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NYC Bill Continues Expansion Of Commercial Tenant Rights

By **Adam Lindenbaum and Peter Kane** (October 16, 2019, 4:54 PM EDT)

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On Sept. 25, the New York City Council passed Introductory Bill 1410-B. Introduced by Bronx City Council member Vanessa L. Gibson, 1410-B seeks to expand and strengthen the existing protections against commercial tenant harassment as codified in New York City Administrative Code Sections 22-901 and what follows, which have been part of New York City law since June 28, 2016.

1410-B will officially be enacted into law upon the mayor's signature, or by being returned by the mayor unsigned and without a veto. Upon its enactment, 1410-B will become effective immediately.

1410-B broadens the current definition of "commercial tenant harassment" to include an act or omission by or on behalf of a landlord that would reasonably cause a commercial tenant to vacate their property or surrender or waive any rights under their lease or other rental agreement. The proposed addition of "would reasonably" cause replaces the existing language of "is intended to" cause.

The bill expands the current provisions of law to include the following additional categories of acts or omissions as part of the definition of commercial tenant harassment: (1) threats against a commercial tenant based on a person's actual or perceived age, race creed, color, national origin, gender, disability, marital status, partnership status, caregiver status, uniformed service, sexual orientation, alienage or citizenship status, status as a victim of domestic violence, status as a victim of a sex offenses or stalking; (2) requests for identifying documentation that would disclose the citizenship status of a commercial tenant; and (3) unreasonable refusal to cooperate with a commercial tenant's permitted repairs or construction activities.

Such new categories of harassment are in addition to the previously existing grounds that include the use of force or implied threats, causing interruptions or discontinuances of essential services, commencing frivolous court proceedings against the tenant, removing a commercial tenant's property, removing the entrance door to the tenant's premises or otherwise tampering with the entrance or locks, preventing access to the premises to tenant or its invitees, commencing unnecessary construction or repairs to or around the covered property, or engaging in other repeated or enduring acts or omissions that substantially interfere with the tenant's business.

Under the 2016 version of the commercial tenant harassment law, tenants maintain a private right of action for harassment in any court of component jurisdiction. Such courts maintain the authority to issue restraining orders against further harassment (among other kinds of injunctive or equitable relief), and to award the tenant compensatory and punitive damages including attorney fees and costs.

1410-B does not amend such private remedies, yet greatly expands the civil monetary penalties the courts may impose by increasing the penalty range for a finding of harassment from $1,000-$10,000 currently to $10,000-$50,000.

1410-B further authorizes courts to issue an order directing the New York City Department of Buildings not to approve certain categories of proposed construction documents for the property (or to renew existing work permits) where the landlord is found to have engaged in commercial tenant harassment. Such court-ordered directive to the DOB can be for a period of time determined to be appropriate given the facts and circumstances of the harassment.

With respect to such a court-ordered DOB directive, 1410-B incorporates the defined term "covered categories of work," which includes: (1) demolition of all or part of the property; (2) change of use or occupancy or all or part of the property; and (3) change to the layout, configuration or location of any portion of the property.

However, the term "covered categories of work" expressly excludes the following categories or work: (1) work conducted to make a portion of the property accessible to people with disabilities; (2) work conducted solely to remediate hazardous or impending hazardous conditions, or to protect public health and safety; (3) work performed pursuant to a lease or other agreement executed prior to such court order; (4) work performed pursuant to an agreement with the commercial tenant; and (5) other categories of work excluded by DOB rules.

The provisions of 1410-B have no bearing on the current commercial tenant harassment laws that specifically provide that a commercial tenant is not relieved of its obligations to pay rent for which it is otherwise liable by reason of the harassment. Any monetary remedy that may be awarded to a commercial tenant victimized by harassment shall be reduced by any amount of delinquent rent or other sums due to the landlord.

The impact of the increased administrative penalties and the ability for a complaining commercial tenant to halt a landlord's construction pursuant to 1410-B could have wide-reaching implications for New York City real estate owners. On the one hand, a tenant's ability to halt a landlord's construction at the subject building provides tremendous leverage to a tenant complaining of harassment. For instance, an owner of real property that is a current or prospective development site should recognize the impact that harassment of a commercial tenant could have upon its construction schedule if halted at the DOB level.

On the other hand, the law leaves the implementation of such remedies for harassment to the overburdened New York state and city courts. Commercial tenants with a harassment claim will need to navigate the backlogged judiciary and expend legal fees to get to trial just like any other litigant.

The real effect of 1410-B will depend on the facts and circumstances of each case, and it is noteworthy that 1410-B did not go so far to compel a commercial landlord to renew the tenancy of a harassed tenant similar to the protections afforded to residential tenants under Real Property Law Section 223-b.

Furthermore, an earlier version of the bill, Bill 1410-A, that was being entertained by the City Council in early 2019 included an additional requirement that landlords first obtain a certification of no harassment, or CONH, from all commercial tenants prior to obtaining any DOB work permits for renovation or demolition work at a particular property. The CONH requirement was dropped from the final version of 1410-B, and is not part of the proposed law awaiting signature by the mayor.

In conclusion, the proposed amendments of 1410-B include new kinds of commercial tenant harassment and substantially increase the monetary fines and administrative penalties that can be levied against landlords and their property managers or agents. Given the current political climate following the New York State Legislature's broad expansion of tenants' rights by enacting the Housing Stability and Tenant Protection Act in June, it is highly likely that 1410-B will be enacted into law.

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