

Up Against the Clock, New York City's "Temporary Schedule Change" Law Goes Into Effect

Earlier this year, the New York City Council passed the "Temporary Schedule Change" law, which provides employees with the right to request a change to their work schedules to accommodate certain medical and family care needs. Effective July 18, 2018, the law permits employees to request up to two temporary schedule changes per calendar year for "personal events." In addition, the law prohibits retaliation against employees who request schedule changes, regardless of whether the request is ultimately granted.

As with other recent New York City enactments, the new law imposes rigorous requirements on employers with regard to employee requests for leave. This alert contains a summary of the notable provisions of the law.

"Personal Events"

Under the new law, an employer is required to provide a temporary schedule change to accommodate "personal events." Personal events include an employee's need to:

- Care for a minor child;
- Care for an individual ("care recipient") with a disability for whom the employee provides direct and ongoing care to meet the daily needs of living and who is a family member or resides in the employee's household;
- Attend a legal proceeding or a hearing for public benefits for the employee, a family member, or the employee's minor child or care recipient; or
- For any reason allowed by New York City's Paid Sick and Safe Leave Act ("Sick/Safe Leave Act").

As we have noted in prior alerts [here](#) and [here](#), there are several acceptable reasons for leave under the Sick/Safe Leave Act. For instance, under that law, an employee may request leave to provide for the care and treatment of an employee's family member. An employee may also request leave to obtain services for the employee or the employee's family member relating to a family offense matter, sexual offense, stalking, or human trafficking. These are the same permissible justifications for a temporary schedule change. As a result, employers should re-familiarize themselves with the Sick/Safe Leave Act to ensure compliance with the Temporary Schedule Change law.

Notably, despite the overlap with the Sick/Safe Leave Act, employers may not require employees to use leave earned under the Sick/Safe Leave Act for temporary schedule changes. Moreover, leave granted for a temporary schedule change does not satisfy an employer's independent obligation to provide sick/safe leave as required by law.

Employee Obligations

Employees must notify their employers as soon as they become aware of the need for a temporary change to their work schedule due to a "personal event." The request can be made orally or in writing. If a request is made orally, the employee must submit a written request within two days after returning to work. The request should include: (a) the date of the temporary schedule change; (b) that the change is due to a personal event; and (c) the proposed type of temporary change, such as unpaid time off, a schedule swap, or a change in work hours.

Employer Obligations

Employers are required to grant temporary schedule changes two times each calendar year for a business day, which is any 24-hour period during which an employee is required to work for any amount of time. If an employee requests an accommodation of two consecutive days and it is granted, the employer is not required to grant a subsequent temporary schedule change within the same calendar year.

Employers must respond to an employee's request immediately, though the initial response need not be in writing. A written response must be made as soon as practicable and in no event later than fourteen days after the employee submits his or her request in writing. The employer's response must include, among other things, its decision on the request, an explanation of the accommodation offered if the request is granted, and an explanation of the denial if the request is denied. Employers must also note the number of requests an employee has made and how many days the employee has remaining in the calendar year for temporary schedule changes.

Employers must post an a notice (which should be printed on 11" x 17" paper) about the law in a place where employees can easily view it within the workplace. The required notice can be found on the website of the Department of Consumer Affairs. Finally, employers may not retaliate against employees who request schedule changes, regardless of whether the employer is required to grant the request.

Eligibility

Employers are required to provide temporary schedule changes to all employees who have worked 80 hours or more per calendar year in New York City and who have been employed by their employer for 120 or more days. Employees covered by the law include, among others, full-time employees, part-time employees, and employees who live outside of New York City.

The law also includes several exemptions. For instance, it does not apply to employees covered by a collective bargaining agreement that waives application of the law. It also does not apply to certain employees in the motion picture, television, and live entertainment industries.

Failure to Comply with the Law

An employer who fails to comply with the Temporary Schedule Change law faces a potential fine of \$500 per employee on a first violation. Employers may also be required to pay compensatory damages or other relief to make the employee or former employee whole. The Department of Consumer Affairs Office of Labor Policy & Standards, which is tasked with enforcing the law, can seek a court order requiring the employer to comply with the law, if still possible. An employer who violates the law by failing to provide a written response to the employee's request may cure the violation by providing proof of a written response to the employee within seven days of being notified of an opportunity to cure.

Take-Aways for Employers

To ensure compliance with the new rules, employers should take the following steps:

- Establish a protocol for reviewing and responding in writing to employee requests for schedule changes;
- Consider developing tracking mechanisms to record the number of requests an employee has made for temporary schedule changes and when such requests are made;
- Comply with mandatory posting requirements; and
- Train and inform all Human Resources personnel on the new requirements under the law. Human Resources personnel should also review the acceptable reasons for leave under New York City's Sick/Safe Leave Act.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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