

# Management Alert



## Shifty Business V: New NYC Law Allows Employees to Request Temporary Schedule Changes; Comment Period for NYS Call-In Pay Rules Extended

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**Seyfarth Synopsis:** A new NYC law entitles employees to two temporary schedule changes per year for certain personal events. Separately, the comment period for call-in pay rules proposed by the State DOL has been extended to January 22.

New York City has enacted a bill that allows employees to request two temporary schedule changes per year for certain personal events. Unlike other recent changes to employee scheduling requirements in NYC, the law applies to nearly all NYC employers and is *not* limited to the retail and fast food industries.

The bill was originally part of the same legislative package as the [NYC Fair Workweek Law](#), which was enacted in May 2017. But the City Council deferred further action on the bill pending certain revisions. It was finally passed on December 19, 2017, and adopted on January 19, 2018. The law will be effective on July 18, 2018.

This legislation requires employers to grant employees two temporary schedule changes, of up to one business day each, per calendar year for certain personal events. If the employer grants an employee a single request spanning two business days, then it does not need to grant a second request that year.

Qualifying personal events include:

- the need to provide care for a minor child or other individual under the employee's care;
- the need to attend legal proceedings for subsistence benefits to which the employee, the employee's family member, or the employee's care recipient is a party; or
- any circumstance that would qualify for use of safe time or sick time under the recently-amended [Earned Safe and Sick Time Act](#) ("ESSTA").

The law provides examples of temporary schedule changes to which the employee will be entitled on the applicable days:

- using paid time off;
- working remotely;
- changing work hours;
- swapping shifts; or
- using short- term unpaid leave.

The law mandates the process by which employees request a schedule change and employers respond.

Employees must provide notice of the need for a temporary change as soon as they are aware of it and propose a temporary schedule change, unless they seek unpaid leave. The employee's initial notice need not be written, but the employee must submit a written request within two days after returning to work. The written notice must state (a) the date for which the change was requested; and (b) that it was due to the employee's personal event.

The employer must *immediately* respond to a temporary schedule change request. This initial response need not be written, but a written response is required within 14 days of the employee's written request. The written response must state (a) whether the employer agrees to the employee's requested temporary change or provide leave without pay; (b) if the request is denied, an explanation for the denial; and (c) how many requests and how many business days the employee has left in the calendar year, after taking into account the decision on the employee's current request. If the employee does not submit a written request, the employer does not need to respond in writing.

Employers can deny a temporary schedule change request relating to a defined personal event *only* if the employee has exhausted the two allotted requests in the calendar year or if one of the exemptions listed below applies.

The requirements of this law are in addition to any obligations under ESSTA, and employees do *not* need to use leave under ESSTA before requesting a schedule change. Unpaid leave granted under this law does not count towards the employer's obligation to grant leave under the ESSTA. Leave granted under the ESSTA does not count towards the obligation to grant leave under this law.

The law includes a non-retaliation provision protecting employees who request schedule changes other than those that employers must grant under this law. Those requests must still follow the process required by this law.

The law does not apply to:

- employees covered by a valid collective bargaining agreement, if it waives the provisions of this law and addresses temporary changes to work schedules;
- employees who have been employed by the employer fewer than 120 days;
- employees working fewer than 80 hours in NYC in a year; or
- individuals performing certain types of work in the theater, film, or TV industry.

## NYS Call-In Pay Rules

Separately, the New York Department of Labor has extended the comment period for its [proposed rules](#) entitling employees to additional pay for on-call scheduling practices. Those rules were published in the State Register on November 22, 2017, and then subject to a 45-day comment period. The new deadline is January 22, 2018. Employers should expect swift action on the rules thereafter.

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**Seyfarth Shaw LLP Management Alert | January 19, 2018**

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