LAW360®

Portfolio Media. Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

NYC Defends Fast-Food Just Cause Law At 2nd Circ.

By **Braden Campbell**

Law360 (September 22, 2022, 3:54 PM EDT) -- A law making it tougher for New York City fast-food restaurants to fire workers neither encroaches on federal labor law nor unfairly boosts local businesses over national chains, the city told the Second Circuit, urging the court to reject an industry challenge.

The city **filed a brief Wednesday** calling on the court to affirm dismissal of the Restaurant Law Center's suit over last year's amendment adding just cause firing language to its fair workweek law, countering the group's National Labor Relations Act preemption and dormant commerce clause claims.

New York enacted the law to give a vulnerable segment of the workforce minimal protections against unfair firing, not to interfere with the power balance between labor and management or hinder national chains relative to the smaller businesses it exempts, the city said.

"The Wrongful Discharge Law is not preempted because it is a substantive minimum labor standard that does not regulate the process or mechanics of labor dispute resolution," the city said. "And the law — which applies only to chains with 30 or more locations — does not violate the dormant commerce clause because it is a regulation of an in-state labor market that does not discriminate against out-of-state commerce."

The Restaurant Law Center — a legal affiliate of the National Restaurant Association — and the New York State Restaurant Association are appealing a February ruling by Southern District of New York Judge Denise Cote **rejecting their challenge** to the Wrongful Discharge Law.

The measure, signed into law in January 2021, amended a 2017 law making fast-food businesses give workers advance notice of their schedules to bar these businesses from firing workers without "just cause," a protection often included in union contracts. The law applies to fast-food businesses that are part of chains with more than 30 locations across the country.

The groups called the measure "an unprecedented intrusion into the core of the employer-employee relationship" **in a June brief**. The groups argued the law violates the dormant commerce clause because the 30-location trigger gives local employers an edge over national competition and is preempted by the NLRA because it imposes job protections that are typically fodder for union negotiations.

The preemption portion of the case leans on the so-called Machinists doctrine, named for a case in which the U.S. Supreme Court held that the NLRA blocks states and cities from meddling in the "free play of economic forces" by tipping the scales of labor relations toward either party.

The city argued Wednesday that the measure is the sort of "minimum labor standard" the Supreme Court and others have said is safe from the doctrine. The city compared its law to others that have withstood Machinists challenges, such as laws making employers pay severance to laid-off workers when closing plants and setting minimum wages for home care aides performing Medicaid-reimbursed work.

"It is a statutory minimum-benefit requirement … that mandates a baseline benefit for all fast-food workers at covered establishments — whether unionized or not — by placing limits on permissible terminations or shift-reductions," the city said.

Nor does the measure violate the dormant commerce clause, the city said. The dormant commerce clause is a Supreme Court reading of the commerce clause that limits state and local laws "aimed at giving a competitive advantage to in-state businesses," according to the city's brief. Under this doctrine, laws that "clearly discriminate" against out-of-state businesses on their face, by intent or effect, are illegal.

The law does not discriminate on its face because it applies equally to in-state and out-of-state restaurants operating in New York City, in its purpose because it was not intended to hamper national chains, or in its effect because the groups haven't shown any local competitors are getting a boost, the city said.

Representatives for the parties did not immediately respond Thursday to requests for comment.

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

The city is represented by Sylvia O. Hinds-Radix, Richard Dearing, Claude Platton and Elina Druker of the Corporation Counsel of the City of New York.

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.

--Additional reporting by Grace Elletson. Editing by Nick Petruncio.
