LAW360 Employment Authority

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Business Groups Urge 2nd Circ. To Ax NYC Just Cause Laws

By **Grace Elletson**

Law360 (June 30, 2022, 2:15 PM EDT) -- The U.S. Chamber of Commerce and a group of business advocacy organizations urged a Second Circuit panel to dismantle New York City laws instituting just cause firing protections for fast food workers, arguing the laws are preempted by the National Labor Relations Act.

The business groups filed an amicus brief with the court Wednesday in support of the Restaurant Law Center and the New York State Restaurant Association, which have appealed a district court's ruling letting the laws stand. The business groups said the firing protections legislate working conditions that would otherwise be determined in collective bargaining, a clear violation of the NLRA.

"The city of New York's just cause law represents an extraordinary and novel intrusion into the relationship between employer and employee," **the business groups said**. In addition to the U.S. Chamber of Commerce, the brief was signed by the National Federation of Independent Business, the Retail Litigation Center Inc. and the Business Council of New York State Inc.

The just cause protections, **signed into law** by former Mayor Bill de Blasio in January 2021, require fast food chains that operate 30 or more locations nationally to abide by certain requirements before laying off or firing employees.

Under the laws, fast food chains must enact a progressive discipline system before firing workers, the businesses are required to hire back laid-off workers before hiring new employees, and layoffs can occur only when there is a "bona fide economic reason" to do so.

The restaurant groups challenged the laws in federal court in May 2021, but the organizations lost their bid when the city was awarded summary judgment in February. They filed their appeal in March and **have since argued** that the lower court erred in its decision when it found that the laws are comparable to minimum labor standards, such as the minimum wage, and therefore are not preempted by the NLRA.

The business groups largely echoed the restaurant groups' arguments in their appeal. The business groups said the laws are squarely preempted by the Machinists doctrine, established in the 1976 U.S. Supreme Court case International Association of Machinists and Aerospace Workers v. Wisconsin Employment Relations Commission.

That doctrine prevents local governments from enacting laws that intrude on the traditional bargaining and unionization process, and it should be applied to New York City's just cause laws, the groups said.

"By imposing certain detailed terms of a collective bargaining arrangement on one particular subset of employers, the just cause law violates that fundamental principle of labor law," the business groups said.

They also said that the city has not identified any intrastate fast food chains that would be affected by the just cause laws. This plainly shows that the protections discriminate against interstate fast food chains by burdening them with extensive regulations, the groups argued. The U.S. Constitution's commerce clause prohibits this discrimination against interstate commerce, the groups said.

The district court's ruling presents a slippery slope by finding that "'substantive labor standards'" are never preempted when they do not regulate the collective bargaining process, the groups said. That view will enable other local governments to determine the outcome of labor disputes by codifying one party's bargaining position into law, the groups said.

Lev Ginsburg, general counsel for the Business Council of New York, said his organization wanted to join the amicus brief because it is concerned that legislative bodies in the state are overreaching into employer and employee disputes.

"We've also seen them begin with single industry groups, like fast food," Ginsburg said. "And then of course it will eventually bleed across the board."

Karen Harned, executive director of NFIB's Small Business Legal Center, said in a news release about the amicus brief that the just cause laws impose significant and costly burdens on small business owners.

"Small businesses, especially restaurants, are managing an ongoing staffing shortage and the city law only exacerbates that problem," Harned said. "We urge the Court of Appeals to reverse the district court's decision."

Counsel representing the business groups did not immediately respond to requests for comment, nor did representatives of the U.S. Chamber of Commerce and the Retail Litigation Center. Counsel for the restaurant groups and the city also did not immediately respond to requests for comment.

The business groups are represented by Melissa Arbus Sherry and Peter E. Davis of Latham & Watkins LLP and by Stephanie A. Maloney of the U.S. Chamber Litigation Center.

The restaurant groups are represented by William R. Peterson, James D. Nelson and Leni D. Battaglia of Morgan Lewis & Bockius LLP and by Angelo I. Amador of the Restaurant Law Center.

The city is represented by Elina Druker of the New York City Law Department.

The case is Restaurant Law Center et al. v. City of New York, case number 22-491, in the U.S. Court of Appeals for the Second Circuit.

--Editing by Khalid Adad.
