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# NYC Releases Guidance and Notice Posting For New Temporary Work Schedule Changes Law

New York City's Department of Consumer Affairs (DCA) recently released guidance on the new temporary work schedule change provisions of the New York City Fair Workweek law that took effect on July 18, 2018. The guidance consists of Frequently Asked Questions and an overview of the law called "What Employers and Workers Need to Know." The DCA also released a mandatory notice that employers must post in the workplace.

The temporary schedule change law (previously reported here) requires New York City employers to provide employees with temporary schedule changes for certain "personal events." Under the law, "personal events" include: caring for a minor child for whom the employee provides direct and ongoing care; caring for an individual with a disability for whom the employee provides direct and ongoing care to meet the needs of daily living and who is a family member or who resides in the caregiver's household ("care recipient"); attending a legal proceeding or hearing for public (or subsistence) benefits for the employee, a family member, or the employee's minor child or care recipient; or any permissible use of safe or sick time under the New York City Earned Safe and Sick Time Act. Employees are entitled to request changes to their usual work schedule (which may include changes to the hours, times, or locations) two times each calendar year—one occasion for up to two business days or two separate business days. Examples of temporary changes include unpaid time off, swapping schedules, working remotely or a change in work hours.

The DCA's guidance clarifies several open questions regarding how and when employees may make such requests. The DCA's guidance confirms that employees must request a schedule change as soon as they become aware of their need for a change. However, conspicuously absent from both the DCA's guidance and the law is any minimum notice period. Indeed, the DCA suggests that, in some cases, an employee may request a schedule change *after* the date the schedule change takes place. While employees may initially request the schedule change orally, they must follow up the oral request in writing within two business days after they return to work. The written request should include the date of the requested schedule change and confirm that the change was due to a covered personal event.

Employers may only deny requests for temporary schedule changes when the employee has exceeded the number of requests permitted under the law or did not have a qualifying "personal event" necessitating the requested schedule change. The DCA's guidance makes clear that employers may not require employees to provide documentation to substantiate a request or to provide proof of the personal event. Employers also cannot prohibit employees from using their two temporary schedule changes on specific days, such as holidays, which has the possibility of creating staffing issues. While employers are required to grant requested schedule changes except under limited circumstances, they are not required to grant the specific *type* of temporary schedule change proposed by an employee. Further, employers may discipline employees who misrepresent the existence of a qualifying personal event.

As noted above, the DCA also released a mandatory notice posting titled "You Have a Right to Temporary Changes to Your Work Schedule," which employers must post in a place visible to employees. In addition to English, employers must post the notice in any language that is the primary language of at least 5% of the workers at the workplace. The poster is currently available only in English, but the DCA will be providing the poster in other languages on its website in the future. Additionally, employers must retain records of requests and responses for three years.

New York City employers should ensure they are in compliance with the law, including its posting and recordkeeping requirements, and should train managers and Human Resources personnel to appropriately respond to employee requests for temporary schedule changes.

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