

Legislation Text

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Amending Title 9 of The Philadelphia Code, entitled "Regulation of Businesses, Trades and Professions," by adding a new Chapter 9-4700, to provide protections for parking employees against wrongful discharge, under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Title 9 of The Philadelphia Code is hereby amended to read as follows:

TITLE 9. REGULATION OF BUSINESSES, TRADES AND PROFESSIONS

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CHAPTER 9-4700. WRONGFUL DISCHARGE FROM PARKING EMPLOYMENT

§ 9-4701. *Definitions. As used in this Chapter, the following terms have the following meanings:*

(1) *Agency. The term "Agency" shall mean such office as the Mayor shall designate to administer and enforce this Chapter.*

(2) *Bona fide economic reason. The term "bona fide economic reason" in connection with the discharge of parking employees means the full or partial closing of operations or technological or organizational changes to the business, resulting in a reduction in revenue or profit.*

(3) *Discharge. The term "discharge" means any cessation of employment, including termination, constructive discharge, layoff, reduction in hours and indefinite suspension.*

(4) *Parking employer. The term "parking employer" shall mean any individual, partnership, association, corporation or business trust or any person or group of persons, or a successor thereof, that employs one or more parking employees, including any such entity or person acting directly or indirectly in the interest of the employer in relation to the parking employee. More than one entity may be the parking employer if employment by one parking employer is not completely disassociated from employment by the other parking employer.*

(5) *Just cause discharge. The term "just cause discharge" means a discharge for a parking employee's failure to satisfactorily perform job duties or misconduct that is demonstrably and materially harmful to the parking employer's legitimate business interests.*

(6) *Parking employee. The term "parking employee" means any person employed on the premises of a public parking garage, public parking lot, or for a valet parking operator, as defined in the Philadelphia Code Sections 9-601(1)(a)(.1), (.2), and (.7), respectively.*

(7) *Progressive discipline.* The term “progressive discipline” means a disciplinary system that provides for a graduated range of reasonable responses to a parking employee’s failure to satisfactorily perform such employee’s job duties or misconduct that is demonstrably and materially harmful to the parking employer’s legitimate business interests, with the disciplinary measures ranging from mild to severe, depending on the frequency and degree of such failure or misconduct

(8) *Reduction in hours.* The term “reduction in hours” means a reduction in a parking employee’s hours of work that totals at least 15 percent of the employee’s weekly work schedule.

§ 9-4702. *Prohibition of wrongful discharge.* A parking employer shall not discharge a parking employee except for just cause or a bona fide economic reason.

§ 9-4703. *Determination of Just Cause.*

(1) *In determining whether a parking employee has been discharged for just cause, the fact finder shall consider, in addition to any other relevant factors, whether:*

- (a) *The parking employee violated the parking employer’s policy, rule or practice;*
- (b) *The parking employee knew or should have known of the parking employer’s policy, rule or practice;*
- (c) *The parking employer provided relevant and adequate training to the parking employee;*
- (d) *The parking employer’s policy, rule or practice was reasonable and applied consistently; and*
- (e) *The parking employer undertook a fair and objective investigation prior to discharging the employee.*

(2) *A discharge shall not be considered based on just cause unless the parking employer has utilized progressive discipline; provided, however, that the parking employer may not rely on discipline issued more than one year before the purported just cause discharge as a step in progressive discipline.*

(3) *The parking employer shall promptly provide a written explanation to any discharged parking employee of the precise reasons for the just cause discharge. The fact finder may not consider any reasons not included in such written explanation.*

(4) *The parking employer shall bear the burden of proving just cause by a preponderance of non-hearsay evidence in any proceeding brought pursuant to this Chapter.*

§ 9-4704. *Determination of Bona Fide Economic Reasons.*

(1) *The parking employer shall promptly provide a written explanation to any discharged employee of the precise bona fide economic reason(s) for the discharge. The fact finder may not consider any reasons not included in such written explanation.*

(2) *A discharge shall not be considered based on bona fide economic reasons unless supported by the parking employer’s business records showing that the closing, technological or reorganizational changes*

resulted in a reduction in revenue or profit.

(3) Discharges based on bona fide economic reasons shall be done in reverse order of seniority according to the length of service of parking employees in the work site where the discharge is to occur, computed in accordance with § 9-4704(4), so that employees most senior in length of service shall be retained the longest and, in the case of temporary layoffs of staff, reinstated first.

(4) Length of service shall be computed from the first date of employment, unless such service has been interrupted by an absence from the payroll of more than six months, in which case length of service shall be computed from the date of restoration to the payroll. Length of service of a parking employee shall be deemed not to have been interrupted if such absence was the result of military service, illness, educational leave, leave authorized by law, or discharge in violation of any local, state or federal law.

§ 9-4705. Exercise of Rights Protected; Retaliation Prohibited.

(1) It shall be unlawful for a parking employer or any other person to interfere with, restrain or deny the exercise of, or the attempt to exercise, any right protected under this Chapter 9-4700 or Section 9-601(8) of Chapter 9-600.

(2) No person shall take any adverse action as to a parking employee that penalizes such employee for, or is reasonably likely to deter such employee from, exercising or attempting to exercise any right protected under this Chapter, or from filing a complaint under Section 9-601(8) of Chapter 9-600. Taking an adverse action includes threatening, intimidating, disciplining, discharging, demoting, suspending or harassing a parking employee; assigning a parking employee to a lesser position in terms of job classification, job security, or other condition of employment; reducing the hours or pay of a parking employee or denying the employee additional hours; and discriminating against a parking employee, including actions or threats related to perceived immigration status or work authorization.

(3) Protections of this Section shall apply to any person who mistakenly but in good faith alleges violations of this Chapter or files a complaint under Section 9-601(8) of Chapter 9-600.

(4) It shall be considered a rebuttable presumption of retaliation if a parking employer or any other person takes an adverse action against a parking employee within 90 calendar days of the employee's exercise of rights protected in this Chapter or the filing of a complaint under Section 9-601(8) of Chapter 9-600.

§ 9-4706. Notice.

(1) Parking employers shall post and keep posted, in conspicuous and accessible places on the premises of the parking employer where notices to employees are customarily posted, a notice, to be prepared or approved by the Agency, setting forth the rights and privileges provided under this Chapter, stating that retaliation against parking employees for exercising such rights is prohibited, and providing such other information as the Agency may require.

§ 9-4707. Parking employer records.

(1) Parking employers shall keep records necessary to demonstrate compliance with this Chapter, including but not limited to written explanations for each discharge, and business records purporting to justify discharges for bona fide economic reason(s). Parking employers shall retain such records for a period of two years, and shall allow the Agency access to such records, with appropriate notice and at a mutually agreeable

time, to monitor compliance with the requirements of this Chapter. If a parking employer does not maintain or retain adequate records documenting compliance, or does not allow the Agency reasonable access to such records within 30 days of the Agency's request, it shall be presumed that the parking employer has violated the Chapter, absent clear and convincing evidence otherwise, in any enforcement action.

§ 9-4708. *Enforcement and Penalties.*

(1) Agency Enforcement.

(a) A parking employee or other person may file a complaint with the Agency for any violation of this Chapter. The Agency may also conduct an investigation on its own initiative.

(b) The Agency shall maintain as confidential the identity of any complainant unless disclosure of such complainant's identity is necessary for resolution of any investigation by the Agency, or otherwise required by law. The Agency shall, to the extent practicable, notify such complainant that the Agency will be disclosing his or her identity prior to such disclosure.

(c) Upon receiving a complaint alleging a violation of this Chapter, or upon its own initiative, the Agency shall investigate alleged violations of this Chapter. The Agency may designate representatives to inspect worksites and access records required to be maintained under Section 9-4707. The Agency shall have the power to subpoena records and testimony from any party to a complaint. Such records shall be provided to the Agency within thirty (30) days after receipt of the subpoena.

(d) The Agency shall keep complainants reasonably notified regarding the status of their complaint and any resulting investigation and shall notify complainants of any final decision of the Agency, including any mediation result, with respect to the complaint.

(e) Whenever the Agency finds that a violation of this Chapter has occurred, it shall issue to the offending parking employer a notice of violation and may seek to resolve violations by mediation.

(f) The Agency shall have the power to impose penalties and fines for violations of this Chapter and to provide or obtain appropriate relief. Remedies shall include reinstatement, restoration of hours, other injunctive relief, back pay and benefits, any other damages suffered as a result of the parking employer's violation of this Chapter, and reasonable attorney's fees and costs. In addition, the Agency may impose on the parking employer liquidated damages up to a maximum of \$2,000.

(h) It shall be a Class III offense under § 1-109(3) of this Code for a parking employer to retaliate against a parking employee for any activity protected under this Chapter or Section 9-601(8) of Chapter 9-600. All other violations of this Chapter shall be Class II offenses under § 1-109(2) of this Code.

(2) Civil Action.

(a) The Agency, the City Solicitor, any person aggrieved by a violation of this Chapter, or any entity a member of which is aggrieved by a violation of this Chapter, may bring a civil action in a court of competent jurisdiction against a parking employer for violations of this Chapter.

(b) If during the pendency of a determination by the Agency, prior to the issuance of a final decision, a complainant parking employee brings a private action under this Ordinance in a court of competent jurisdiction, seeking relief based upon the same facts and allegations as the complainant employee's complaint

under this Chapter, or affirmatively or by consent opts to participate in any such litigation, that complainant employee's complaint to the Agency shall be deemed withdrawn with respect to any respondent parking employer named as a defendant in such court action. This Section shall be interpreted narrowly so as to leave unaffected any cumulative rights which were not the subject of the complainant employee's complaint.

(c) Nothing in this Chapter or its implementing regulations shall be construed to require a complaint to be filed with the Agency before bringing an action in court or before any other governmental agency.

(d) Upon a complainant's prevailing in an action brought pursuant to this Section, the court shall order reinstatement, restoration of hours, other injunctive relief, back pay and benefits, any other damages suffered as a result of the parking employer's violation of this Chapter, and reasonable attorney's fees and costs. In addition, the court may impose on the parking employer liquidated damages up to a maximum of \$2,000.

(3) Limitations. The limitations period for an agency complaint or a civil action brought pursuant to this Chapter shall be two (2) years from the date the plaintiff knew or should have known of the violation.

§ 9-4709. Advisory Group.

The Agency is authorized to establish a working group consisting of members of the Administration, City Council, parking employees, and a representative group of other affected stakeholders to provide advice regarding implementation of this Chapter, including regulations promulgated under this Chapter.

§ 9-4710. Regulations.

The Agency is authorized to coordinate the implementation, administration, and enforcement of this Chapter, and shall promulgate such regulations or guidelines as it may deem necessary for such purposes.

SECTION 2. Effective Date. This Ordinance shall take effect ninety (90) days after becoming law.

Explanation:

Italics indicate matter added.