New York City Health Care Security Act

Chapter 5, Title 22, Section 506

of the Administrative Code of the City of New York

§ 22-506 a. Short title. This section shall be known and may be cited as the "Health Care Security Act."

b. Definitions. For purposes of this section, the following terms shall have the following meanings:

(1) "Active retail floor space" means the floor space in any store operated by a grocery employer that is utilized for the display and sale of food; provided that such term shall not include any storage space, loading dock, food preparation space or eating area designated for the consumption of prepared food.

(2) "Administering agency" means any city agency, office, department, division, bureau or institution of government, the expenses of which are paid in whole or in part from the city treasury, as the mayor shall designate.

(3) "City" means the city of New York.

(4) "Covered employer" means any grocery employer operating in the city.

(5) "Covered industry" means the grocery industry operating in the city.

(6) "Employee" means any person who is not a family member of a covered employer and who works at any location in the city on a full-time, part-time or seasonal basis for any grocery employer; provided that such term shall not include persons who are managerial, supervisory or confidential employees; and provided further that such term shall not include persons who are hired to work exclusively for the holiday period from November 1 through December 31.

(7) "Entity" or "Person" means any natural person, corporation, sole proprietorship, partnership, association, joint venture, limited liability company or other legal entity.

(8) “Family of employee” means the spouse or domestic partner as defined in section 3-240 of the administrative code of an employee and each dependent child of such employee.

(9) “Family member of a covered employer” means the spouse or domestic partner as defined in section 3-240 of the administrative code of a covered employer and each child, parent, sister or brother of such employer.

(10) “Fiscal year” means the period from July 1 of each year through June 30 of the following year.

(11) “Food” means nourishment for human consumption.

(12) “Grocery employer” means any entity operating one or more retail stores in the city that (i) primarily sell food for off-site consumption, where such entity employs fifty or more employees at any one such store, provided that such entity shall be deemed to employ the highest number of employees that such entity employed at any time during the preceding fiscal year or (ii) contain 12,500 square feet or more of active retail floor space for the sale of food for off-site consumption, such as a “big box” retail store or warehouse club; provided that such term shall not include any retail store for which pharmacy sales comprise fifty percent or more of store sales.

(13) “Health care expenditure” means any amount paid by a covered employer to its employees or to another party on behalf of its employees and/or the families of its employees for the purpose of providing health care services or reimbursing the cost of such services for its employees and/or the families of its employees, including, but not limited to, (i) contributions by such employer to a health savings account as defined under section 223 of the United States internal revenue code or to any other account

having substantially the same purpose or effect without regard to whether such contributions qualify for a tax deduction or are excludable from employee income; (ii) reimbursement by such employer to its employees and/or the families of its employees for incurred health care expenses where such recipients had no entitlement to have expenses reimbursed under any plan, fund or program maintained by such employer; or (iii) contributions by such employer to any New York city health and hospitals corporation facility or federally qualified health center that is located in a borough where such employer operates a store or where the majority of such employer's employees reside, provided that such contributions shall not be designated for a particular individual or group of individuals, notwithstanding anything herein to the contrary; provided, however, that such term shall not include any payment made directly or indirectly for workers' compensation, Medicare benefits or any other health care costs, taxes or assessments that such employer is required to pay pursuant to any federal, state or local law other than this section, or any amount deducted from an employee's wages and not reimbursed by such employer.

(14) "Health care services" means primary or secondary medical care or services, including, but not limited to, (i) inpatient and outpatient hospital services, (ii) physicians' surgical and medical services, (iii) laboratory, diagnostic and x-ray services, (iv) prescription drug coverage, (v) annual physical examinations, (vi) preventative services, (vii) mental health services or (viii) substance abuse treatment services; provided, however, that such term shall not include any medical procedure or treatment which is solely cosmetic.

(15) "Prevailing health care expenditure rate" means the amount of health care

expenditure customarily made on behalf of a full-time employee and/or the family of such employee in the same trade or occupation in the covered industry, prorated on an hourly basis and calculated pursuant to paragraph 2 of subdivision c of this section.

(16) “Required health care expenditure” means the total health care expenditure that a covered employer is required to make each year for its employees and/or the families of its employees pursuant to subdivision c of this section.

(17) “Retaliatory action” means the discharge, suspension, demotion or penalization of, or discrimination or taking other adverse action against, an employee with respect to the terms and conditions of such employee’s employment.

c. Required health care expenditures. (1) Covered employers shall make required health care expenditures on behalf of their employees and/or the families of their employees each fiscal year, beginning on July 1, 2006. Such expenditures may be made within thirty days after the close of the fiscal year for which such expenditures are required to be made; provided that no health care expenditures may be credited toward more than one fiscal year.

(2) The administering agency shall annually determine the prevailing health care expenditure rate for employees in the covered industry using procedures and standards similar to those used to calculate prevailing wages and fringe benefits pursuant to sections 230 and 220 of the New York state labor law; provided that where thirty percent or more of such employees are covered by a valid collective bargaining agreement, the prevailing health care expenditure rate for such employees shall be equal to the health care expenditure rate for full-time employees as provided under such collective bargaining agreement; provided further that where there are more than one such

collective bargaining agreements with differing health care expenditure rates for full-time employees which together cover thirty percent or more of the employees in the covered industry, the prevailing health care expenditure rate for such employees shall be the average such rate of all such agreements; and provided further that all employees employed in the covered industry shall be deemed to be in the same trade or occupation for purposes of determining the prevailing health care expenditure rate. Each prevailing health care expenditure rate determined pursuant to this subdivision shall be published by the administering agency by March 1 of each year and shall take effect on July 1 of the fiscal year.

(3) Each covered employer shall annually determine its required health care expenditure by multiplying the prevailing health care expenditure rate as determined by the administering agency pursuant to this subdivision for such employer's covered industry by the total number of hours worked during the fiscal year by all the employees of such employer. A covered employer may use any reasonable methodology to determine (i) the number of hours worked during the fiscal year by its employees; (ii) such employer's required health care expenditure for the fiscal year; and (iii) whether the health care expenditure made by such employer during the fiscal year is at least equal to such employer's required health care expenditure for such year. Each covered employer shall file a concise statement describing such methodology with the administering agency, or if no such agency has been designated, with the city clerk, by April 1 of each year for the following fiscal year.

(4) A covered employer shall (i) maintain an accurate work log that includes, for each employee, such employee's name, trade or occupation, and the dates and hours or

time periods worked by such employee, provided, however, that covered employers shall not be required to maintain such records in any particular form; (ii) provide an employee or such employee's designated representative(s) with access to such employee's work log and payroll records for inspection and copying; (iii) maintain accurate records of health care expenditures and required health care expenditures, and proof of such expenditures each year, provided, however, that covered employers shall not be required to maintain such records in any particular form; and (iv) provide a report to the administering agency on an annual basis containing the information required to be maintained pursuant to subparagraphs (i) and (iii) of this paragraph, and such other information as the administering agency shall require. Such report shall be made available to the public upon request without employee names or other personally identifying information. A covered employer that is a signatory to one or more collective bargaining agreements that cover at least seventy-five percent of its employees may comply with this section as provided in subdivision g.

d. Unlawful retaliation. It shall be unlawful for any covered employer to deprive or threaten to deprive any person of employment, take or threaten to take any retaliatory action against any person, or directly or indirectly intimidate, threaten, coerce, command or influence or attempt to intimidate, threaten, coerce, command or influence any person because such person has taken an action to enforce, inquire about or inform others about the requirements of this section. Taking any such adverse action against any person within ninety days of such person's exercise of rights pursuant to this section shall raise a rebuttable presumption that such action was in retaliation for the exercise of such rights.

e. Violations and penalties. (1) Any covered employer found to be in violation of this section by failing to make health care expenditures during the fiscal year at least equal to the required health care expenditure for such employer shall be liable for a civil penalty equal to the amount of the shortfall.

(2) Any covered employer found to be in violation of this section by failing to make health care expenditures during the fiscal year at least equal to the required health care expenditure for such employer shall correct such violation within ninety days of such determination. The administering agency shall serve a notice to correct such violation which shall specify the date which is ninety days from such determination by which the violation shall be corrected. Failure to correct such violation pursuant to this paragraph shall subject a covered employer to a civil penalty of not less than five hundred dollars for each day such violation continues.

(3) Any covered employer found to have violated any of the requirements of paragraph (4) of subdivision c of this section shall be liable for a civil penalty of not less than five hundred dollars for each such violation.

(4) In addition to being liable for civil penalties pursuant to this subdivision, any covered employer found to have violated this section may be subject to other action taken by the administering agency, including, but not limited to, requesting that city agencies or departments revoke or suspend any city-issued registration certificates, permits or licenses held by such covered employer until such time as the violation is remedied.

(5) Penalties imposed pursuant to this section shall not affect any right or remedy available or civil or criminal penalty applicable under law to any individual or entity, or

in any way diminish or reduce the remedy or damages recoverable in any action in equity or law before a court of law with competent jurisdiction.

f. Enforcement. (1) The administering agency shall take appropriate action to enforce this section, including, but not limited to, periodically auditing covered employers to monitor compliance with this section; establishing a system to receive complaints from any person charging that a violation has occurred pursuant to this section; investigating complaints received; and making findings of violations and civil penalties in accordance with the provisions of this section.

(2) Any proceeding to recover any civil penalty authorized pursuant to this section shall be commenced by the service of a notice of violation which shall be returnable to the administering agency. The commissioner or other designated person of such administering agency shall, after due notice and an opportunity for a hearing, be authorized to impose the civil penalties prescribed by this section.

(3) Any action or proceeding that may be appropriate or necessary for the correction of any violation issued pursuant to this section, including, but not limited to, actions to secure permanent injunctions, enjoining any acts of practices which constitute such violation, mandating compliance with the provisions of this section or such other relief as may be appropriate, may be initiated in any court of competent jurisdiction by the corporation counsel or such other persons designated by the corporation counsel on behalf of the administering agency.

(4) Any joint-labor management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (section 175a of title 29 of the United States code) operating in the covered industry or any employee of a covered employer may

bring an action in any court of competent jurisdiction against a covered employer that fails to make health care expenditures during the fiscal year at least equal to the required health care expenditure for such employer in violation of this section. Upon a determination of any such violation, the court may award any appropriate equitable relief to secure compliance with this section and shall award reasonable attorney's fees and costs incurred in maintaining the action to any complaining party who prevails in any such enforcement action.

(5) Any aggrieved person may bring an action in any court of competent jurisdiction against a covered employer for violation of subdivision d of this section. Upon a determination of any such violation, the court may award any appropriate remedy at law or equity and shall award reasonable attorney's fees and costs incurred in maintaining the action to any complaining party who prevails in any such enforcement action.

(6) Any enforcement proceedings commenced under this section must be commenced within three years after the date of the occurrence or termination of the alleged violation, which ever occurs later.

g. Exemption. A covered employer that is a signatory to one or more collective bargaining agreements that cover at least seventy-five percent of its employees may fully comply with the requirements of this section by filing annually with the administering agency proof of such collective bargaining agreements and their terms, in such form and manner as specified by the administering agency, and shall otherwise be exempt from all other provisions of this section.

h. Rules. The administering agency shall promulgate rules in accordance with this section and such other rules as may be necessary for the purpose of implementing, construing and carrying out the provisions this section.