

New York City DCA Issues Guidance on Temporary Schedule Change Amendments to Fair Workweek Law

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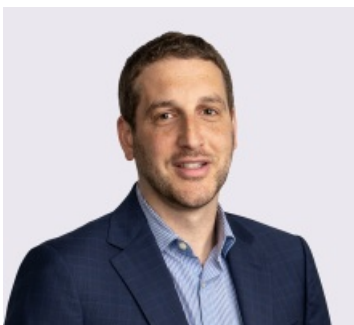
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The New York City Department of Consumer Affairs (DCA) Office of Labor Policy & Standards has released a mandatory posting, [Frequently Asked Questions](#), and an overview for employers and workers called “[What Employers/Workers Need to Know](#)” as guidance on the temporary schedule change provisions of the New York City Fair Workweek Law. The temporary schedule change provisions require most New York City employers to grant employees two temporary changes to their work schedules each calendar year for certain “personal events.”

The temporary schedule change provisions, which went into effect on July 18, 2018, apply to all industries and (unlike other provisions of the Fair Workweek Law) are not limited to retail and fast food employers in their coverage. However, compliance dates are delayed for employees covered by an existing collective bargaining agreement.

For more on the law, see our articles, [Temporary Schedule Change Amendments to New York City Fair Workweek Law Effective July 18](#), [New York City Employers Must Grant Temporary Work Schedule Changes Beginning July 18](#), and [New York City Employers Must Grant Temporary Work Schedule Changes under Bill Passed by City Council](#).

Mandatory Posting

The DCA has mandated that employers post its “You Have a Right to Temporary Changes to Your Work Schedule” notice in a location visible to employees.

The notice currently is available only in English on the DCA’s [dedicated webpage](#). However, the DCA has advised that it will be making translated copies of the notice available, at which time employers must post the notice in any language that is the primary language of at least five percent of the workers in the workplace.

The FAQs: Highlights

The FAQs remind employers that they must grant temporary changes to covered employees’ usual work schedules (including changes to the hours, times, or locations) on two occasions each calendar year for “personal events.”

Covered employees, in general, means employees who work at least 80 hours per calendar year in New York City and have been employed for at least 120 days.

The requested temporary change may include, for example, working remotely, swapping shifts, or adjusting shifts.

The DCA notes that employers also have the option of granting unpaid leave in lieu of the temporary change requested by the employee.



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Employers must grant requests for up to:

- Two separate occasions, each totaling one business day; or
- One occasion for up to two business days.

A business day is any 24-hour period during which an employee is required to work any amount of time.

A “personal event” occurs when an employee needs to:

- Care for a minor child for whom the employee provides direct and ongoing care.
- Care for an individual (“care recipient”) 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.
- Attend a legal proceeding or hearing for public benefits for the employee, a family member, or the employee’s minor child or care recipient.
- Use leave for any acceptable reason identified under New York City’s Paid Safe and Sick Leave Law.

The FAQs provide definitions of other relevant terms.

The FAQs also offer helpful scenarios of when and how workers may request temporary schedule changes from their employers, either orally or in writing, and how employers should respond to these requests from employees. For example:

Scenario:

Rose notifies her employer on July 20 that she will need to change her schedule on July 24. She needs to care for her 4-year-old daughter, Sophia, because Sophia’s childcare provider will be unavailable in the afternoon. Rose, who is scheduled to work on July 24 from 8 a.m. until 4 p.m., proposes working from 6 a.m. until 2 p.m. on that day instead. Is Rose’s employer required to allow Rose to change her hours as she proposed under the Temporary Schedule Change Law?

No. Although Rose’s employer must grant Rose temporary changes to her work schedule on up to two occasions each calendar year, her employer does not have to grant the specific type of temporary change proposed by Rose. Instead, her employer can tell Rose that she can take unpaid leave from 2 p.m. to 4 p.m. to accommodate her personal event.

The FAQs provide that an employee is not required to submit documentation with their request or provide proof of the “personal event.” Furthermore, employers cannot require employees to make temporary schedule change requests within a specified time prior to the need for the change. Rather, employees must make their requests as soon as practicable and employers must respond within a specific timeframe.

The temporary schedule change provisions are part of the Fair Workweek Law; therefore, employees are protected from retaliation. Employers are prohibited from retaliating against employees who exercise their rights under the law, including for requesting schedule changes in excess of their rights under the law. Employees cannot waive their rights under the law and employers may not request or require that they do so, *e.g.*, by use of a signed document saying employees cannot request changes to their schedule.

Additionally, employers must comply with the law's recordkeeping requirements, including retention of temporary schedule change requests and responses. Violations of the law may result in fines assessed on a per-employee basis, as well as an award of compensatory damages and/or other relief.

Please contact the Jackson Lewis attorney with whom you regularly work for assistance in modifying your organization's practices to comply with the new law.

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