

ATTORNEY GENERAL OF THE STATE OF NEW YORK
LABOR BUREAU

NEW YORK CITY DEPARTMENT OF CONSUMER AFFAIRS
OFFICE OF LABOR POLICY AND STANDARDS

IN THE MATTER OF THE INVESTIGATION
BY LETITIA JAMES, ATTORNEY
GENERAL OF THE STATE OF NEW YORK
AND LORELEI SALAS, COMMISSIONER,
NEW YORK CITY DEPARTMENT OF
CONSUMER AFFAIRS

OF

Assurance No. 19-155

STARBUCKS CORPORATION

ADJC No. 15860-2019-ADJC

Respondent.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (“Attorney General” or “OAG”) and the Office of Labor Policy and Standards in the New York City Department of Consumer Affairs (“DCA”) have investigated Starbucks Corporation (“Starbucks”) pursuant to New York Executive Law § 63(12) and Chapter 8 of Title 20 of the New York City Administrative Code. This Assurance of Discontinuance (“Assurance”) contains the findings of the OAG and DCA’s investigation (the “Investigation”) and the relief agreed to by the Attorney General, DCA, and Starbucks, (collectively, the “Parties”).

RELEVANT LEGAL FRAMEWORK

1. The New York City Earned Safe and Sick Time Act (“ESSTA”) requires an employer that employs five or more employees to provide “paid sick time” to all New York City employees. N.Y.C. Admin. Code § 20-913(a)(1). ESSTA further sets out that “[a]n employer

shall not require an employee, as a condition of taking sick time, to search for or find a replacement worker to cover the hours during which such employee is utilizing sick time.”

N.Y.C. Admin. Code § 20-914(e).

2. Pursuant to the New York City Charter §§ 20-a and 2203(e) and N.Y.C. Admin. Code § 924(a), DCA is charged with conducting public education, advocacy, and enforcement to promote workplace equity and has broad authority to investigate potential violations of ESSTA.

3. Pursuant to New York Executive Law § 63(12), the Attorney General has broad investigatory authority to protect the interests of workers, consumers, and the general public of New York, and to ensure public safety and welfare.

OAG AND DCA's FINDINGS

4. In 2015, DCA commenced an investigation into Starbucks' compliance with ESSTA. DCA's initial investigation revealed that Starbucks had issued a formal, written employee manual called the Starbucks Partner Guide (“Guide”), which contained policies that constituted facial violations of ESSTA. The Guide required its employees (referred to in the Guide as “partners”) to find substitutes when they were unable to report to work. Specifically, the Guide stated, “[i]f a partner knows in advance that he or she will be unable to report to work for a scheduled shift, it is the partner's responsibility to arrange for another person to substitute” and that “[f]ailure to abide by this policy may result in corrective action, up to and including termination of employment” (the “Policy”). The Guide did not provide any exceptions to the Policy for absences for sick leave or other purposes protected by ESSTA.

5. DCA interviewed Starbucks employees who confirmed that Starbucks was requiring workers to look for and find replacement workers as a condition of using sick leave.

6. Based on these findings, DCA referred the matter to OAG for joint-enforcement in 2017. For the period from April 1, 2014 through February 2016, DCA and OAG determined that Starbucks violated N.Y.C. Admin Code § 20-914(e) by requiring employees to search for or find replacement workers in order to use sick leave.

7. Over the course of the Investigation, DCA and OAG determined that Starbucks had corrected the facially-violative language in the Policy in approximately March 2016.

8. In 2018, Starbucks implemented a single nationwide leave policy designed to comply with all state and municipal leave policies applicable to any location in the United States in which Starbucks stores are located, including New York City (the “2018 Policy”).

PROSPECTIVE RELIEF

WHEREAS, N.Y.C. Admin. Code § 20-914(e) provides that “[a]n employer shall not require an employee, as a condition of taking sick time, to search for or find a replacement worker to cover the hours during which such employee is utilizing sick time”;

WHEREAS, the Investigation by DCA and OAG revealed that Starbucks had issued a formal, written policy that facially violated the aforementioned provision and that such unlawful policy had in fact been implemented by Starbucks;

WHEREAS, the parties wish to obviate further investigation and to avoid the expense and inconvenience of potential litigation;

WHEREAS, OAG is willing to accept the terms of the Assurance pursuant to New York Executive Law § 63(15) in lieu of commencing a statutory proceeding for violations of Executive Law § 63(12) based on the conduct described above;

WHEREAS, DCA is willing to accept the terms of this Assurance to resolve its investigation of Starbucks; and

WHEREAS, the parties believe that the obligations imposed by this Assurance are prudent and appropriate;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between Starbucks, OAG, and DCA, as follows:

MONETARY PAYMENT

9. Starbucks shall pay \$26,000.00 (“Restitution Funds”) in resolution of the violations DCA and OAG identified during the Investigation on account of workers being required to find a replacement worker and having been harmed by the Policy. The Restitution Funds will be paid directly to DCA and will be distributed as restitution to workers by DCA. Employees who receive restitution from the Restitution Funds shall not be eligible to receive restitution from the Claims Funds for the same alleged violations.

10. The Restitution Funds shall be paid in full upon execution of this Assurance in the form of a certified check made payable to “NYC Department of Consumer Affairs” and shall reference ADJC No. 15860-2019-ADJC in the memo line.

11. In the event any payment of Restitution Funds to an employee is undeliverable, DCA, in its sole discretion, shall determine whether (1) additional efforts to locate such employee(s) must be made or (2) such payment of Restitution Funds shall be voided and the total amount of any such uncashed or undeliverable checks shall be converted to the Claims Fund (as defined below).

12. Starbucks also shall set up and pay for a separate fund (the “Claims Fund”) in resolution of the investigation, which shall be used to pay any current or former baristas and shift supervisors who were employed by Starbucks for at least 120 days and who worked eighty (80) hours or more in a calendar year in Starbucks stores located in New York City at any time

between January 1, 2015 and December 31, 2016 (“Covered Employees”) who file a “Claim Form” for restitution damages for ESSTA violations described herein that occurred at any time between January 1, 2015 and December 31, 2016 (“Violations Period”). In order to be eligible for Claims Funds, the Covered Employee must provide information as set forth in Paragraph 18 below showing that he or she was a Covered Employee and (1) he or she was required to find a replacement in order to use sick leave; or (2) disciplined for not finding a replacement in connection with the use of sick leave.

13. Starbucks shall make an initial payment to the Claims Fund in the amount of \$150,000.00, but if the \$150,000.00 fund is exhausted Starbucks shall be responsible for any additional payments that would be necessary to satisfy unpaid valid claims. In the event that there is any remaining amount in the Claims Fund subsequent to the completion of the Claims Administrator’s duties, the remaining amount will revert to DCA.

CLAIMS ADMINISTRATOR

14. Within thirty days of the Effective Date of this Assurance, Starbucks, at its own expense, shall retain a qualified firm or an individual (“Claims Administrator”), which is acceptable to OAG and DCA, to administer the Claims Fund.

15. Within fourteen days of retention of the Claims Administrator, Starbucks shall provide the Claims Administrator with contact information (last known email, phone, and mailing address) for all Covered Employees.

16. Starbucks shall develop a draft “Notice,” subject to the approval of OAG and DCA, which must provide to Covered Employees (1) the Claim Form with all of the requirements described in paragraph 18, (2) information sufficient to inform them of the material terms of this Assurance, (3) the appropriate means for obtaining additional information regarding

this Assurance, and (4) the appropriate means for and information about submitting a Claim Form and obtaining any potential settlement payment pursuant to the Assurance.

17. Within ten (10) days of OAG and DCA approval of the Notice, the Claims Administrator shall distribute the Notice by email to Covered Employees at their last known email address. For those Covered Employees without current email addresses, such notice shall be provided by regular U.S. postal service to his or her last known U.S. postal address. Within five (5) business days of the completion of sending such notices, the Claims Administrator shall send a confirmation to the OAG and DCA that notice has been sent as required by this paragraph. Within forty-five (45) days after the initial mailing of the Notice and Claim Form, the Claims Administrator shall distribute a "Reminder Notice," by the same means of distribution as the original Notice, to all Covered Employees who have not yet submitted a Claim Form or otherwise responded to the Notice. The Claims Administrator should provide a telephone number in the Notice that Covered Employees may use if they have any questions regarding the Assurance. Within sixty (60) days after the initial mailing of the Notice and Claim Form, the Claims Administrator shall provide to OAG and DCA the names of any former employees for whom notice was returned as undeliverable either by e-mail or U.S. mail.

18. The Covered Employees shall be required to submit their Claim Form to the Claims Administrator within ninety (90) days of the initial mailing of the Notice, or within (90) days of the date on which the online portal described in paragraph 20 becomes operational and accessible to Covered Employees, whichever date occurs later ("Claims Filing Period"). To be eligible for restitution, employees must provide documentary evidence and/or a narrative description of their claim and must also provide (a) store location, (b) approximate dates and purpose of the usage, and either (c) manager or supervisor contacted regarding the usage, or (d)

potential substitute employee(s) contacted regarding the usage.

19. The Claims Administrator shall evaluate and determine if the information provided credibly demonstrates that the employee was a Covered Employee and (1) was required to find a replacement in order to use sick leave; or (2) was disciplined for not finding a replacement in connection with the use of sick leave.

20. To qualify as a valid claim, the Claim Form shall be submitted to the Claims Administrator through an online portal that is secure, password-protected, and accessible through both a mobile device or desktop computer or, in the alternative, be placed in the United States Mail with first-class postage, addressed to the Claims Administrator, and postmarked by the United States Postal Service within the Claims Filing Period.

21. The Covered Employees who submit claims that are deficient in one or more respects will receive a deficiency notice from the Claims Administrator and will have forty-five (45) days after the mailing or emailing of the deficiency notice in which to cure the deficiency. If a Covered Employee fails to cure the deficiency within that time, the Claims Administrator shall deem the deficient claim to be an invalid claim.

22. The Claims Administrator will issue payments only to Covered Employees who submit a valid Claim Form as described in paragraph 18 to 21. However, the Claims Administrator will accept Claim Forms that are submitted past the Claims Filing Period and issue payments accordingly if the delay was not caused by the fault of the claimant. In no event will the Claims Administrator accept Claim Forms submitted more than ninety (90) days after the Claims Filing Period.

23. Upon the due date for receipt of valid claims, the Claims Administrator shall, as soon as thereafter reasonably practicable, but within no more than forty-five (45) additional days:

mail, by first-class United States Mail, to Covered Employees checks in the amounts determined by OAG and DCA pursuant to this Assurance and drawn on the account of the Claims Fund.

Covered Employees shall be eligible to receive \$125.00 per alleged violation. In no event shall any Covered Employee receive more than \$750.00.

24. Within thirty (30) days of being retained by Starbucks, the Claims Administrator shall provide to OAG and DCA a written plan (“Administrator’s Plan”) reflecting the requirements described in paragraphs 16 to 23. The Administrator’s plan shall include but not be limited to a description of the steps that will be taken including the following tasks:

- a. Verifying contact information for, and locating and contacting potential claimants;
 - b. Developing a claims process pursuant to paragraphs 16 to 23;
 - c. Developing a method of contacting potential claimants with a range of literacy levels;
 - d. Developing a method of contacting potential claimants who are non-native English speakers;
 - e. Evaluating all completed claims forms of potential claimants and determining their eligibility for restitution, subject to OAG and DCA’s approval;
 - f. Calculating, in consultation with OAG and DCA, and pursuant to paragraph 23, restitution due to potential claimants;
 - g. Preparing a restitution report, subject to OAG and DCA’s approval, that lists all claimants and the Claims Administrator’s calculations of restitution to be distributed to each of the claimants;
25. Upon OAG and DCA’s approval, the Claims Administrator shall implement the

processes and procedures set forth in the Administrator's Plan.

26. The Claims Administrator shall provide advance written notice to OAG and DCA of all payments to claimants and shall provide written proof of any such payments to OAG and DCA.

27. Starbucks shall be required to continue to retain the Claims Administrator (or, if necessary, a replacement administrator that is acceptable to OAG and DCA) until all restitution payments have been made to claimants pursuant to paragraph 22 to 23.

28. OAG and DCA, at their sole discretion, shall have the right to require Starbucks to change the Claims Administrator upon a reasonable and good faith determination that the Claims Administrator has been ineffective in carrying out its duties pursuant to this Assurance.

29. The Claims Administrator shall not be permitted to subcontract its obligations under this Assurance to any other person or entity, except that, after notifying OAG and DCA and subject to OAG and DCA's approval, the Claims Administrator may retain additional persons or entities needed for the Claims Administrator to carry out its obligations under this Assurance. If the Claims Administrator subcontracts its obligations under this Assurance, or retains additional persons or entities without notifying OAG and DCA and/or without OAG and DCA's approval, OAG and DCA shall have the right to direct Starbucks to cancel the contract between Starbucks and the Claims Administrator and to require Starbucks to retain a new Claims Administrator that is acceptable to OAG and DCA within fifteen (15) days.

30. This Assurance shall be attached to Starbucks' contract with the Claims Administrator and all of OAG and DCA's rights herein shall be incorporated by reference in Starbucks' contract with the Claims Administrator.

31. Starbucks shall provide a copy of its contract with the Claims Administrator to

OAG and DCA within two (2) business days of its execution.

32. The agreement between Starbucks and the Claims Administrator shall require the Claims Administrator to treat all information provided by OAG and DCA regarding claimants as confidential and not to share such information with any other person or entity.

NOTICE TO EMPLOYEES

33. Within forty-five (45) days of this Assurance, Starbucks shall distribute a plain language notification by hand delivery, email, or other electronic communication regularly used by Starbucks to communicate with employees to all current employees working in New York City confirming that Starbucks does not require or ask workers to search for and/or find a replacement worker in order to use sick leave. The plain language notification must prominently include the following language in the body of the notification and without the need to open any related attachments or documents: “Starbucks employees in New York City are covered by New York City’s Earned Safe and Sick Time Act. Under this law, it is illegal for employers to require workers to search for or find replacement workers as a condition of taking safe or sick leave. As a matter of both policy and practice, no Starbucks employee must look for a replacement worker in order to use their safe or sick leave.”

EDUCATIONAL POSTER

34. Starbucks shall create, in consultation with and subject to the approval of OAG and DCA, an educational poster designed to educate the general public about workers’ rights under New York City’s ESSTA (“Educational Poster”). Starbucks further agrees to post these Educational Posters in a prominent, publicly-accessible location that provides significant visibility to consumers in all Starbucks stores located within New York City for a period of one year. For any store that is smaller than 500 square feet or has a kiosk or similar format,

Starbucks may request that OAG and DCA approve a waiver of the Educational Poster requirement upon a specific showing that the store lacks adequate wall space to affix the Educational Poster. Starbucks shall notify OAG and DCA of any such stores and approval of any such waiver request shall not be unreasonably withheld.

35. The Parties agree that the Educational Poster shall be subject to the approval of OAG and DCA, and must include logos of OAG and DCA, as well as general information about workers' rights under ESSTA. As soon as practicable, but no later than forty-five (45) days after the execution of this Assurance, Starbucks shall send, by email, a copy of the poster design to OAG and DCA for approval. The Educational Poster shall be distributed to all Starbucks stores located in New York City within thirty (30) days of OAG and DCA's final approval.

36. The Educational Poster must meet the minimum size requirement of 8.5 x 11 inches.

MONITORING

37. Six (6) months after the signing of this Assurance, Starbucks shall prepare a written report detailing its compliance with ESSTA and the requirements set forth in this Assurance. The report shall be submitted to OAG and DCA within thirty (30) days following the end of the six-month period. In any case where the circumstances warrant, OAG and DCA may require Starbucks to file an interim report of compliance upon forty-five (45) days' notice. All reports submitted pursuant to this paragraph must include at least the following information: 1) Starbucks' latest sick leave policies, 2) any updates or changes made to its sick leave policies, and 3) any proposed updates or changes to its sick leave policies.

38. Starbucks shall reasonably cooperate with OAG and DCA in any future inquiry by OAG and DCA into Starbucks' compliance with the terms of this Assurance.

PENALTIES

39. Should any OAG or DCA examination show that Starbucks has materially failed to comply with the terms of this Assurance, Starbucks shall pay \$1,000.00 in liquidated damages per violation, separate and apart from any other penalty or damages associated with the violation, provided that prior to any assessment of liquidated damages Starbucks shall be notified of the violation by writing, after which Starbucks shall have fifteen (15) business days from the date the notification is sent to investigate and cure the violation. Payment of any liquidated damages under this paragraph shall be made payable to “NYC Department of Consumer Affairs” and shall reference ADJC No. 15860-2019-ADJC in the memo line. OAG and DCA, at their sole discretion, may conduct and/or direct an independent monitor to conduct an inspection to confirm that such material violation has been cured.

MISCELLANEOUS

40. OAG and DCA have agreed to the terms of this Assurance based on, among other things, the representations made by Starbucks and its counsel, and the OAG’s and DCA’s own factual investigation. To the extent that any material representations are later found to be false, this Assurance is voidable by OAG and DCA in their sole discretion.

41. This Assurance will expire three (3) years after the Effective Date, subject to the OAG’s and DCA’s ability to extend the term of the Assurance by one (1) additional year should the Attorney General and DCA determine, in their sole discretion, that Starbucks has materially failed to comply with the Assurance.

42. OAG or DCA shall provide written notice to Starbucks during the three-year term at least thirty (30) days in advance of making any determination described in paragraph 41, and Starbucks shall have the opportunity to cure the material noncompliance. If OAG and DCA

determine that Starbucks has cured the material noncompliance, the Assurance shall not be extended.

43. If the Assurance is voided by OAG and DCA pursuant to paragraph 40 or Starbucks has failed to cure a material noncompliance with the Assurance pursuant to paragraphs 41 and 42, Starbucks agrees and acknowledges that any statute of limitations or other time-related defenses relating to violations of ESSTA are tolled from and after the Effective Date of this Assurance.

44. Starbucks agrees and acknowledges that this Assurance shall in no way bar or otherwise preclude OAG or DCA from commencing, conducting, or prosecuting any investigation, action, or proceeding, however denominated, related to the enforcement or breach of this Assurance, against Starbucks, or from using in such investigation, action, or proceeding any statements, documents, or other materials produced or provided by Starbucks prior to or after the date of this Assurance. Any civil action or proceeding brought by OAG or DCA to enforce this Assurance will be adjudicated by the courts of the State of New York, and that Starbucks irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue.

45. Starbucks agrees and acknowledges that this Assurance shall in no way bar or otherwise preclude OAG or DCA from commencing, conducting, or prosecuting any investigation, action, or proceeding, however denominated, related to any acts or omissions other than those described in paragraphs 4-8 above.

46. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Starbucks in agreeing to this Assurance.

47. Starbucks represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and the execution of this Assurance is duly authorized. Starbucks shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects Starbucks' (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal, administrative, or regulatory proceedings.

48. Pursuant to Executive Law § 63(15), evidence of a violation of this Assurance shall constitute *prima facie* proof of a violation of the applicable law in any civil action or proceeding thereafter commenced by OAG.

49. If a court of competent jurisdiction, after any appeals by either party, determines that Starbucks has violated the Assurance, Starbucks shall pay to OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

50. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of Starbucks. Starbucks shall include any such successor, assignment or transfer agreement a provision that binds the successor, assignee or transferee to the terms of the Assurance. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of OAG and DCA.

51. To the extent not already provided under this Assurance, for the Term of the Assurance, Starbucks agrees, upon request by OAG or DCA, to provide any documentation and information reasonably requested by OAG and DCA to verify compliance with this Assurance.

52. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

From Starbucks to the Attorney General:

Julie Ulmet, Deputy Bureau Chief
New York State Office of the Attorney General
Labor Bureau
28 Liberty Street, 15th Floor
New York, NY 10005
julie.ulmet@ag.ny.gov

From Starbucks to DCA:

Benjamin Holt, Deputy Commissioner
New York City Department of Consumer Affairs
Office of Labor Policy and Standards
42 Broadway, 9th Floor
New York, NY 10004
bholt@dca.nyc.gov

From the Attorney General and DCA to Starbucks:

Estela Díaz
Akin Gump Strauss Hauer & Field LLP
One Bryant Park
New York, NY 10036-6745
ediaz@akingump.com

Any changes in the person to whom communications should be specifically directed shall be made in writing in advance of the change.

53. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

54. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

55. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or

unenforceable in any respect, in the sole discretion of the Attorney General and DCA, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

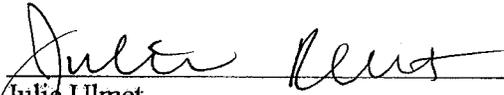
56. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

57. This Assurance may be executed in multiple counterparts by the parties hereto, and each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the Effective Date of this Assurance. A signed copy of this Assurance transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy.

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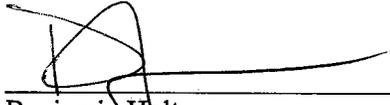
58. The Effective Date of this Assurance shall be December 19, 2019.

LETITIA JAMES
Attorney General of the State of New York
28 Liberty Street
New York, NY 10005

By: 
Julie Ulmet
Deputy ~~Acting~~ Bureau Chief
Labor Bureau
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New York, NY 10005
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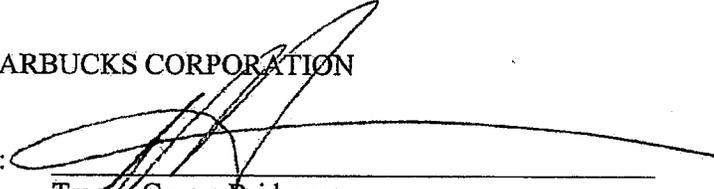
Date: 12/19/19

LORELEI SALAS
Commissioner
Department of Consumer Affairs
42 Broadway
New York, NY 10004

By: 
Benjamin Holt
Deputy Commissioner
Office of Labor Policy and Standards
42 Broadway, 9th Floor
New York, NY 10004
Phone: (212) 436-0272

Date: 12/19/19

STARBUCKS CORPORATION

By: 
Tracey Gaven-Bridgman
Regional Vice President

Date: 12-13-19

