

# NEW YORK CITY EMPLOYERS, BEWARE: WORKER PROTECTION BILLS ON TAP FOR 2017

Insights  
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New York City lawmakers have introduced a suite of legislation aimed at penalizing retail and fast food employers for making last-minute changes to employee schedules, while also providing protection for all New York City employees who request flexible work arrangements. The six bills, introduced to the City Council on December 6, 2016, strive to give retail and fast food employees more notice of and predictability in their schedules, while compensating them with extra pay for last-minute schedule changes.

While not in effect yet, we expect some form of these bills to pass and become effective in 2017, so New York City employers should prepare for the inevitable now.

## RETAIL EMPLOYEES

One of the bills is aimed at retail stores with five or more employees. The bill would prohibit these stores from cancelling an employee's shift, or requiring them to come into work, with less than 72 hours' notice. Additionally, the bill would ban "on-call shifts," where employees are required to be available to work if needed and to report for duty at the employer's behest.

The bill would also require retail employers to post a physical copy of the work schedule for all employees at that work location at least 72 hours prior to the beginning of the scheduled shift, and to directly notify affected employees as soon as practicable if any changes are made to the schedule. The bill would not prohibit a retail employer from

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allowing employees to switch shifts with each other on short notice, so long as the change is mutually agreeable.

Finally, if passed, retail stores would be required to give part-time employees at least 20 hours of work every two weeks.

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## FAST FOOD EMPLOYEES

Four of the bills are aimed at work schedules for fast food employees, who are defined as non-salaried employees working for a fast food establishment whose job duties include customer service, cooking, food or drink preparation, delivery, security, stocking supplies or equipment, cleaning, or routine maintenance. The proposed legislation would prohibit fast food employers from requiring their workers to work back-to-back shifts when the first shift closes the establishment and the second shift opens it the next day, with fewer than 11 hours in between, dubbed "clopenings." The employer would be required to pay \$100 for each instance an employee works a "clopening" shift.

Additionally, fast food employers would be required to provide employees with an estimate of their work schedule upon hire, and going forward, to provide a work schedule covering at least a seven-day period 14 days in advance. If changes are made to the schedule, the bill would require a premium to be paid to the employees as follows:

- \$15 for each shift to which additional hours are added, or which the date or start or end time of a shift is changed with no loss of hours, with less than 14 days' notice;
- \$45 for each instance in which hours are subtracted from a shift or a shift is cancelled with less than 14 days' notice but at least 24 hours' notice; and
- \$75 for each instance in which hours are subtracted from a shift or a shift is cancelled with less than 24 hours' notice.

The premiums would not be required if the employer's operations cannot begin or continue due to factors outside their control, such as a fire, flood, or other natural disaster, power failure, shutdown of public transportation, or a state of emergency. Additionally, no premium would be required if the employee requested a change in schedule or traded shifts with another employee.

The proposed legislation also would require fast food employers with available working hours to offer such shifts to existing employees before hiring new employees. Employers would be required to offer hours to current employees up until the point at which the employer would be required to pay overtime, or until all current employees have rejected the available hours, whichever comes first.

Additionally, the proposed legislation would allow fast food employees to authorize voluntary contributions to covered not-for-profit organizations of their choosing and require employers to deduct and remit such donation to the chosen not-for-profit. This would allow employees to deduct voluntary contributions to a nonprofit organization for fast food workers' rights.

## **ALL EMPLOYEES**

Finally, one of the proposed bills would prohibit all New York City employers from retaliating against an employee who requests a "flexible work arrangement," such as a modified work schedule, working from home or another location, changes in work duties, or job sharing arrangements. If an employee requests a "flexible work arrangement," the employer would be required to engage in an interactive process regarding the request, and to provide a good faith response within 14 days.

Additionally, the proposed legislation would create a right for an employee to receive certain changes to their work schedule in the event of a caregiving or personal health emergency, or if an employee or a family member has been the victim of a family offense matter, a sexual offense, or stalking. Such changes would be required no more than four times per calendar year and for one business day per request.

## **WHAT'S NEXT?**

If the New York City Council passes the proposed legislation, the laws would take effect 180 days after being implemented. All employers in New York City, particularly those in the retail and fast food industries, should be aware of the proposed legislation. We expect the City Council will continue to introduce worker protection legislation, perhaps with increased vigor, based on council members' expressed

concerns that workers' rights could be under attack under the Trump administration.

We will monitor the pending bills, as well as any other proposed legislation, and provide updates on any further developments.

For more information about how these proposed ordinances affect your workplace, contact any attorney in our [New York City](#) office at 212.899.9960, or your regular Fisher Phillips attorney.

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*This Legal Alert provides information about specific proposed ordinances. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*