

KEY PORTION OF NYC'S FAIR WORKWEEK LAW PUT ON PAUSE

Insights

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One of the key provisions of [New York City's Fair Workweek Law](#) was just put on hold while a federal judge sorts out a constitutional challenge brought by two restaurant advocacy organizations. The "Deductions Law" portion of the new city statute allows certain employees of fast food establishments to authorize a portion of their wages to be paid to registered and approved not-for-profit organizations, and also directs fast food establishments to deduct, collect, and remit those employee wages to the designated organizations. However, thanks to a lawsuit brought by the Restaurant Law Center and the National Restaurant Association, enforcement of the Deductions Law has been put on pause, and could be permanently scrapped if found unconstitutional.

LEGAL CHALLENGE TAKES SHAPE DAYS BEFORE ENACTMENT OF NEW LAW

On November 21, 2017, just five days before the new law was set to take effect, the two restaurant advocacy groups filed suit in federal court against the City of New York, alleging that the Deductions Law violates the First Amendment. They claimed that the law would unconstitutionally compel speech by forcing unwilling employers to donate employees' wages to ideological and political organizations with whom they may and do disagree. They also contended that it would compel employers to associate with and endorse such groups and their messages, as employers would be forced to fund—and would be perceived as funding—their apparent ideological and political agenda. Finally, they argued that the Deductions Law would compel employers to subsidize their employees' speech, as it necessarily

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imposes numerous administrative, labor, and legal costs which will not be (and in some cases *cannot* be) reimbursed.

But the legal challenges did not end with the constitutional arguments. The advocacy organizations also alleged that the Deductions Law was preempted by the National Labor Relations Act (NLRA), as the law grants the city the authority to decide what is and is not a “labor organization” and legislates obligations that the NLRA intended to leave unregulated. In a related argument, they argued that the new law would require covered employers to pay funds without regard to the restrictions of the Labor Management Relations Act (LMRA), exposing employers to federal criminal liability and an impossible choice between compliance with federal or local law.

COURT AGREES TO PRESS PAUSE

As the legal challenge has gotten underway, the two restaurant groups informed the city that it intended to seek a temporary restraining order to block enforcement of the Deductions Law. Rather than risk a negative court ruling that would throw the status of the law into an uncertain state and cause confusion among New York City employers, the city agreed to temporarily stay enforcement of the Deductions Law. It stipulated that the Deductions Law would not be enforced until the court renders a ruling on the matter or March 30, 2018, whichever comes first. The judge blessed this arrangement between the parties in a court order issued on January 17, formally putting this provision of the law on ice while the legal challenges play out.

Over the next several months, the parties will brief the issues and the court will ultimately issue a ruling on the enforceability of the Deductions Law. We will provide updates as this matter progresses. In the interim, while the Deductions Law remains in flux, the other aspects of the Fair Workweek Law remain in effect.

For more information about how this case could 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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