

NYC Enacts “Fair Workweek” Laws

On May 30, New York Mayor Bill de Blasio signed a package of five bills into law, imposing varied worker scheduling limitations on retail and fast food employers. Slated to take effect on November 26, the so-called “Fair Workweek” laws regulate shift scheduling and pay practices in the fast food industry, and effectively ban on-call scheduling by retailers. NYC employers should identify policy changes that may be needed to ensure compliance with local law.

Background

On May 24, the New York City Council passed the “Fair Workweek” legislative package that imposes new restrictions on worker scheduling practices by fast food and retail employers operating in the city. Signed into law by Mayor Bill de Blasio on May 30, the package included five bills primarily aimed at ensuring more predictable scheduling for employees in those industries. The Council has not yet voted on a sixth bill ([Int. No. 1399](#)) that would, if enacted, give employees a right to flexible work arrangements in certain situations.

Work Scheduling Restrictions for Retailers

[Int. No. 1387-A](#) (Law No. 2017/099) effectively bans on-call scheduling by “retail” employers – a common industry practice that requires employees to be available to work while making them check in with, or wait to be contacted by, their employer to learn whether they will have to report to work that day. The new predictive scheduling law covers employers with at least 20 employees primarily engaged in the sale of consumer goods at a NYC store, but carves out employees covered by collective bargaining agreements that waive its provisions.

Under this law, employers must provide written work schedules to retail employees at least 72 hours in advance of scheduled work hours, post the schedule in a conspicuous workplace location, update it as needed, and notify employees of any changes that affect them as soon as practicable. Retailers that regularly communicate scheduling information electronically must also transmit schedules by that means. Upon request, employers will also have to provide employees with a written work schedule for any week worked during the past three years.



In addition to eliminating on-call scheduling, the new law generally bars retail employers from cancelling or changing a retail employee's regular shift with less than 72 hours' notice. However, retailers will be able to approve time-off requests, allow employees to trade shifts, and change work schedules with less than 72 hours' notice without penalty if their operations could not otherwise begin or continue due to threats to employees or property, public utility or transportation failures, natural disasters, or federal, state or local states of emergency.

Limitations on Fast Food Employers

Four new laws amend the administrative code of the city of New York to limit fast food employers' ability to change workers' schedules, require premium pay for last-minute schedule changes, establish minimum time between shifts and restrict on-call scheduling. In addition, the new laws allow workers to remit some of their pay to nonprofit advocacy groups through payroll deduction.

“Clopenings” Banned

[Int. No. 1388-A](#) bans “clopenings” – consecutive work shifts in fast food restaurants involving both the closing and opening of the restaurant. Under this law, fast food employers would not be allowed to require 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. A fast food employee could work two such shifts with a break of less than 11 hours, provided he or she requests or consents in writing. However, the employer would be required to pay the employee \$100 for every “clopening” shift worked.

Payroll Deductions

[Int. No. 1384-A](#) allows fast food employees to make voluntary contributions through payroll deduction to not-for-profit organizations of their choice, including organizations that advocate on the part of such workers for additional protections and enforcement of existing labor laws, such as the minimum wage and the Wage Theft Protection Act. The law would require fast food employers to collect and remit such contributions, with written authorization from the employee, unless the authorization was for less than \$6 per paycheck if employees are paid biweekly, less than \$3 per paycheck if paid weekly, or for more than once per pay period. Employers that fail to make authorized deductions and remittances may be subject to civil penalties of up to \$500 for each violation and \$1,000 if the violation is willful.

For these purposes, “fast food employee” means any employee employed or permitted to work at or for a “fast food establishment” that is located within the city whose job duties include at least one of the following: customer service, cooking, food or drink preparation, delivery, security, stocking supplies or equipment, cleaning, or routine maintenance. The law applies only to establishments that are part of a chain of 30 or more establishments nationally, including both integrated enterprises and franchises.

Additional Hours

[Int. No. 1395-A](#) requires fast food employers with available hours to offer additional shifts to existing employees before hiring new employees, including hiring through subcontractors. Employers would have to extend the offer to workers employed at all fast food establishments they own (or at a subset of those establishments as provided in the rules), with preferences given to workers at the location where the offered shifts would be worked.

Importantly, employers would be required to offer hours to current employees only up to the point at which they would be required to pay overtime, or until all current employees have rejected available hours, whichever comes first. Thereafter, employers would be free to hire or contract for additional workers.

Work Schedules and Schedule Change Premiums

[Int. No. 1396-A](#) establishes general provisions governing fair work practices and requires certain fast food employers to provide advance notice of work schedules to employees and pay a schedule change premium when hours are changed on less than 14 days' notice.

Work Schedules

This law would require a fast food employer to provide a good faith estimate of the employee's long-term work schedule at hire and before the employee receives his or her first work schedule. It would also require an employer to provide a written work schedule (of at least one week's duration) 14 days in advance of the first day of that schedule. The written schedule would also have to be posted in a conspicuous workplace location, and electronically transmitted (if that's how schedule changes are usually communicated).

Fast food employers would be required to update the written schedule within 24 hours of any change and make the revised schedule available to the employee. An employee could refuse or consent to work additional hours that are not included in the initial written work schedule before the start of the shift. Before scheduling any such hours, the employer would have to notify the employee of the changes. On request, an employer would have to provide an employee with a copy of previous work schedules (within the last three years) and the most current version of all employee work schedules at that location.

Schedule Change Premiums

Under the new law, fast food employers would have to pay a premium to employees when changing the work schedule with less than 14 days' notice. The amount of the premium would vary depending on the amount of advance notice given to the employee, and whether hours are added or cut, shifts cancelled or the date, start or end time of a regular or on-call shift is changed with no loss of hours. The premium for schedule changes made with at least seven days' but less than 14 days' notice to the employee would range from \$10-\$20 for each shift that is changed. With less than seven days' but at least 24 hour's advance notice, the premium pay would range from \$15-\$45 for each schedule change. For each instance when regular or on-call hours are subtracted or a regular or on-call shift is cancelled on less than 24 hours' notice, an employer would pay \$75 to the employee.

An employer would not have to pay schedule change premiums if its operations cannot begin or continue due to threats to the employees or the employer's property; the failure of public utilities or the shutdown of public transportation; a fire, flood or other natural disaster; a federal, state or local state of emergency; or severe weather conditions that pose a threat to employee safety. However, when an employer adds shifts to an employee's schedule to cover for or replace another employee who cannot safely travel to work, it would have to pay a schedule change premium to the replacing or covering employee. A schedule change premium would not be required if the employee requested a schedule change in writing or traded shifts with another employee or the employer has to pay overtime for a changed shift.

In Closing

The new restrictions, slated to take effect on November 26, impose strict scheduling requirements just as the 2017 holiday shopping season kicks off for retailers. While regulations reportedly under development by the state ultimately may preempt them, retail and fast food employers with NYC operations should identify any policy changes that may be needed to ensure compliance with local law.

Authors

Nancy Vary, JD
Abe Dubin, JD

Produced by the Knowledge Resource Center of Conduent Human Resource Services

The Knowledge Resource Center is responsible for national multi-practice compliance consulting, analysis and publications, government relations, research, surveys, training, and knowledge management. For more information, please contact your account executive or email fyi@conduent.com.

You are welcome to distribute *FYI*® publications in their entirety. To manage your subscriptions, or to sign up to receive our mailings, visit our [Subscription Center](#).

This publication is for information only and does not constitute legal advice; consult with legal, tax and other advisors before applying this information to your specific situation.