Engage PEO Client Alert:

New York City: Fair Workweek Laws

Accommodation of Temporary Schedule Change Requests

The Temporary Schedule Change Law (part of the New York City Fair Workweek law), went into effect on July 18 and requires employers to allow employees to request a temporary schedule change for a personal event. The law also includes a required procedure for all temporary schedule changes including those that are not precisely covered under the law.

Note, it is unlawful to retaliate against an individual exercising their rights under this law. See details and document links below:

Employees covered

All employees who have worked for an employer for 120 days and have logged 80 hours of work in New York City in one calendar year are covered by this law.

Employees subject to a collective bargaining agreement or involved in the care or maintenance of an existing building are excluded, in addition to employees in the motion picture industry.

Covered Use

The schedule change can be used for a "**personal event"** which is defined as the need for the employee to:

- Care for a child under the age of 18
- Care for a person with a disability who is a family or household member and relies on the employee for medical care or to meet the needs of daily living (a "care recipient")
- Attend a legal proceeding or hearing for public benefits to which the employee, a family member, or the employee's minor child or care recipient is a party
- Any other reason for which the employee may use leave under NYC's Paid Safe and Sick Leave Law

Employees can request up to two temporary schedule changes. A temporary change is a limited alteration to the hours, or times or location of work.

The request can be for either:

- One business day on two separate occasions during the calendar year, or
- Two business days on one occasion during the calendar year

As with the NYC Earned Sick and Safe Time Act (ESSTA), employers may choose to be more generous and grant changes in addition to those required under this law.

An acceptable change accommodation is any accommodation which meets the employee's needs, such as: using PTO, telecommuting, a change in start or end time, switching shifts or taking a short term unpaid leave.

Employers do not need to grant the specific accommodation requested but can grant unpaid time off instead, which will not constitute a denial.

Temporary Schedule Change Procedure

This NYC law outlines the procedure for ALL temporary schedule change requests, not only requests under this law.

- Employee makes the preliminary request either verbally or in writing
  - ❑ Employee notifies employer as soon as he/she becomes aware of the need for the accommodation, but at least as much notice as "practical"
  - ❑ The employee proposes a specific schedule change
  - ❑ The employee states that it is due to a qualifying event (unless the request is not for a personal event). Employers can grant requests for non-qualifying events at their discretion but should be mindful of following consistent business practices to avoid discrimination claims
  - ❑ Following the preliminary request, within two days of returning to work, the specific date must be put into **writing** with a statement that the request was made for a *qualifying personal event*
- If the request falls under a qualifying event under this new law, then employers must make their initial response to the employee immediately either in writing or verbally
  - ❑ Following the initial response, a written response must also be provided within 14 days of the written request. **The written response must include:**
    - Whether the employer is granting the request or if the temporary change would be leave without pay, or
    - Indicate if it is denied – with an explanation.

      It may only be denied if: The employee had already exhausted the two allotted requests for the calendar year; or if an exemption applies. **Engage clients are encouraged to speak with their HR Consultant before denying a request**.
    - A notice of how many requests and business days that the employee may still make in the calendar year. This notice must be provided regardless of whether the request qualifies.

Interaction with Earned Sick and Safe Time Act (ESSTA)

Employees are not required to use leave under ESSTA before requesting a change under this law. Conversely, ESSTA time does not apply towards the time used under this law.

As a reminder, Sick and Safe Time can be taken for any of the following reasons:

- Sick time off may be used for a mental or physical illness, injury or health condition for employees or their covered family members who:
  - ❑ Need a medical diagnosis
  - ❑ Require care or treatment of a mental or physical illness
  - ❑ Have an injury or health condition
  - ❑ Due to closure of the employee's place of business by order of public official due to a public health emergency, or for an employee's need to care for a child whose school or childcare provider has been closed by order to a public official due to a public health emergency
- Safe time off may be taken for absence from work due to any of the following reasons when the employee or a family member has been the victim of domestic violence or unwanted sexual contact, sexual offense, stalking or human trafficking:
  - ❑ To obtain services from a domestic violence shelter, rape crisis center, or other shelter or services program for relief from such
  - ❑ To participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future family offense matters, sexual offenses, stalking or human trafficking
  - ❑ To meet with an attorney or other social services provider to obtain information and advice on and prepare for or participate in any criminal or civil proceeding, including but not limited to, matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues, orders of protection, immigration housing, discrimination in employment, housing or consumer credit
  - ❑ To file a complaint or domestic incident report with law enforcement
  - ❑ To meet with a district attorney's office
  - ❑ To enroll children in a new school
  - ❑ To take other actions necessary to maintain, improve, or restore the physical, psychological, or economic health or safety of the employee or the employee's family member or to protect those who associate or work with the employee

Covered Family Member under ESSTA

The employee may use the described time off for themselves or for a covered individual. A covered individual includes a child (biological, adopted, stepchild, and/or child of a domestic partner, foster child, legal ward, child of an employee standing in loco parentis), spouse/domestic partner, parent (including parent-in-law and parent of a domestic partner), sibling (including half and step siblings) or grandchild and grandparents and any other blood relative or another individual whose association with the employee

is the equivalent of a family relationship and is in need of medical care or otherwise in accordance with applicable law.

Sample Policy

Engage clients can find a sample NYC Temporary Schedule Change Policy Addendum here:

Posting Requirements

This law, like ESSTA, requires posted notices in a conspicuous place. The notices must be posted in English. In addition, if more than five percent of the workplace primarily speaks another language, the poster must also be posted in that language (so long as the city's Division of Consumer Affairs has made a translation available). Finally, if an employee has a primary language that is not English and the notice is available, it should be provided it to the employee in that language as well.

Please make sure that you post these notices as soon as possible and provide these notices to new hires in English and their primary language as explained above.

The Required Notice for Temporary Schedule Change Law in English can be found here: https://www1.nyc.gov/assets/dca/downloads/pdf/workers/TemporaryScheduleChange-Notice-English.pdf

As other languages become available, they will be found here: https://www1.nyc.gov/site/dca/workers/workersrights/temporary-schedule-change-law-employees.page

Reminder: The Required Notice for ESSTA in English can be found here: https://www1.nyc.gov/assets/dca/downloads/pdf/about/PaidSickLeave-MandatoryNotice-English.pdf

Other languages here: https://www1.nyc.gov/site/dca/businesses/paid-sick-leave-law-for-employers.page

If you have questions, please contact your Engage HR Consultant.

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