

November 2017

Effective November 26, 2017: New York City Retail and Fast Food Employers Subject to New Fair Workweek Law

On November 26, New York City will implement a package of laws, dubbed the “Fair Workweek Law” (Law). The package of five laws states that retail and fast food employers in New York City must provide employees with predictable schedules and paychecks. The Law includes strict notice and recordkeeping requirements and sets forth firm enforcement mechanisms, including penalties, damages, and fines for employers that fail to comply.

RETAIL EMPLOYERS

The Law defines a retail employer as an establishment having 20 or more employees at one or multiple stores within New York City that is primarily engaged in selling consumer goods or is a part of a retail chain. With some exceptions, the Law bans the practice of on-call scheduling by retail employers. Generally, employers would need to post a physical copy of the employee schedule at least 72 hours prior to the beginning of a shift and provide employees at least 72 hours’ notice before modifying the schedule in order to comply. Upon an employee’s request, retailers must provide a written copy of an employee’s work schedule for any week the employee worked within the last three years.

FAST FOOD EMPLOYERS

The Law defines a fast food employer as an establishment that offers food where guests order and pay before receiving it, provides limited service, and is part of a national chain or franchise brand with 30 or more national locations. The Law provides that fast food employers need to obtain an employee’s consent or pay a \$100 premium to any employee scheduled to “clopen” (a term defined to mean a schedule where the employee works back-to-back shifts, first closing the business and then opening it the next day).

The Law also states that fast food employers have to provide employees with a good faith estimate of their work schedule and provide updates if a long-term change is made. With certain exceptions, current employees are to be offered open available shifts, and specific notice requirements are imposed, before an employer hires new employees to fill the openings. Employers are not required to offer shifts that would allow the employee to receive overtime or one and one-half times pay. Generally, if an employer changes the schedule less than 14 days beforehand or an employee accepts additional shifts, a premium is payable to the employee. Payments range from \$10 to \$75, depending on the amount of notice the employee is given.

Finally, if an employee elects to donate to a not-for-profit organization, employers are required to set up a system to deduct the amount from the employee’s paycheck and remit payment to the charity of

the employee's choice. The Law specifies minimum employee contribution amounts per paycheck.

EMPLOYER COMPLIANCE

To prepare, New York City retail and fast food employers may want to:

1. Train all owners, managers, supervisors, and individuals responsible for schedules and call-outs on these developments.
2. Review scheduling practices and policies.
3. Post a copy of the Fair Workweek notices outlining employees' rights in a conspicuous location. Posters will be available from the New York City's Office of Labor Policy and Standards, available here: <https://www1.nyc.gov/site/dca/about/office-of-labor-policy-standards.page>
4. Retain records demonstrating compliance with the scheduling laws for three years.
5. Retain records demonstrating compliance with the contribution law for two years.

The Fair Workweek Law forbids retaliation against employees who exercise their rights under the Law. Retaliation includes "threatening, intimidating, disciplining, demoting, suspending or harassing, reducing hours or pay, . . . [or] discriminating" against an employee.

TREND

New York City is the most recent in a string of predictive scheduling laws that have been enacted. San Francisco, California, was the first to enact scheduling regulations in 2014. Seattle, Washington, and Emeryville, California, followed suit with scheduling regulations taking effect earlier this year.

Oregon became the first state to make Fair Workweek scheduling the law statewide. Oregon's law will take effect in 2018. Over a dozen states and municipalities around the country have introduced similar legislation.

For more information or if you have questions about how the issues raised in this alert affect your policies, practices, or other compliance efforts, please contact one of the following lawyers in the firm's [Labor, Employment, Benefits + Immigration Group](#).

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