SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARTHUR F. ENGORON** **PART** **IAS MOTION 37EFM**

Justice

---X

INDEX NO. 655987/2018

MOTION DATE 01/28/2020

MOTION SEQ. NO. 003 004

INTERNATIONAL FRANCHISE ASSOCIATION, RESTAURANT LAW CENTER, THE NEW YORK STATE RESTAURANT ASSOCIATION,

Plaintiffs,

- v -

CITY OF NEW YORK, STEVE VIDAL, VIOLETA DAUZE, EDWIN CABRERA, SHADEI GORDON, RAYMOND ORTIZ, PRINCESS WRIGHT,

Defendants.

---X

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 46, 47, 48, 49, 50, 51, 62, 64, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 109, 112, 113

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 52, 53, 54, 55, 56, 57, 58, 59, 60, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 110, 114

were read on this motion to/for DISMISS.

Upon the foregoing documents, defendants' motions to dismiss are granted, and plaintiffs' cross-motions for summary judgment are denied.

The papers are somewhat long, but this decision will be fairly short.

Over the course of the last century and a half or so New York State has enacted certain laws designed to protect workers. In particular, State law imposes certain minimum wage requirements and certain rules about how many hours a worker can work per day and week. The City law at issue herein, Title 20, Chapter 12 of the New York City Administrative Code, sometimes known as the New York City Fair Workweek Law ("FWWL"), simply put, requires employers to estimate worker schedules in advance; to provide advance notice of workers' schedules; to give current workers priority in working additional shifts; and to pay certain "premiums" for "clopenings" i.e., for working adjacent closing/opening shifts.

Plaintiffs claim that the FWWL is invalid because of "conflict preemption" and "field preemption." They have provided useful descriptions of both, from case law. "Preemption applies both in cases of express conflict between local and State law and in cases where the State has evidenced its intent to occupy the field." Albany Area Builders Ass'n v Town of Guilderland, 74 NY2d 372, 377 (1989). "[I]f the State has demonstrated an intent to preempt an

entire field" it has thereby chosen to "preclude any further local regulation." Ardizzone v Elliott, 75 NY2d 150, 155 (1989). "Where the State has preempted the field, a local law regulating the same subject matter is deemed inconsistent with the State's transcendent interest, whether or not the terms of the local law actually conflict with a State-wide statute." Albany Area Builders Ass'n, 74 NY2d at 377. "Conflict preemption occurs where local laws prohibit what would be permissible under State law or impose prerequisite additional restrictions on rights under State law, so as to inhibit the operation of the State's general laws." Patrolmen's Benevolent Assn. of the City of N.Y., Inc. v City of New York, 142 AD3d 53, 61-62 (1st Dept. 2016). Simply put, if State law permits something, a locality cannot prohibit it; and if State law prohibits something, a locality cannot permit it.

One thing State law prohibits this Court from doing is passing judgment on, or second-guessing, the wisdom of the FWWL. It appears to be a well-intentioned effort to protect vulnerable workers from exploitation by unpredictable scheduling. It also interferes with freedom of contract; distorts capitalism; and is surprisingly complex, arguably unwieldy, and only problematically enforceable. But the City has enacted it, and the question is whether the State has preempted it.

This Court finds that plaintiffs have standing to challenge it, for the reasons they argue in their papers.

However, their challenge falls flat. Hornbook law declares that all laws enjoy a presumption of constitutionality.

Current State regulation is a little this (minimum wage regulation), a little that (worker hours), and does not include an overarching statement of intent to cover the waterfront. The FWWL is narrowly tailored, regulates a few discreet facets of employer-employee relations (mainly "predictive scheduling"), and does not infringe on State prerogatives. State and City regulation are harmonious.

Lawyers learn in law school that states can provide their citizens greater protections than the federal government does. If the United States Congress bans a certain pesticide, individual states can ban others. New York City has been called "The City that Never Sleeps." Its government could have concluded that its citizens needed "predictive scheduling," even though the State government has not concluded that all State citizens do. This City regulation takes nothing away from what the State government has done. Mandating extra compensation for a workday of more than 10 hours has nothing to do with "predictive scheduling," other than they can both be labelled "scheduling." Furthermore, the obvious goal, and effect, of the "premiums" under the FWWL is to encourage "predictive scheduling," not to interfere with State minimum wage law. And there is no point in getting bogged down in esoteric arguments about whether a "premium" is a "wage." Of course, minimum wage law must include a broad definition of "wage." But the "premiums" at issue here are to compensate for a particular harm, and to deter it, not to increase somebody's hourly wage.

As defendants argue, the FWWL specifically exempts from coverage situations that would violate any other law, such as those governing underage workers or imposing restrictions on workers' hours.

The record-keeping provisions of State and City law do not conflict, even if they may overlap somewhat.

See DJL Rest. Corp. v City of New York, 96 NY2d 91, 94 (2001) ("Local laws of general application--which are aimed at legitimate concerns of a local government--will not be preempted if their enforcement only incidentally infringes on a preempted field.").

In Garcia v New York City Dept. of Health & Mental Hygiene, 31 NY3d 601 (2018), the Court of Appeals found no "field preemption" of a local rule requiring that children in day-care be vaccinated against "the flu" even though the State had enacted a "relatively comprehensive scheme for school vaccinations." "[T]he mere fact that the Legislature has enacted specific legislation in a particular field does not necessarily lead to the conclusion that broader agency regulation of the same field is foreclosed." Id. at 620. Also, "conflict preemption is generally found only when the State specifically permits the conduct prohibited at the local level or there is some other indication that deviation from state law is prohibited." Id. at 617-18.

In sum, this Court agrees with defendants (Reply Brief at 13) that the FWWL does not prohibit what the State allows and does not allow what the State prohibits, and employers can comply with both.

Thus, defendants' motions to dismiss are granted; plaintiffs' cross-motions for summary judgment are denied; and the clerk is hereby directed to enter judgment dismissing this action with prejudice.

2/13/2020
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:	[X] CASE DISPOSED		[ ] NON-FINAL DISPOSITION	
APPLICATION:	[X] GRANTED	[ ] DENIED	[ ] GRANTED IN PART	[ ] OTHER
	[ ] SETTLE ORDER		[ ] SUBMIT ORDER	
CHECK IF APPROPRIATE:	[ ] INCLUDES TRANSFER/REASSIGN		[ ] FIDUCIARY APPOINTMENT	[ ] REFERENCE