

By Council Members Ferreras Copeland, Lander, Williams, Kallos, Rodriguez, Richards, Torres and Rose

A Local Law to amend the administrative code of the city of New York in relation to providing fast food employees the ability to make voluntary contributions to not-for-profit organizations of their choice through payroll deductions

Be it enacted by the Council as follows:

1 Section 1. Title 20 of the administrative code of the city of New York is amended by  
2 adding a new chapter 13 to read as follows:

3 CHAPTER 13

4 PAY DEDUCTIONS FOR CONTRIBUTIONS TO NOT-FOR-PROFIT ORGANIZATIONS

5  
6 § 20-1301 Pay deductions for voluntary contributions by fast food employees to not-for-  
7 profit organizations

8 a. Definitions. For purposes of this chapter, the following terms have the following  
9 meanings:

10 Chain. The term “chain” means a set of establishments that share a common brand or that  
11 are characterized by standardized options for decor, marketing, packaging, products and services.

12 Covered not-for-profit organization. The term “covered not-for-profit organization”  
13 means an entity that is organized under the not-for-profit corporation law or the law governing  
14 incorporation of not-for-profit organizations in the jurisdiction of its incorporation, which seeks  
15 remittances and has been certified by the department pursuant to subdivision c below.

16 Department. The term “department” means the department of consumer affairs.

17 Employee. The term “employee” includes any person covered by the definition of  
18 “employee” set forth in subdivision 5 of section 651 of the labor law or any person covered by  
19 the definition of “employee” set forth in subsection (e) of section 203 of title 29 of the United

1 States code, and who is employed within the city and who performs work on a full-time or part-  
2 time basis, including work performed in a transitional jobs program pursuant to section 336-f of  
3 the social services law, but not including work performed as a participant in a work experience  
4 program pursuant to section 336-c of the social services law. The term “employee” does not  
5 include any person who is employed by (i) the United States government; (ii) the state of New  
6 York, including any office, department, independent agency, authority, institution, association,  
7 society or other body of the state including the legislature and the judiciary; or (iii) the city or  
8 any local government, municipality or county or any entity governed by section 92 of the general  
9 municipal law or section 207 of the county law.

10 Employer. The term “employer” includes any person or entity covered by the definition of  
11 “employer” set forth in subdivision 6 of section 651 of the labor law or any person or entity  
12 covered by the definition of “employer” set forth in in subsection (d) of section 203 of title 29 of  
13 the United States code. The term “employer” does not include (i) the United States government;  
14 (ii) the state of New York, including any office, department, independent agency, authority,  
15 institution, association, society or other body of the state including the legislature and the  
16 judiciary; or (iii) the city or any local government, municipality or county or agency or other  
17 body thereof.

18 Fast food employee. The term “fast food employee” means any person employed or permitted to  
19 work at or for a fast food establishment by any employer that is located within the city where  
20 such job duties include at least one of the following: customer service, cooking, food or drink  
21 preparation, delivery, security, stocking supplies or equipment, cleaning or routine maintenance.  
22 The term “fast food employee” does not include any employee who is salaried.

1           Fast food employer. The term “fast food employer” means any employer that employs a  
2 fast food employee at a fast food establishment.

3           Fast food establishment. The term “fast food establishment” means any establishment (i)  
4 that has as its primary purpose serving food or drink items; (ii) where patrons order or select  
5 items and pay before eating and such items may be consumed on the premises, taken out, or  
6 delivered to the customer’s location; (iii) that offers limited service; (iv) that is part of a chain;  
7 and (v) that is one of 30 or more establishments nationally, including (A) an integrated enterprise  
8 that owns or operates 30 or more such establishments in the aggregate nationally; or (B) an  
9 establishment operated pursuant to a franchise where the franchisor and the franchisees of such  
10 franchisor own or operate 30 or more such establishments in the aggregate nationally. The term  
11 “fast food establishment” includes such establishments located within non-fast food  
12 establishments.

13           Franchise. The term “franchise” has the same definition as set forth in section 681 of the  
14 general business law.

15           Franchisee. The term “franchisee” means a person or entity to whom a franchise is  
16 granted.

17           Franchisor. The term “franchisor” means a person or entity who grants a franchise to  
18 another person or entity.

19           Integrated enterprise. The term “integrated enterprise” means two or more entities  
20 sufficiently integrated so as to be considered a single employer as determined by application of  
21 the following factors: (i) degree of interrelation between the operations of multiple entities; (ii)  
22 degree to which the entities share common management; (iii) centralized control of labor  
23 relations; and (iv) degree of common ownership or financial control.

1 Remittance. The term “remittance” means a voluntary contribution duly authorized in  
2 writing by a fast food employee to be deducted from the employee’s pay and remitted to a  
3 covered not-for-profit organization pursuant to this chapter.

4 Retaliate. The term “retaliate” includes actions to threaten, intimidate, discipline,  
5 discharge, demote, suspend, harass, reduce employee hours or pay, inform another employer that  
6 an employee has engaged in activities protected by this chapter, or discriminate against an  
7 employee, and any other such action that penalizes an employee for, or is reasonably likely to  
8 deter an employee from, exercising or attempting to exercise any right protected under this  
9 chapter. The term “retaliate” also includes threats or adverse action related to perceived  
10 immigration or work authorization because the employee or former employee exercises a right  
11 protected under this chapter.

12 b. Requirement to deduct and remit voluntary contributions to covered not-for-profit  
13 organizations. 1. An employer of a fast food employee shall, upon written authorization of a fast  
14 food employee, including electronic authorization or other authorization method prescribed by  
15 the department, deduct voluntary contributions from the employee’s pay and remit them to the  
16 covered not-for-profit organization designated by the employee. Such authorization shall  
17 include:

18 (a) The fast food employee’s name and address;

19 (b) The amount, frequency and commencement date of the contribution; and

20 (c) The name and address of the covered not-for-profit organization to which the fast  
21 food employee wishes to contribute.

1           2. An authorization, which may be submitted by either a covered not-for-profit or a fast  
2 food employee, is valid until the fast food employee revokes the authorization in writing and  
3 transmits the revocation to the employer.

4           3. The employer shall provide a copy of any written authorization or revocation to the  
5 covered not-for-profit organization to which it pertains within five business days of receipt.

6           4. The employer shall commence deductions no later than the first pay period after 15  
7 days of receipt of the authorization and shall remit the deductions to the covered not-for-profit  
8 organization no later than 15 days after deduction.

9           5. A fast food employer is not required to honor an authorization for a contribution:

10           (a) Of less than \$6 per pay check if the fast food employee is paid every two weeks, or  
11 less than \$3 per pay check if the fast food employee is paid every week; or

12                   (b) More than once per pay period.

13           6. Processing fee. Upon request by a fast food employer, the covered not-for-profit  
14 organization shall reimburse the employer for the reasonable costs of deduction and remittance  
15 in an amount determined by the department.

16           7. Written notice of rights and obligations. A fast food employer shall provide written  
17 notice to its fast food employees of their rights and the employer's obligation under this section  
18 on a form provided by the department.

19           c. Certification of covered not-for-profit organizations. 1. A not-for-profit organization  
20 seeking to be certified pursuant to this subdivision must provide the department with the  
21 following:

1 (a) The name, address, email address and phone number of the organization; and (b)

2 Proof of current status as a not-for-profit organization.2. A not-for-profit organization

3 shall be certified by the department upon demonstration

4 that:

5 (a) The organization is incorporated as a not-for-profit corporation under the laws of the  
6 state of its incorporation;

7 (b) The organization has not been dissolved and its not-for-profit status has not been  
8 revoked, pursuant to applicable law; and

9 (c) At least 500 fast food employees have authorized contributions in the form described  
10 in subdivision b of this section. Such authorizations need not be from fast food employees  
11 employed by the same fast food employer.

12 3. Upon request by a fast food employer or a fast food employee, the department shall  
13 provide written confirmation that a not-for-profit organization has been certified pursuant to this  
14 subdivision.

15 d. Nothing herein shall be construed to permit deductions prohibited by section 193 of the  
16 labor law or to require remittances to a “labor organization” within the meaning of section 2(5)  
17 of the national labor relations act.

18 e. Enforcement. 1. In addition to failure to comply with subdivision b of this section, it is  
19 a violation of this section for any employer to discriminate or retaliate against any fast food  
20 employee who makes a request for voluntary deductions pursuant to paragraph 1 of subdivision b  
21 of this section or files a complaint pursuant to this section or files a civil action pursuant to  
22 subdivision f of this section.

1 2. Whenever the department has reason to believe there has been a violation of this  
2 section, or upon a verified complaint in writing from a fast food employee, a covered not-for-  
3 profit organization, or a fast food employee's representative claiming a violation of this section,  
4 the department shall conduct an investigation to determine the facts relating thereto.

5 3. The department, after providing the employer an opportunity to cure any violations,  
6 where appropriate shall issue an order, determination or other disposition, including, but not  
7 limited to, a stipulation of settlement. Such order, determination or disposition may at the  
8 discretion of the department impose the following on the employer committing the applicable  
9 violations:

10 (a) Direct deductions and remittances as authorized by the fast food employee, and pay  
11 interest to the covered-not-for-profit from the date of the failure to deduct or remit based on the  
12 interest rate then in effect as prescribed by the superintendent of banks pursuant to section 14-a  
13 of the banking law, but in any event at a rate of no less than six percent per year;

14 (b) Direct payment of a further sum as a civil penalty in an amount not exceeding \$500  
15 except that in cases where a final disposition has been entered against a fast food employer twice  
16 within any consecutive three-year period determining that such employer has willfully failed to  
17 deduct or remit in accordance with paragraph 1 of subdivision b of this section or to comply with  
18 paragraph 1 of this subdivision, the department may impose a civil penalty in an amount not  
19 exceeding \$1,000; and

20 (c) Direct the reinstatement of, back pay for, and other appropriate relief for any person  
21 found to have been subject to discrimination, retaliation or coercion. In assessing an appropriate  
22 remedy, due consideration shall be given to the gravity of the violation, the history of previous  
23 violations, and the good faith of the employer.

1           4. Before issuing an order, determination or other disposition, the department shall give  
2 notice thereof, together with a copy of the complaint, which notice shall be served personally or  
3 by mail on any person affected thereby. The department may negotiate an agreed upon  
4 stipulation of settlement or refer the matter to the office of administrative trials and hearings, or  
5 other appropriate department or tribunal, for a hearing and disposition. Such person or employer  
6 shall be notified of a hearing date by the office of administrative trials and hearings, or other  
7 appropriate department or tribunal, and shall have the opportunity to be heard in respect to such  
8 matters. Either party may bring an action pursuant to article 78 of the civil practice law and rules  
9 to enforce, vacate or modify the order, determination or other disposition of such office,  
10 department or tribunal.

11           5. In an investigation conducted by the department under the provisions of this section,  
12 the inquiry of the department shall not extend to violations committed more than three years  
13 prior to the filing of the complaint or to the commencement of such investigation, whichever is  
14 earlier.

15           f. Civil Action. 1. Except as otherwise provided by law, any person claiming to be  
16 aggrieved by a violation of this section has a cause of action in any court of competent  
17 jurisdiction for damages, including punitive damages, and for injunctive relief and such other  
18 remedies as may be appropriate, unless such person has filed a complaint with the department  
19 with respect to such claim. In an action brought by a fast food employee, if the court finds in  
20 favor of the employee, it shall award the employee, in addition to other relief, his or her  
21 reasonable attorneys' fees and costs.



1           2. Notwithstanding any inconsistent provision of paragraph 1 of this subdivision, where  
2 a complaint filed with the department is dismissed, an aggrieved person shall maintain all rights  
3 to commence a civil action pursuant to this section as if no such complaint had been filed.

4           3. A civil action commenced under this section shall be filed in accordance with  
5 subdivision 2 of section 214 of the civil practice law and rules.

6           4. No procedure or remedy set forth in this section is intended to be exclusive or a  
7 prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This  
8 section shall not be construed to limit an employee's right to bring a common law cause of action  
9 for wrongful termination.

10           g. Application. This section does not discourage, prohibit, preempt or displace any law,  
11 regulation, rule, requirement, written policy or standard that is at least as protective of an  
12 employee as the requirements of this section.

13           § 2. This local law takes effect 180 days after it becomes law.

MWC  
12-5-16  
LS 9052 and LS 8636