ORDINANCE 2023-
BE IT ENACTED by the Common Council of the City of Ithaca as follows:

**Section 1. Findings of Fact.**
The Common Council makes the following findings of fact:

**Section 2. Creation of Chapter 321 "Workers Rights."**
The City of Ithaca Municipal Code is hereby amended to add a new Chapter 321, entitled "Workers Rights." Such Chapter shall read as follows:

## Chapter 321 - Workers Rights

### Article I- General Provisions

#### § 321-1. Workers Rights Commission.

A. There shall be a workers rights commission, consisting of no fewer than three members appointed by the common council. The members shall select from among their number a chair.

B. The Mayor shall appoint a director of worker rights who shall provide administrative assistance to such commission and assist aggrieved persons with the filing of complaints. No person shall be barred from being appointed the director of worker rights by nature of holding another city position.

C. The commission shall appoint:

(1) hearing officers with the power to hear and adjudicate complaints by any person aggrieved by any violation of this chapter and order appropriate relief; and

(2) such additional persons as it deems necessary to advise its members, prepare materials on its behalf, or conduct research and develop programs for education about the provisions of this chapter.

D. The Commission may, after an opportunity for public comment, adopt rules altering the requirements of this chapter for employers in different sectors.

E. Members of the commission and any hearing officers or other persons appointed thereby shall serve without compensation except for reimbursement for actual and necessary reasonable expenses incurred as a result of such service.

F. Any person alleging a violation of this chapter may file a complaint with the commission within two years of the date the person knew or should have known of the alleged violation. Upon receiving such a complaint, the director of worker rights shall schedule it for a hearing before a hearing officer.

G. Where the subject of a complaint has failed to appear on a designated hearing date, such failure to appear shall be deemed, for all purposes, to be an admission of liability for the purposes of such violation and shall be grounds for rendering a default decision and order imposing a penalty up to the maximum amount prescribed under law for the violation charged.

H. Any party may within 30 days of the hearing officer rendering a decision request the commission review en banc the determination of a hearing officer. Any decision not appealed within such period or any en banc decision of the commission shall, except as otherwise provided, finally and irrevocably decide all the issues raised in the proceedings before it, unless any party seeks judicial review of any en banc decision in the manner provided in article seventy-eight of the civil practice law and rules.

I. The commission shall not participate in proceedings for judicial review of its decisions. The record to be reviewed in such proceedings for judicial review shall include but not be limited to the record of the complaint submitted to the commission, the decisions of the hearing officer and commission, the stenographic transcript of the hearing before the hearing officer and commission and any exhibit or document admitted into evidence at any proceeding before the hearing officer or commission.

J. If a hearing officer or commission member has a personal, business or other relationship or association with a party to or a witness or counsel in a case, the member shall disclose such circumstances to the Chair and recuse themself from deliberations or action in connection with that case. If the recusal of a commission member would result in fewer than three commission members participating in the review of the determination of a hearing officer, the unrecused members of the commission shall appoint from among the hearing officers who neither are recused in such case or participated in prior deliberations or actions to sit in the en banc consideration until there are three members of the panel.

**§ 321-2. Enforcement by the City Attorney.**

A. When a final disposition has been made finding a violation of this chapter and the person found violating this chapter has failed to comply with the payment or other terms of the remedial order, and provided that no proceeding for judicial review shall then be pending and the time for initiation of such proceeding shall have expired, the city attorney shall file a copy of such order containing the amount found to be due with the clerk of the county of residence or place of business of the person found to have violated this section, or of any principal or officer thereof who knowingly participated in the violation of this section. The filing of such order shall have the full force and effect of a judgment duly docketed in the office of such clerk. The order may be enforced by and in the name of the mayor in the same manner and with like effect as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

B. Where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of this chapter, the city attorney may commence a civil action on behalf of the city in a court of competent jurisdiction. The city attorney shall commence such action by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, relief for employees or civil penalties set forth in this article, and any other appropriate relief. In any civil action commenced pursuant to this subdivision, the trier of fact may impose a civil penalty of not more than $15,000 for a finding that an employer has engaged in a pattern or practice of violations of this chapter.

C. Nothing in subdivision b of this section prohibits a person alleging a violation of this chapter from filing a complaint or a civil action pursuant to this article based on the same facts pertaining to such a pattern or practice, provided that a civil action pursuant to subdivision b shall not have previously been commenced.

**§ 321-3. Retaliation.**

No person shall take any adverse action against an 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. Taking an adverse action includes threatening, intimidating, disciplining, discharging, demoting, suspending or harassing an employee, reducing the hours or pay of an employee, informing another employer that an employee has engaged in activities protected by this chapter, and discriminating against the employee, including actions related to perceived immigration status or work authorization. An employee need not expressly refer to this chapter or the rights enumerated herein to be protected from retaliation.

**§ 321-4. Specific administrative remedies for employees or former employees.**

For violations of this chapter, the workers rights commission may grant the following relief to employees or former employees:

A. All compensatory damages and other relief required to make the employee or former employee whole;

A. For each violation of Section 321-3:

(1) Rescission of any discipline issued, reinstatement of any employee terminated, and payment of back pay and an additional and equal amount as liquidated damages for any loss of pay or benefits resulting from discipline or other action taken in violation of section 321-3;

(2) $500 for each violation not involving termination; and

(3) $2,500 for each violation involving termination.

B. For each violation of Section 321-11:

(1) Reinstatement or restoration of hours of the employee, unless waived by the employee;

(2) $500 for each violation;

(3) An order directing compliance with section 321-11;

(4) Rescission of any discipline issued;

(5) Payment of back pay and an additional and equal amount as liquidated damages for any loss of pay or benefits resulting from the wrongful discharge; and

(6) Any other equitable relief as may be appropriate.

D. For each violation of sections 321-12, 321-13 or 321-14:

(1) $500 for each violation; and

(2) An order directing compliance with section 321-12, 321-13 or 321-14.

E. For each violation of section 321-15:

(1) $500; and

(2) Payment of any severance pay due and owing resulting from the violation of section 321-15 and an additional and equal amount as liquidated damages;

F. The relief authorized by this section shall be imposed on a per employee and per instance basis for each violation.

**§ 321-5. Specific civil penalties payable to the city.**

A. For each violation of this chapter, an employer is liable for a penalty of $500 for the first violation and, for subsequent violations that occur within five years of any previous violation of this chapter, up to $1,000 for the second violation and up to $1,500 for each succeeding violation.

B. The penalties imposed pursuant to this section shall be imposed on a per employee and per instance basis for each violation.

C. The penalties recovered under this section shall be budgeted into a separate account. Such account shall be used solely to support worker protection education and enforcement activities, with 50 percent of these penalties reserved for grants to community groups or labor unions for outreach and education about rights under the city's labor standards.

**§ 321-6. Private cause of action.**

A. Claims. Any person, including any organization, alleging a violation of the following provisions of this chapter may bring a civil action, in accordance with applicable law, in any court of competent jurisdiction:

(1) Section 321-3;

(2) Section 321-11;

(3) Section 321- 12;

(4) Section 321-13;

(5) Section 321-14; or

(6) Section 321-15.

B. Remedies. Such court may**,** in the case of a public enforcement action pursuant to paragraph subdivision f of this section, order payment of the civil penalties set forth in section 321-5, and in any action may order compensatory, injunctive and declaratory relief, including the following remedies for violations of this chapter:

(1) Rescission of any discipline issued in violation of section 321-3;

(2) Reinstatement of any employee terminated in violation of section 321-3;

(3) Payment of back pay and an additional and equal amount as liquidated damages for any loss of pay or benefits resulting from discipline or other action taken in violation of section 321-3;

(4) An order directing compliance with the requirements set forth in sections 321-12, 321-13 or 14;

(5) Payment of any severance pay due and owing resulting from a violation of section 321-14 and an additional and equal amount as liquidated damages;

(6) Other compensatory damages and any other relief required to make the employee whole; and

(7) Reasonable attorney's fees and costs.

C. For each violation of section 321-11, the court shall order reinstatement or restoration of hours of the employee, unless waived by the employee, payment of back pay for any loss of pay or benefits resulting from the wrongful discharge together with an additional and equal amount as liquidated damages, and shall order the employer to pay the

reasonable attorneys' fees and costs of the employee. The court may, in addition, grant the following relief: $500 for each violation, an order directing compliance with section 321-11, rescission of any discipline issued, payment of back pay for any loss of pay or benefits resulting from the wrongful discharge, punitive damages, and any other equitable relief as may be appropriate.

D. Statute of limitations. A civil action under this section shall be commenced within two years of the date the person knew or should have known of the alleged violation.

E. Relationship to commission action.

(1) Except where the action seeks the imposition of civil penalties, any person filing a civil action shall simultaneously serve notice of such action and a copy of the complaint upon the workers right commission. Failure to so serve a notice does not adversely affect any plaintiff's cause of action.

(2) An employee need not file a complaint with the workers rights commission before bringing a civil action; however, no person shall file a civil action after filing a complaint with the workers rights commission unless such complaint has been withdrawn or dismissed without prejudice to further action.

(3) No person shall file a complaint with the workers rights commission after filing a civil action unless such action has been withdrawn or dismissed without prejudice to further action.

F. Notwithstanding the foregoing subdivision, any current or former employee or labor organization as defined in section 321-10 may initiate a public enforcement action seeking to recover civil penalties and injunctive and declaratory relief as a relator on behalf of the City for a violation affecting current or former employees. Any civil penalties imposed as a result of an enforcement action described in this paragraph shall be distributed 65 percent to the City, and 35 percent to the relator to be distributed to the employees affected by the violation, including a service award that reflects the burdens and risks assumed by the relator in prosecuting the action. The share of penalties recovered for the City under this subsection shall be budgeted into a separate account. Such account shall be used solely to support worker protection education and enforcement activities, with 50 percent of these penalties reserved for grants to community groups or labor unions for outreach and education about rights under the city's labor standards. The right to bring an action as a relator under this paragraph shall not be contravened by any private agreement. If any part of an employee relator's claim under this part is ordered or submitted to arbitration, or is resolved by way of final judgment, settlement or arbitration in favor of the employee, the employee relator retains standing to maintain an action for violations suffered by other employees in any forum having jurisdiction over the claim.

**Article II- Wrongful Discharge**

**§ 321-10. Definitions.**
For the purposes of this article, the following definitions shall apply:

**ADJUNCT INSTRUCTOR**

A part-time faculty member or instructor who teaches not less than one course at a private institution of higher education or postsecondary vocational institution.

**BIOMETRIC DATA**

A physiological, biological or behavioral characteristic, including but not limited to an iris scan, fingerprint, a hand scan, voiceprint and thermal or facial characteristics that can be used alone or in combination with each other, or with other information, to establish individual identity.

**BIOMETRIC TECHNOLOGY**

Either or both of the following: (i) a process or system that captures biometric data of an individual or individuals; (ii) a process or system that can assist in verifying or identifying an individual or individuals based on biometric data.

**BONA FIDE ECONOMIC REASON**

Either or both of the following: (i) the full or partial closing of the employer's operations at the establishment where the discharge is to occur; (ii) a decline in revenue over no less than a quarter affecting operations staffed by the discharged employee as demonstrated by the employer's business records; or (iii) an expected decline in at least 75% of the revenues supporting the discharged employee's position, but shall not include elimination of staff redundancy created by a merger or acquisition.

**DISCHARGE**

Any cessation of employment, including layoff, termination, constructive discharge, reduction in hours, and indefinite suspension, but excluding an employee quits under circumstances that do not constitute a constructive discharge

**EGREGIOUS MISCONDUCT**

Workplace conduct that is so outrageous, dangerous, or illegal that an employer cannot reasonably expect to correct it through progressive discipline.

**ELECTRONIC MONITORING**

The collection of information concerning employee activities, communications, actions, biometrics or behaviors by electronic means including, but not limited to, video or audio surveillance, electronic employee work speed data, and other means but shall not include any processes covered by section 52-c of the civil rights law as added by chapter 583 of 2021.

**EMPLOYEE WORK SPEED DATA**

Information an employer collects, stores, analyzes or interprets relating to an individual employee's or group of employees' pace of work, including, but not limited to, quantities of tasks performed, quantities of items or materials handled or produced, rates or speeds of tasks performed, measurements or metrics of employee performance in relation to a quota and time categorized as performing tasks or not performing tasks. Notwithstanding the preceding sentence, it does not include qualitative performance assessments, personnel records or itemized wage statements, except for any content of those records that includes employee work speed data.

**EMPLOYER**

Any person or entity covered by the definition of "employer" set forth in subdivision 6 of section 651 of the labor law or any person or entity covered by the definition of "employer" set forth in in subsection (d) of section 203 of title 29 of the United States code, except that where an employee is employed by a temporary staffing agency to perform work for a host employer, both the temporary staffing agency and the host employer shall be jointly and severally responsible for compliance with the requirements of this subchapter. Notwithstanding any other provision of this section, the term "employer" does not include (i) the United States government; (ii) the state of New York, including any office, department, independent agency, authority, institution, association, society or other body of the state including the legislature and the judiciary; or (iii) the city or any local government, municipality or county or any entity governed by section 92 of the general municipal law or section 207 of the county law.

**GEOFENCING TECHNOLOGIES**

The use of global positioning system or radio frequency identification technology to create a virtual geographic boundary, enabling software to trigger a response when a device enters or leaves a particular area.

**HOST EMPLOYER**

Any person that engages individuals through a temporary staffing agency to perform work.

**JUST CAUSE**

An employee's failure to satisfactorily perform job duties or misconduct that is demonstrably and materially harmful to the employer's legitimate business interests.

**LABOR ORGANIZATION**

Any labor union or any organization of any kind, or any agency or employee representation committee, association, group or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

**PROBATION PERIOD**

A defined period of time, not to exceed 90 calendar days from the first date of employment of an employee, within which employers and employees are not subject to the prohibition on wrongful discharge set forth in section 321-11.

**PROGRESSIVE DISCIPLINE**

A disciplinary system that provides for the accrual of disciplinary points, strikes, or some comparable system of graduated responses to an employee's failure to satisfactorily perform such employee's job duties, with the disciplinary measures ranging from mild to severe, depending on the frequency and degree of the failure.

**REDUCTION IN HOURS**

A reduction in an employee's hours of work totaling at least 15 percent of the employee's regular schedule or 15 percent of any weekly work schedule that was not requested or consented to by an employee in advance.

**TEMPORARY POSITION**

Employment pursuant to a written contract that specifies that the position is to end after a specified period of time, not to exceed six months unless the primary purpose of such position is educational, and where the employer can show that the work or need in question is expected to end, but excluding any employment as an adjunct instructor.

**TEMPORARY STAFFING AGENCY**

Any entity that employs, supplies, or assigns individuals to perform work, for a fee, to a host employer pursuant to an agreement between the temporary staffing agency and the host employer, regardless of the means or method of employing, supplying or assigning the individuals and including but not limited to entities that manage, assign or supply staffing through a digital application.

**§ 321-11. Prohibition on wrongful discharge.**

A. An employer shall not discharge an employee who has completed such employer's probation period except for just cause or a bona fide economic reason.

B. In determining whether an employee has been discharged for just cause, the fact-finder shall consider, in addition to any other relevant factors, whether:

(1) The employee actually knew of the employer's policy, rule, practice or performance standard that is the basis for progressive discipline or discharge;

(2) The employer provided the employee with relevant and adequate training to comply with the policy, rule, practice or performance standard that is the basis for progressive discipline or discharge;

(3) The employer's policy, rule, practice or performance standard, including the utilization of progressive discipline, was reasonable and applied consistently;

(4) The employer impermissibly relied on electronic monitoring;

(5) The employer disciplined or discharged the employee based on that employee's individual performance, and not because the employee exhibited lower performance than other employees;

(6) The employer undertook a fair and objective investigation into the job performance or misconduct; and

(7) The employee violated the policy, rule or practice, failed to meet the performance standard, or committed the misconduct that is the basis for progressive discipline or discharge.

C. Except where termination is for egregious misconduct, a termination shall not be considered based on just cause unless: (1) the employer has utilized progressive discipline; provided, however, that the employer may not rely on discipline issued more than one year before the purported just cause termination; and (2) the employer had a written policy on progressive discipline in effect at the workplace or job site and that was provided to the employee.

D. (1) Except where termination is for egregious misconduct, an employer may not discharge an employee unless the employer has provided the employee a written notice of potential discharge at least 30 days prior to discharge informing the employee of the performance issue or misconduct and the steps that the employee can take to avoid discharge, or of the bona fide economic reason that may be the basis for future discharge and the process the employee utilized to identify those employees subject to future discharge for such reason. Such notice shall include a copy of any materials, personnel records, data or assessments that the employer used to make the disciplinary decision.

(2) An employer that discharges an employee shall provide the employee written notice of discharge providing the precise reasons the employee was discharged, including the selection process in cases of discharge for bona fide economic reason, and, for discharges for just cause, itemizing each policy, rule, practice or performance standard that is the basis for discipline or discharge, each disciplinary step taken and the dates of such discipline. Such notice shall include a copy of any materials, personnel records, data or assessments that pertain to the reasons and events leading to discharge. If the employer is relying on data collected through electronic monitoring to make the discharge decision, the employer shall also provide any aggregated data collected on employees performing the same or similar functions at the same establishment for the six months prior to the discharge in question.

(3) In determining whether an employer had just cause or bona fide economic reasons for discharge, the fact-finder may not consider any reasons proffered by the employer that

were not included in such written notice of potential discharge and notice of discharge provided to the employee, and may not consider any extrinsic evidence proffered to prove just cause. Notwithstanding the preceding sentence, the fact-finder may consider any evidence proffered by an employee to disprove any reason proffered in a written notice of potential discharge or notice of discharge provided to the employee.

(4) Where an employer fails to timely provide a written notice of potential discharge and notice of discharge to an employee, the discharge shall not be deemed to be based on just cause or a bona fide economic reason.

E. The employer shall bear the burden of proving just cause or a bona fide economic reason by a preponderance of the evidence in any proceeding brought pursuant to this subchapter, subject to the rules of evidence as set forth in the civil practice law and rules or, where applicable, the common law.

F. In any proceeding brought pursuant to article I of this chapter, if an employer is found to have unlawfully discharged an employee in violation of this chapter the relief shall include an order to reinstate or restore the hours of the employee, unless waived by the employee, and, in any such proceeding brought pursuant to section 321-6 where an employer is found to have unlawfully discharged an employee in violation of this subchapter, the employer shall be ordered to pay the reasonable attorneys' fees and costs of the employee.

G. A discharge shall not be considered based on a bona fide economic reason unless supported by an employer's business records showing the reason for the full or partial closing of the employer's operations or the decline in revenue that justify the discharge.

H. An employer shall make reasonable efforts to offer reinstatement or restoration of hours, as applicable, to any employee discharged based on a bona fide economic reason within the previous twelve months, if any, before the employer may offer or distribute shifts to other employees or hire any new employees.

**§ 321-12. Right to Receive.**

A. A current employee shall have the right to request a copy of any policy, rule, practice, performance standard that may be used for the purposes of discipline and termination at least once a quarter.

   A. A current employee shall have the right to request a copy of any past disciplinary notices at least once a quarter.

   B. An employer shall provide the requested copies of policies, rules, practices, performance standards, and past disciplinary notices within seven days of any request.

**§ 321-13**. **Electronic monitoring.**

A. (1) Employers may not rely on data collected through electronic monitoring in discharging or disciplining an employee unless the employer can establish(i) there is no other practical means of assessing employee performance(ii) the employer previously provided notice to the employee of that monitoring as required by this section; and (iii) the employer has met the data access and accuracy requirements set forth in section 321-13.

(2) Employers that have established practical necessity for using data from electronic monitoring for assessing employee performance may not rely solely on such data but must also use other means of assessment such as manager observation or interviewing clients, customers or other employees to solicit feedback.

(3) When relying on electronic employee work speed data to discipline or discharge an employee, employers may not apply a performance standard that measures total output over an increment of time that is shorter than one day and may not discipline or discharge an employee based on failure to meet a daily performance standard if the employee did not complete their entire shift.

(4) Employers using electronic monitoring to measure increments of time within a day during which an employee is or is not meeting performance standards may not record or rely on such data in discharging or disciplining an employee unless it is gathered during a periodic performance review and so long as (i) the employee subject to the performance review has been given at least seven days advance notice of the exact timing of such review; (ii) such review has a duration time of no longer than three hours; and (iii) no other reviews of this kind have occurred in the previous ninety days.

B. Notwithstanding subdivision a, employers may not use data for discipline or discharge if such data is gathered using biometric technologies, video or audio recordings within the private home of an employee, applications or software installed on personal devices, or geofencing technologies.

C. Notwithstanding subdivision a, employers may use data gathered through electronic monitoring:

(1) To record the beginning or end of a work shift, meal break, or rest break;

(2) For non-employment-related purposes;

(3) To discharge or discipline an employee in cases of egregious misconduct or involving threats to the health or safety of other persons; or

(4) Where required by state or federal law.

D. An employer or agent thereof that is planning to electronically monitor an employee for the purposes of discipline or discharge shall provide the employee with notice that

electronic monitoring will occur prior to conducting each specific form of electronic monitoring. Notice shall include, at a minimum, the following elements:

(1) Whether the data gathered through electronic monitoring will be used to make or inform disciplinary or discharge decisions, and if so, the nature of that decision, including any associated performance standards;

(2) Whether the data gathered through electronic monitoring will be used to assess employees' productivity performance or to set productivity standards, and if so, how;

(3) The names of any vendors conducting electronic monitoring on the employer's behalf;

(4) A description of the dates, times, and frequency that electronic monitoring will occur;

(5) An explanation for why there is no other practical means of assessing employee performance;

(6) Notice of the employees' right to access or correct the data; and

(7) Notice of the administrative and judicial mechanisms available to challenge the use of electronic monitoring.

E. (1) Notice of the specific form of electronic monitoring shall be clear and conspicuous. A notice that states electronic monitoring "may" take place or that the employer "reserves the right" to monitor shall not be considered clear and conspicuous.

(2) An employer who engages in periodic electronic monitoring of employees for the purposes of discipline or discharge shall inform the affected employees of the specific events that are being monitored prior to the time the monitoring takes place. Data gathered from randomly-timed electronic monitoring or randomly selected from continuous electronic monitoring may not be used for the purposes of discipline or discharge.

(3) Notice of periodic electronic monitoring may be given after electronic monitoring has occurred only if necessary to preserve the integrity of an investigation of illegal activity or to protect the immediate safety of employees, customers or the public.

(4) An employer shall provide additional notice to employees when an update or change is made to third party vendors, the electronic monitoring, or in how the employer is using it.

F. Employers shall provide a copy of the disclosures required by this section to the commission at the time they are required to be disseminated to employees.

**§ 321-14. Data access and accuracy.**

A. An employer shall ensure that any data collected through electronic monitoring that may be used for the purposes of discipline or discharge is accurate and, where relevant, kept up to date**.**

B. (1) A current employee shall have the right to request a copy of any data collected through electronic monitoring and any associated performance standards that may be used for the purposes of discipline and termination at least once every seven days.

(2) An employer shall provide requested copies of any data collected through electronic monitoring and any associated performance standards within seven days of such a request.

C. (1) Employers using electronic monitoring to collect employee work speed data for the purposes of discipline or discharge must provide employees the opportunity to supplement that data to indicate any increments of time during which they are not performing work-related tasks and to indicate the reason that they are not performing work-related tasks during that time.

(2) Such opportunity must be made available to employees both at the time of data collection and after.

(3) Employers must give employees the option to record reasons for not performing tasks that include, at a minimum, the following: using the bathroom, taking meal breaks, responding to an emergency, injury, illness, fear of injury, disability, complying with local, state or federal laws or exercising workplace rights under local, state or federal laws.

D. (1) Employers using electronic monitoring to collect employee work speed data for the purposes of discipline or discharge must provide employees with the opportunity to review and request correction of such data both at the time of its collection and after.

(2) An employer that receives an employee request to correct inaccurate data collected through electronic monitoring shall investigate and determine whether such data is inaccurate.

(3) If an employer, upon investigation, determines that such data is inaccurate, the employer shall:

i. Promptly correct the inaccurate data and inform the employee of the employer's decision and action;

ii. Review and adjust, as appropriate, any disciplinary or discharge decisions that were partially or solely based on the inaccurate data and inform the employee of the adjustment; and

iii. Inform any third parties with which the employer shared the inaccurate data, or from which the employer received the inaccurate data, and direct them to correct it, and provide the employee with a copy of such action.

(4) If an employer, upon investigation, determines that the data is accurate, the employer shall inform the employee of the following:

i. The decision not to amend the data; and

ii. The steps taken to verify the accuracy of the data and the evidence supporting the decision not to amend the data.

**§ 321-15. Severance pay.**

A. Except as provided in subdivision d, any employer that discharges an employee shall pay such employee severance pay in accordance with this section, not later than 14 days after the date of the discharge, in an amount equal to the amount of severance pay accrued by the employee under subdivision b.

B. The amount of severance pay accrued by the employee under this subdivision shall be equal to one hour of the rate of pay of the employee determined under subdivision c:

(1) For every 12.5 hours worked by the employee for such employer, for the first 2,080 hours so worked; and

(2) For every 25 hours worked thereafter.

C. The rate of pay of an employee determined under this subdivision shall be the lesser of the regular rate of pay of the employee as determined under subdivision e of section 207 of title 29 of the United States code; or the threshold rate of pay used to determine whether an employee is a highly compensated employee for the purposes of determining whether such employee is exempt from sections 206 and 207 of title 29 of the United States code under paragraph 1 of subdivision a of section 213 of such title.

D. An employer shall not be required to pay severance pay under subdivision a to an employee who is discharged for egregious misconduct or egregious failure to perform their duties. Where an employee has been discharged unlawfully and subsequently reinstated, any severance pay paid may be credited against any back pay for loss of pay or benefits resulting from the wrongful discharge.

E. Severance pay shall be exclusive of final compensation due an employee upon separation under any other state or local law.

**§ 321-15. Exceptions.**
This article shall not:

A. Apply to any employee who is:

(1) Currently employed within a probation period;

(2) Discharged at the end of a temporary position provided that the employer does not hire another employee to perform similar work for 180 days after the end of the temporary position; or

(3) Covered by a valid collective bargaining agreement to the extent such agreement expressly waives a provision of this article.

B. Limit or otherwise affect the applicability of any right or benefit conferred upon or afforded to an employee by the provisions of any other law, regulation, rule, requirement, policy or standard including but not limited to any federal, state or local law providing for protections against retaliation or discrimination.

**Section 3. Severability.**
If any portion of this ordinance is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this ordinance, which remaining portions shall continue in full force and effect.

**Section 4. Effective Date.**
This ordinance shall take effect 180 days after it is adopted in accordance with law upon publication of notices as provided in the Ithaca City Charter. Notwithstanding the preceding sentence, in the case of employees covered by a valid collective bargaining agreement in effect on the effective date prescribed by this section, this ordinance shall take effect on the date of the termination of such agreement.