New York City Employers Will Soon Need To Allow Employees Limited Schedule Flexibility

Insights
1.18.18

The New York City Council passed a bill allowing employees to make temporary schedule changes to attend to a "personal event." The bill is an amendment to the recently enacted Fair Workweek Law.

A "personal event," for purposes of this legislation, is defined as:

1. The need for a caregiver to provide care to a minor child or care recipient;
2. An employee's need to attend a legal proceeding or hearing for subsistence benefits to which the employee, a family member or the employee's care recipient is a party; or
3. Any circumstance that would constitute a basis for permissible use pursuant to New York City's Earned Sick and Safe Time Act.

In the event of such a personal event, employees can request "a limited alteration in the hours or times that or locations where an employee is expected to work, including, but not limited to, using paid time off, working remotely, swapping or shifting work hours and using short-term unpaid leave." The employer can either agree to provide the employee's requested schedule change, or instead, can provide leave without pay.

Employers must grant an employee's request for a temporary schedule change two times in a calendar year for up to one business day per request. The employer may permit the employee to use two business days for one request, in which case the employer would not need to grant a second request. Employers can deny an employee's request only if the employee has already exhausted the allotted changes for the year. An employee does not need to use leave accrued under the NYC Earned Safe and Sick Time Act before requesting a schedule change. Employers are prohibited from retaliating against employees for making schedule change requests.

In order to request a schedule change, an employee needs to notify the employer or direct supervisor as soon as he or she becomes aware of the need for a temporary change to the work schedule. The initial request does not need to be in writing, but, as soon as practicable, and no later than the second business day after the employee returns to work following the conclusion of the temporary change, the employee must submit a written request, indicating the date for which the change was requested and that it was due to the employee's covered personal event. The employer must provide a written response no later than 14 days after receipt of the written request. The

must provide a written response no later than 14 days after receipt of the written request. The employer's response must include whether the employer will agree to the temporary change to the work schedule or will provide the change to the work schedule as unpaid leave. If the employer denies the request, the employer must include an explanation for the denial. Finally, the employer's response must include how many requests and how many business days the employee has left for temporary schedule changes.

Under the bill, employees are also permitted to request schedule changes other than the temporary changes required to be granted, which the employer can elect to grant or deny. The procedure for such employee requests and employer responses must follow the same process as described above. Though employers do not need to grant these additional requests, employees who request such changes will be protected by the anti-retaliation provisions.

The bill provides for a penalty of $500 for employer violations, payable to the employee. However, if the employer fails to provide an employee with the required written response to a schedule change request, the employer can cure the violation without imposition of a penalty by presenting proof that it provided the employee with the written response within seven days after being notified of the opportunity to cure. Employers may also be directed to comply with the bill. Additionally, employers may be potentially liable for compensatory damages or other penalties under the Fair Workweek Law.

The legislation does not apply to employees 1) covered by a collective bargaining agreement that waves the provisions of this law and addresses temporary changes to work schedules, 2) who have been employed for fewer than 120 days, 3) who work in certain capacities in the entertainment industry, or 4) who work fewer than 80 hours in the city per calendar year.

The bill now goes to Mayor Bill De Blasio, who is expected to sign the bill into law. Once he signs the bill, it will become effective 180 days later.

[ED. NOTE: The bill became law on January 19 after Mayor De Blasio failed to sign or veto it by the procedural deadline. The effective date of the law will be July 18, 2018.]
Employers with operations in New York City should follow this bill for the latest updates. If and when it is enacted, employers must understand their obligations to provide schedule changes. Additionally, employers must prepare to engage in the process outlined in the bill for responding to schedule change requests.

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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