

NYC FAST FOOD EMPLOYERS BACK IN THE SPOTLIGHT: MORE AMENDMENTS TO THE CITY'S FAIR WORKWEEK LAW COMING YOUR WAY

Insights

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It is looking increasingly likely that fast food employers in New York City will have to deal with troubling new workplace regulations in the near future, including the prospect of increased penalties for violations, additional employee training requirements, and the threat of revoked business permits. Building off of recent punitive enforcement efforts by New York City's Department of Consumer and Worker Protection (DCWP) for violations of the Fair Workweek and Just Cause Laws (FWW) and Earned Safe and Sick Time Act (ESTA), City Council members introduced two bills this summer that further target fast food employers by amending the FWW. On September 19, a City Council committee held a hearing on these two bills. Since a sizeable portion of the City Council is co-sponsoring them, some version of each is likely to eventually pass. Here's what's potentially in store for New York City fast food employers.

Int. No. 613 (Increased Penalties for FWW Violations)

If enacted, [Int. No. 613](#) would double civil penalties for violation of the FWW, allow city officials to revoke, prohibit, or delay the issuance of permits by the Department of Health and Mental Hygiene (DOHMH) because of excessive FWW or ESTA violations, and provide employees effected by those permit decisions with severance pay for time out of work. Specifically, the bill would impose the following:

Increased Civil Penalties

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- \$1,500 from \$750 for a second violation within two years of the original violation;
- \$2,000 from \$1,000 for additional violations; and
- \$30,000 from \$15,000 for pattern and practice violations brought by the City's corporation counsel.

Interestingly, representatives for DCWP pushed back against these proposed increases, arguing that they were not needed given the significant penalties (on a per worker and per instance basis) already imposed by the law.

Suspension, Revocation, or Denial of Permits

Most alarmingly for employers, the bill would give DCWP's Commissioner codified authority to direct DOHMH to suspend, revoke, deny, or refuse to renew a food service establishment permit for fast food employers that have:

- Failed to pay an ordered fine or penalty for violating FWW or ESTA;
- Been found by a court to have engaged in a pattern or practice of violations of FWW or ESTA; or
- Been ordered to pay an aggregate of \$500,000 or more in penalties or monetary relief in a three-year period for violations of FWW or ESTA.

While DCWP can only make this directive after providing the employer with due notice and an opportunity to be heard, the specific parameters of the determination (and challenges to it) are not laid out in the bill.

Employee Severance

Acknowledging that prohibiting a fast food establishment from operating would lead to lost jobs by workers, the bill provides these workers with a slight consolation. Fast food employers will be required to pay their employees up to 14 days of severance for work lost during the suspension, revocation, or denial of permit issuance or renewal. However, the details of what constitutes "14 days" – e.g. 14 days of pay or the pay that would have been earned during 14 days of the establishment's operation – and other details regarding pay are not specified.



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It also remains to be seen if the City (assuming this bill is enacted as is) will *actually* risk driving fast food establishments – and the more than 67,000 jobs they bring with them – out of the City by revoking or suspending permits. While representatives for DCWP acknowledged the deterrent effect the bill sponsors’ permit plan may have on non-compliance with the FWW, calling the plan an “interesting idea,” they also signaled the agency’s hesitance to wholeheartedly support the proposed change.

Intro No. 640 (Mandatory Training)

The other bill, [Int. No. 640](#), would require DCWP (or a designated agency or community organization) to provide a two-hour (at most) training on the rights provided to fast food employees by the FWW. Consistent with the City’s general punitive approach to employers, this bill focuses solely on training to employees about their rights but offers no assistance to employers in complying with the FWW. Given the many struggles of fast food employers in complying with the onerous and complex FWW, providing greater assistance to employers would have gone a long way.

The bill will also give DCWP the authority, upon 45 days’ notice, to direct a fast food employer to make its employees available for the training and to pay them for the training time. DCWP will have significant latitude to determine the conditions that would trigger this training obligation given that the bill only specifies the number and severity of violations of the FWW as considerations and leaves any other relevant factors to DCWP’s discretion. As a slight reprieve, employers would not have to make available employees who received the training within the past year.

Much remains to be seen about how this provision of the law would be implemented. “Community organization” is defined in a broad and vague manner but contemplates DCWP’s use of private organizations in conducting the government-mandated training. Given organized labor’s heavy involvement with this law as a tool to try to organize fast food employers, it is very possible that unions will seek to use this training as a means to gain access to employees. Additionally, DCWP’s ability to mandate training upon 45 days’ notice provides no indication that an employer’s operations will be considered in the logistics of this training.

Next Steps for New York City Fast Food Employers

Given the increasingly punitive nature of the FWW, the importance of strict compliance cannot be understated. Despite the clear challenges presented by the FWW coupled with the fast-paced and unpredictable environment of food service (noted by one City Council member during the hearing), it's still full steam ahead for certain council members on enforcement, punishment, and expansion of the FWW.

It's anyone's guess what that means for thousands of workers that rely on these businesses for their livelihoods, the millions of NYC residents and visitors that patron their establishments, and the businesses themselves, but you shouldn't wait to find out. This is the time to train your managerial employees on the requirements of the FWW (and ESTA) and implement the provisions of the law, especially with respect to schedule changes, premium pay, and recordkeeping.

Be sure to periodically check DCWP's webpage. The agency adopted new rules this summer and revised guidance from the agency is forthcoming.

We will continue to monitor developments impacting fast food employers as they grapple with the FWW and provide updates as appropriate, so make sure you are subscribed [to Fisher Phillips' Insight System](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [New York City](#) office.