



NYC Scheduling Laws Will Constrain Employers' Scheduling And Flexibility

RETAIL AND FAST FOOD EMPLOYERS SOON SUBJECT TO "FAIR WORKWEEK" LAWS

Insights

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New York City Mayor Bill de Blasio signed a suite of legislation dubbed the "Fair Workweek" bills into effect on May 30, 2017, which will limit the scheduling practices and flexibility of certain employers. These laws are aimed at giving retail and fast food employees more notice and predictability in their schedules, while compensating them with extra pay for last-minute schedule changes. They are scheduled to effect November 26, 2017.

What do employers need to know in order to come into compliance with the new laws?

Retail Employees

One of the bills, Intro. 1387-A, restricts certain scheduling practices of retail employers with 20 or more employees at one or more stores within New York City. The bill bans the practice of "on-call scheduling" for retail employees, which is deemed to occur when the employer requires the employee to be available to work if needed and to either contact the employer or wait to be contacted by the employer about whether they must report to work. Additionally, the bill prohibits retail stores from cancelling an employee's shift, or requiring them to come into work, with less than 72 hours' notice.

The bill also requires 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 if any changes are made to the schedule. Additionally, upon request, retail employers must provide a written copy of an employee's work schedule for any week worked within the prior three years and the most current version of the work schedule for all retail employees at that work location.

The bill does not prohibit a retail employer from allowing employees to switch shifts with each other on short notice or granting an employee's request for time off. Additionally, retail employers can change an employee's work schedule with less than 72 hours' notice if the employer cannot operate due to certain emergency conditions, such as natural disasters, failures of public utilities, or shutdowns of public transportation.

Fast Food Employees

The bills also target work schedules for employees of non-salaried fast food establishments whose job duties include customer service, cooking, food or drink preparation, delivery, security, stocking supplies or equipment, cleaning, or routine maintenance.

Intro. 1388-A prohibits fast food employers from requiring employees to work back-to-back shifts in circumstances such that the first shift closes the establishment and the second shift opens it the next day, with fewer than 11 hours in between (dubbed “clopenings”), unless the employee requests or consents to work such a shift. The employer is required to pay the employee \$100 for each instance an employee works a “clopening” shift.

Additionally, Intro. 1396-A requires employers to provide employees with a good faith estimate of their work schedule upon hire. If a long term change is made to the good faith estimate, the employer must provide an updated estimate to the employee as soon as possible. Additionally, fast food employers are required to provide work schedules to their employees covering at least a seven-day period, 14 days in advance of the first day of the schedule. If changes are made to the schedule, the bill mandates that a premium to be paid to the employees as follows:

- \$10 for each change in which additional hours or shifts 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 but at least seven days’ notice;
- \$15 for each change to which additional hours or shifts are added, or which the date or start or end time of a shift is changed with no loss of hours, with less than seven days’ notice;
- \$20 for each change to the work schedule in which hours are subtracted from a shift or a shift is cancelled, with less than 14 days’ notice but at least seven days’ notice;
- \$45 for each instance in which hours are subtracted from a shift or a shift is cancelled with less than seven 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.

Schedule change premiums must be paid at the same time the employer pays the employee wages owed for work performed during the subject week, and must be separately noted on the employee’s pay stub. The premiums are not due 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 is due if the employee requested a change in schedule or traded shifts with another employee, or if the changed shift results in overtime pay to the employee.

The legislation also requires fast food employers to offer available work shifts to existing employees (up to a point) before hiring new employees. Under Intro. 1395-A, employers are required to notify employees of available shifts and allow them to claim such shifts before hiring new employees for those shifts. Employers must offer shifts to current employees up until the earlier of the point at

which the offers would result in overtime pay, or until all current employees have rejected the available hours.

Finally, Intro. 1384-A creates a mechanism for fast food employees to authorize voluntary contributions to covered not-for-profit organizations of their choosing and require employers to deduct and remit such contributions to the chosen not-for-profit. Among other things, this change forces employers to facilitate voluntary pay deductions to be contributed to nonprofit organizations that advocate for employee rights and benefits.

Steps To Take

Retail and fast food establishments in New York City must be aware of the legislation that will become effective later this year, and should begin reviewing their scheduling practices and develop practices to comply with their upcoming obligations. Because some of these changes may require a full-scale revision of current practices and policies, you should not delay your work in this area.

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

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

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