process Clause:*** According to the court, plaintiff is unlikely to succeed on its Due Process Clause claim where it was not shown that the law is impermissibly vague or that that City Council acted in an arbitrary or capricious way in passing the law.

- **Equal Protection Clause:** Similarly, the court concluded the plaintiff did not show a likelihood of success on its Equal Protection Clause claim, which was premised on a “class of one” theory, because the plaintiff did not establish that it was treated differently from similarly situated businesses in New York City who suffered similar financial losses and continue to see comparable unemployment rates.

## Takeaways

With this denial of the motion for a preliminary injunction, New York City hotels remain subject to the statutory severance obligations imposed by the City’s Severance Law. The case remains pending before the S.D.N.Y., and while the preliminary ruling demonstrates the court’s doubt as to whether plaintiff will ultimately succeed on the merits, we will continue to keep you apprised of updates. For now, employers should review their policies and practices to ensure they are in compliance with the statutory severance obligations.

### Related Professionals

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