

Mayor Signs Major Workplace Reforms For Fast Food & Retail Workers

Mayor Bill de Blasio signed the New York City Council's five-bill Fair Work Week legislative package, intended to reform scheduling and workplace practices for fast food and retail workers in New York City.

On May 30, 2017, Mayor de Blasio signed into law all five bills that comprise the legislative package that was first introduced on December 6, 2016, and passed by the New York City Council on May 24, 2017. This initiative follows Mayor Bill de Blasio's September 2016 announcement that his administration plans to implement greater protections for approximately 65,000 hourly fast food workers in the City. The original package included six bills, but one (Int. 1399) regarding requests for modifications to worker schedules was not voted on by the Council. Summaries of the new laws, which will take effect November 26, 2017 are below. The law on payroll deduction (Int. 1384) will sunset after two years. The newly created Office of Labor Standards within the New York City Department of Consumer Affairs (discussed below) has the power to implement the laws, promulgate rules, and conduct outreach prior to the effective date.

On-Call Scheduling

Intro 1387, sponsored by Council Member Corey Johnson (D-Manhattan), bans the practice of "on-call scheduling" for retail employees.

Under the law, employers will be prohibited from scheduling a retail employee for any on-call hours (that is, requiring an employee to be available to work, contact the employer, or wait to be contacted by the employer) before determining whether the employee must report to work.

The law will prohibit employers from:

- Scheduling a retail employee for any on-call shift;
- Canceling a work shift with fewer than 72 hours' notice;
- Requiring a retail employee to work with fewer than 72 hours' notice, unless the employee consents in writing; and
- Requiring a retail employee to contact an employer to confirm whether the employee should report for his or her scheduled shift in the 72 hours before the start of the shift.

The law allows retail employers to make schedule changes or cancel shifts within 72 hours of the start of the scheduled shift without penalty:

- To give an employee time off or to allow a retail employee to voluntarily trade shifts with another retail employee; or
- If the employer's operations cannot begin or continue.

Consecutive Work Shifts

Intro 1388, also sponsored by Council Member Johnson, bans consecutive work shifts in fast food restaurants involving both the closing and opening of the restaurant.

The law will prohibit employers from requiring fast food employees to work back-to-back shifts, when the first shift closes the restaurant and the second shift opens it the next day, with fewer than 11 hours in between (which the law coins as “clopening” shifts), unless the employee requests to work such shifts or consents in writing. If an employer schedules such back-to-back shifts, it must pay the employee an additional \$100.

Shifts to Current Employees

Intro 1395, sponsored by Council Member Brad Lander (D-Brooklyn), requires fast food employers to offer work shifts to current employees before hiring additional employees.

The law states that whenever a fast food employer has additional regular or on-call work shifts to provide in any fast food job position, the employer must first offer such shifts to current employees at the specific

location where the additional shifts are needed before the employer can hire any additional employees or subcontractors (including temporary staffing agencies) to fill the shifts.

When shifts become available, the employer must conspicuously post the number and nature of all shifts being offered and assign additional shifts to any employee who has responded to the offer of work. Employers will be required to offer all available hours until interested employees would be required to receive overtime pay, or until all current employees have rejected available hours, whichever comes first.

Fair Work Week

Intro 1396, also sponsored by Council Member Lander, creates general provisions for a new “fair work week” chapter in the City’s Administrative Code that outlines oversight by the Department of Consumer Affairs.

The law will require fast food employers to provide employees with an estimate of their work schedule upon hire and regular work schedules outlining all shifts with 14 days’ advanced notice for a period of at least 7 days, and include all regular and on-call shifts that the employee will be required to work or be available to work.

Moreover, it will require that an employer pay the following different premiums to the employee when making a scheduling change:

- If additional shifts or hours are added to a shift, or if the date, start, or end times of a shift are changed with no loss of hours with notice to the employee of fewer than 14 days, but at least 7 days' notice, the employer must pay an additional \$10 for each schedule change.
- If hours are subtracted or if a shift is cancelled with notice to the employee of fewer than 14 days, but at least 7 days, an employer must pay \$20 for each schedule change.
- If shifts or hours to a shift are added, or the date, start or end time or a shift changes with no loss of hours with notice to the employee of less than 7 days, an employer must pay \$15 for each schedule change.
- If hours are subtracted from a shift or the shift is cancelled with less than 7 days' notice, but at least 24 hours' notice to the employee, the employer must pay \$45 for each schedule change.
- If hours are subtracted or if a shift is cancelled with fewer than 24 hours' notice to the employee, the employer must pay \$75 for each schedule change.

An employer is not required to provide premium pay when operations cannot begin or continue due to severe weather conditions that pose a threat to employee safety. However, if the employer adds shifts to an employee's schedule to cover for or replace another employee who cannot safely travel to work, the covering employee is paid premium pay according to the schedule. Further, an employer is not required to provide premium pay when two employees voluntarily trade shifts.

Payroll Deduction

Intro 1384, sponsored by Council Member Julissa Ferreras-Copeland (D-Queens), provides fast food workers with the ability to make voluntary contributions to not-for-profit organizations of their choice through payroll deductions. The purpose of this legislation is to make it easier for employees to support advocacy organizations working on their behalf.

The law outlines standards for organizations eligible to receive the contributions. It also establishes a minimum contribution of \$6 per biweekly paycheck and \$3 per weekly paycheck in order to minimize the burden to the employer.

Governor Cuomo's Reported Statewide Regulations

Governor Andrew Cuomo and the New York State Department of Labor are reportedly

drafting their own statewide regulations for retail and restaurant workers and potentially all minimum wage workers. If such regulations become effective, they could legally or practically supersede the new New York City laws. These regulations may go further than the New York City laws in some respects, but also relax certain requirements. We will continue to monitor the situation.

Please contact Jackson Lewis with any questions about this legislative package, compliance, or government relations.

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