

NYC Employers Must Accommodate Employees’ “Personal Events”

Effective July 18, New York City employers must allow employees to temporarily change their work schedules. Amendments to New York City’s Fair Workweek Law will now require employers to allow employees to alter their hours, times, or work locations for up to two business days a year for certain personal reasons. Employers should update their employee handbooks, new-hire packets, leave and other employment policies to ensure compliance.

Background

Last year, New York City enacted the so-called Fair Workweek Law, a legislative package of five bills imposing varied worker scheduling limitations on retail and fast-food employers operating in the city. The law, which took effect in November, regulates shift scheduling and pay practices in the fast food industry, and effectively bans on-call scheduling by retailers. (See our [June 16, 2017 For Your Information](#).)

New Accommodation Requirement

Earlier this year, the city enacted a sixth bill ([Int. No. 1399](#)), amending the Fair Workweek Law to give employees a right to flexible work arrangements in certain situations. Unlike the earlier bills, the Temporary Schedule Change Law is not limited to fast-food restaurants and retail employers.

Effective July 18, nearly all New York City employers must grant covered employees two *temporary changes* in a year to their work schedules or locations for qualifying *personal events*.

Covered Employees

The new law covers employees who work at least 80 hours in NYC in a calendar year and have been employed by their employer for 120 days or more. Full-time and part-time employees, as well as transitional jobs program employees, are covered by the accommodation mandate regardless of immigration status.

Notably, the law does not cover federal, state, or local government employees, or employees covered by a collective bargaining



agreement that waives these provisions and addresses temporary work schedule changes. It also contains a carve-out for the entertainment industry. Exempted from coverage are workers employed by an employer whose primary business is the development, creation, or distribution of theatrical motion pictures, televised motion pictures, television programs or live entertainment presentations **unless** the employee's primary job duty is performing: (1) office or non-manual work directly related to the management or general business operations of the employer or employer's customers; or (2) routine mental, manual, mechanical or physical work in connection with the care or maintenance of an existing building or location used by the employer.

Temporary Schedule Changes

For these purposes, a *temporary change* is a limited alteration in an employee's usual schedule, including in the hours, times, or locations where an employee is expected to work. The change may include: using paid time off; working remotely; swapping or shifting work hours; and using short-term unpaid leave.

Qualifying Personal Events

Employees will be able to make temporary schedule changes for the following reasons:

- Providing care for a minor child for whom the employee provides direct and ongoing care
- Providing care for a family or household member with a disability who requires medical care or assistance with the needs of daily living (care recipient)
- Attending a legal proceeding or hearing for subsistence (or public) benefits to which the employee, a family member, or the employee's care recipient is a party (e.g., welfare, food stamps, Social Security Income/Disability)
- Any circumstance that would qualify for the use of safe time or sick time under the city's Earned Safe and Sick Time Act

NYC Earned Safe and Sick Time Act (ESSTA)

ESSTA allows eligible employees who work in NYC for more than 80 hours in a year to accrue up to 40 hours of paid time off per year that may be used for reasons relating to:

- Care of their own or a covered family member's illness, injury or medical condition
- Closure of their workplaces or their children's schools or day care facilities due to a public health emergency
- Their own or a covered family member's status as a victim of a family offense, sexual offense, stalking, or human trafficking (collectively, "safe time")

(See our [November 27, 2017 FYI](#) for a more detailed discussion of safe time.)

Like the ESSTA, the Temporary Schedule Change Law recognizes the following as family members: the employee's child, grandchild, parent, grandparent, sibling or other blood relation, spouse, domestic partner, child or parent of the employee's spouse or domestic partner, and any other individual whose close association with the employee is the equivalent of a family relationship.

Requesting A Schedule Change

The employee is to request a temporary schedule change as soon as he or she becomes aware of the need for the change. The employer must respond immediately. The response need not to be in writing unless the employee's request was in writing.

While the employee's initial request does not need to be in writing, it should be submitted in writing before the schedule change occurs, if possible, but no later than two days after returning to work. The request must include

the proposed schedule change unless the employee is seeking leave without pay. The employer has 14 days to either grant the request or explain why it was denied (either because the employee is not covered by the law or has already exhausted the annual two-day entitlement). The response must also inform the employee of the number of schedule changes he or she remains entitled to for the rest of the year.

Temporary schedule changes may last up to one business day — a 24-hour period during which an employee is required to work for any amount of time — per occasion. Alternatively, the employee may request — and the employer may allow — up to two business days for a single occasion. If an employer allows a two-day temporary schedule change, it has satisfied its accommodation obligation and need not grant another change request in that year.

While the employer may offer the employee the option to use accrued leave time such as vacation or PTO for a temporary schedule change, it may not require employees to use it prior to requesting a change. The employer may, however, require the employee to take unpaid leave instead of granting the type of temporary change the employee proposes (e.g., swapping shifts).

Interaction with ESSTA

Because the schedule changes required under the Fair Workweek Law are in addition to the five paid sick days that may be accrued under ESSTA, paid leave granted under ESSTA will not satisfy the requirement under the new law. Further, an employee requesting a temporary schedule change need not exhaust his or her paid sick leave under ESSTA before seeking the change.

Non-Retaliation

Because the temporary schedule change provisions are part of the Fair Workweek Law, employees are protected against retaliation for exercising or attempting to exercise their rights under the new law and for requesting additional changes to their schedules that employers are not required to grant. Further, employees cannot waive those rights and employers may not request or require them to do so.

Enforcement

Any person, including workers' representatives and related organizations, may file a complaint about possible violations of the Temporary Schedule Change Law with the NYC Department of Consumer Affairs (DCA) Office of Labor Policy & Standards (OLPS), which enforces this and other local workplace laws. Complaints must be filed with OLPS within two years of when the employee learned (or should have learned) of the violation. Alternatively, individuals may bring a private action in civil court for monetary and other relief.

Employers who violate the Temporary Schedule Change Law may be subject to the following fines per employee: (1) \$500 for a first violation; (2) up to \$750 for a second violation within a two-year period; or (3) up to \$1,000 for subsequent violations within a two-year period. Employers who do not comply with the new law may be liable to the employee for \$500 and any compensatory damages or other relief required to make the employee or former employee whole.

Remedies available for workers who were retaliated against for exercising or attempting to exercise their rights under the new law may include payments for lost wages or benefits, \$500 (or \$2,500 if the retaliation resulted in termination), and any other payments and relief required to remedy the harm done.

DCA Guidance

The DCA has posted on its dedicated [webpage](#) an [overview](#) of the Temporary Schedule Change Law, [Frequently Asked Questions](#) (FAQs), and other information on filing a complaint. It also provided a model employee rights [notice](#) that employers must conspicuously post at each NYC workplace in English and in any other language that is the primary language of at least 5 percent of the workers at a workplace once the DCA makes a translated version available.

The FAQs confirm recordkeeping requirements, noting that covered employers must retain records documenting compliance with the requirements of the Temporary Schedule Change Law (including temporary change requests and responses) for a period of three years unless another law requires a longer retention period.

In Closing

Employers should update their employee handbooks, new-hire packets, leave and other employment policies to ensure compliance.

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