



New York State to Address Employee Scheduling

Insights

11.13.17

New York City's Fair Workweek Law takes effect on November 26, 2017, thereby limiting the scheduling options and reducing the flexibility of retail and fast food employers. Not to be outdone, New York State is about to add additional restrictions regarding on-call practices statewide. On November 10, Governor Cuomo proposed statewide regulations targeting "on-call" scheduling. The regulations seek to curb employers' ability to require an employee to be available to work only if needed, and to either contact the employer or wait to be contacted by the employer about whether to report to work – even if just shortly before the shift is scheduled to start.

The proposed regulations were announced after a series of public hearings held by the State Labor Commissioner and the State Department of Labor. The regulations are subject to a 45-day public review and comment period, which will begin after they are formally published in the November 22 State Register.

What Do The New Regulations Entail?

The proposed regulations seek to crack down on "on-call" scheduling practices, which require employees to remain available for a shift right up until the beginning of the possible start time, sometimes only told at the last minute whether they need to report to work. Under the new regulations, employers would be required to give their workforce 14-day advance notice of their schedules. Employees must be paid two hours of call-in pay if required to work hours that were not scheduled at least 14 days in advance.

Additionally, employees would need to be paid at least four hours of call-in pay any time they are on call to report to work, or when a shift is canceled less than 72 hours before the beginning of the shift. Call-in pay would have to be paid at the basic minimum hourly wage – not the employee's regular rate of pay – and would not be considered payment for hours worked, so it would not impact the employee's qualification for, or the calculation of, overtime pay.

The call-in pay premiums would not apply in the following situations:

- During the first two weeks of a new employee's employment;
- If an employee volunteers to cover a new and additional shift during the first two weeks that the shift is worked;

- If an employee volunteers to cover a coworker's shift, which had been scheduled at least 14 days in advance;
- If an employer cancels a shift at the employee's request for time off; or
- If the employer cannot operate due to weather or other emergency conditions, provided, however, that the employer must give 24-hour advance notice of shift cancellations when operations can continue but staffing needs are reduced.

Next Steps

New York employers must monitor these impending regulations closely and prepare to implement them once finalized. Comments to the proposed regulations can be submitted to the State by email to hearing@labor.ny.gov.

Additionally, employers in New York City must be prepared to comply with the [New York City Fair Workweek law](#) come November 26. We will continue to monitor further developments both city and statewide. If you have questions 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 proposed regulations. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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