

DEPARTMENT OF CONSUMER AFFAIRS

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing?

The Department of Consumer Affairs (the “Department”) is proposing rules to clarify provisions found in Chapter 8 of Title 22 of the Administrative Code of the City of New York (as added by Local Law 11 for the year 2016), establish requirements to implement the law and meet its goals, and provide guidance to covered grocery establishments and protected employees.

When and where is the hearing? The Department of Consumer Affairs will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 A.M. on Wednesday, June 15th, 2016. The hearing will be in the Department of Consumer Affairs hearing room at 42 Broadway, 5th Floor, New York, New York, 10004.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Department of Consumer Affairs through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to Rulecomments@dca.nyc.gov.
- **Mail.** You can mail comments to Casey Adams, Deputy Director of City Legislative Affairs, Department of Consumer Affairs, 42 Broadway, New York, NY 10004.
- **Fax.** You can fax comments to the Department of Consumer Affairs, (646) 500-5962.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling 212-436-0186. You can also sign up in the hearing room before the hearing begins on Wednesday, June 15th, 2016. You can speak for up to three minutes.

Is there a deadline to submit written comments? Written comments may be submitted on or before 5 p.m. on Wednesday, June 15th, 2016.

Do you need assistance to participate in the hearing? You must tell the Office of Legal Affairs if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 212-436-0155. You must tell us by Monday, June 13th, 2016.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public between the hours of 9 a.m. and 5 p.m. at the Office of Legal Affairs.

What authorizes the Department of Consumer Affairs to make these rules? Section 1043 and Section 2203(f) of the New York City Charter authorize the Department of Consumer Affairs to make these proposed rules. These proposed rules were not included in the Department's regulatory agenda for this Fiscal Year because they were not contemplated when the Department of Consumer Affairs published the agenda.

Where can I find the Department of Consumer Affairs' rules? The Department of Consumer Affairs' rules are in title 6 of the Rules of the City of New York.

What laws govern the rulemaking process? The Department of Consumer Affairs must meet the requirements of Section 1043 of the New York City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rules

In January 2016, the City Council passed Local Law 11 of 2016, which requires successor employers in the grocery industry to retain eligible employees for a transitional employment period. The City Council determined that protecting grocery workers would have a positive effect on the local economy, the grocery industry, and the financial security of grocery store employees' families, and result in a more prosperous city.

These proposed rules clarify provisions in the law, establish requirements to implement and meet the goals of the law, and provide guidance to covered grocery establishments and protected employees. Specifically, these rules:

- Define "confidential employee;"
- Describe the means by which an incumbent grocery employer may comply with the requirement to post employee notices;
- Provide a method for determining the seniority of eligible grocery employees;
- Clarify the record keeping requirements regarding grocery employer maintenance and provision of records, and the consequences for failing to maintain, retain, or produce such records;
- Describe the circumstances in which the Department will issue a Notice of Violation to an employer;
- Describe the circumstances in which a grocery employer must give the Department access to records, and define "appropriate notice" of the need for such access by the Department;
- Require the Department, prior to settling any complaint, to give complainants notice of the proposed settlement; and
- Describe the method by which a complainant may opt out of a Department settlement and describe the method by which a complainant may withdraw their complaint with the Department.

Proposed Rule

Section 1. A new chapter 10 of Title 6 of the Rules of the City of New York is added to read as follows:

CHAPTER 10 DISPLACED GROCERY WORKERS

§ 10-01 Definitions.

(a) As used in this chapter, the following terms have the same meanings as set forth in section 22-507 of the Administrative Code: “change in control,” “city,” “department,” “eligible grocery employee,” “grocery establishment,” “incumbent grocery employer,” “person,” “successor grocery employer,” and “transitional employment period.”

(b) As used in this chapter, the following terms shall have the following meanings:

“Appropriate notice” means 20 days’ written notice to the grocery employer, unless the grocery employer agrees to a lesser amount of time or the department has reason to believe that:

(i) the grocery employer will destroy or falsify records;

(ii) the grocery employer is closing, selling, or transferring its business, disposing of assets, or is about to declare bankruptcy;

(iii) the grocery employer is the subject of a government investigation or enforcement action or proceeding related to wages and hours, unemployment insurance, workers’ compensation, discrimination, or paid sick leave; or

(iv) more immediate access to records is necessary to prevent retaliation against employees for exercising their rights under the Grocery Worker Retention Act.

“Continuous employment” means a period of uninterrupted employment. Separations from employment six months or less in duration for any reason, including, but not limited to, paid or unpaid leaves of absence, paid or unpaid time off, and work schedule changes, shall not constitute interruptions in employment.

“Grocery employer” means incumbent grocery employers and successor grocery employers.

“Grocery Worker Retention Act” means section 22-507 of the Administrative Code.

§ 10-02 Confidential employees.

For purposes of section 22-507(a) of the Administrative Code, “confidential employee”

means “confidential employee” as defined in the federal Labor Management Relations Act, 22 U.S.C.A. § 4102(6).

§ 10-03 Incumbent grocery employer’s posting of notice of change in control.

The incumbent grocery employer may meet the posting requirement of section 22-507(b)(1)(B) of the Administrative Code by posting the required notice of change in control conspicuously in prominent and accessible places customarily frequented by the employees at the grocery establishment subject to a change in control. Each incumbent grocery employer must take steps to ensure that such notice is not altered, defaced, or covered by other material.

§ 10-04 Determining Seniority.

For purposes of the preferential hiring list required under section 22-507(b)(3) of the Administrative Code, an employee attains seniority as a result of that employee’s length of continuous employment in the grocery establishment subject to a change in control, regardless of job position and regardless of full-time or part-time status.

§ 10-05 Recordkeeping.

- (a) Grocery employers must retain records demonstrating compliance with the requirements of the Grocery Worker Retention Act for a period of three years unless otherwise required by any other law, rule, or regulation.
- (b) Incumbent grocery employers must maintain, in an accessible format, contemporaneous, true, and accurate records that document:
 - (1) The list of eligible grocery employees required under section 22-507(b)(1)(A) of the Administrative Code, the date the list was provided to the successor grocery employer, and written proof that the list was provided to the successor grocery employer; and
 - (2) The notice of change in control required under section 22-507(b)(1)(B) of the Administrative Code, the date it was posted, and proof of posting.
- (c) Successor grocery employers must maintain, in an accessible format, contemporaneous, true, and accurate records that document:
 - (1) The list of eligible grocery employees received by the successor grocery employer pursuant to section 22-507(b)(1)(A) of the Administrative Code and the date it was received, and the names of those eligible employees retained for the transitional employment period pursuant to section 22-507(b)(2) of the Administrative Code;

(2) The preferential hiring list required under section 22-507(b)(3) of the Administrative Code, the date eligible employees on the preferential hiring list were given the right of first refusal to jobs that become available during the transitional employment period, and proof that the right of first refusal was given; and

(3) The written performance evaluations as required under section 22-507(b)(5) of the Administrative Code.

§ 10-06 Enforcement.

(a) If the department issues a subpoena or document demand upon appropriate notice, a grocery employer must provide the department with access to records documenting its compliance with the requirements of the Grocery Worker Retention Act and the provisions of this chapter at the department's office.

(b) Alternately, in the absence of a subpoena or document demand upon appropriate notice, a grocery employer must provide the department with access to records and at a mutually agreeable time of day at the employer's place of business.

(c) The department will make two attempts by any combination of letter, email, or telephone to arrange a mutually agreeable time of day for the grocery employer to provide access to its records in accordance with subdivision (b) of this section. If these attempts are not successful, the department may set a time to access records at the grocery employer's place of business during regular business hours, upon two days' notice to the grocery employer.

(d) A grocery employer's failure to maintain, retain, or produce pursuant to a subpoena or document demand by the department any record otherwise required to be maintained under these rules that is relevant to a material fact alleged by the department in a notice of violation issued pursuant to the Grocery Worker Retention Act or these rules will create a reasonable inference that such fact is true.

(e) The department, after conducting an investigation pursuant to section 22-507(d)(1)(A) of the Administrative Code, may issue a notice of violation for any violation of the Grocery Worker Retention Act.

(f) Additionally, the department may issue a notice of violation to a grocery employer who fails to provide records or access to records as required by section 10-05 of this chapter, provided that the department notifies the grocery employer that failure to provide requested information, records, or access to records may result in a notice of violation charging the grocery employer with failure to maintain, retain, or produce records as required by the Grocery Worker Retention Act.

(g) A grocery employer who fails to respond to the notice of violation issued under subdivision (f) of this section on or before the hearing date is subject to a penalty of

five hundred dollars, in addition to any penalties or remedies imposed as a result of the department's investigation of the complaint.

- (h) The grocery employer may cure a notice of violation issued in accordance with subdivision (f) of this section without penalty by producing the requested information or records on or before the first scheduled hearing date.
- (i) The department may settle a complaint at any time prior to the conclusion of an adjudication. Prior to settling any complaint, the department shall provide each complainant with notice of the proposed settlement.
- (j) A complainant who intends to opt out of a settlement pursuant to section 22-507(d)(1)(E) of the Administrative Code must do so in writing to the department.
- (k) A complainant who intends to withdraw his or her complaint with the department pursuant to section 22-507(d)(2) of the Administrative Code must do so in writing to the department prior to bringing a civil action.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Protection of Displaced Grocery Workers

REFERENCE NUMBER: 2016 RG 030

RULEMAKING AGENCY: Department of Consumer Affairs

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: May 4, 2016

NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400

CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)

RULE TITLE: Protection of Displaced Grocery Workers

REFERENCE NUMBER: DCA-50

RULEMAKING AGENCY: Department of Consumer Affairs

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Provides a cure period for violations.

/s/ Norma Ponce
Mayor's Office of Operations

May 5, 2016
Date