

MEMORANDUM

DATE: July 30, 2018

TO: New York City Clients

FROM: Kane Kessler, P.C.
Labor and Employment Law Department

RE: **NYC “Temporary Schedule Change” Law
Mandatory Notice Now Available For Posting in the Workplace**

The New York City “Temporary Schedule Change” law provides covered employees with the right to request up to two temporary schedule changes per calendar year for a “personal event” as defined under the law. The NYC Department of Consumer Affairs Office of Labor Policy & Standards (“DCA”), the City agency tasked with enforcing the law, has published a mandatory workplace notice for New York City employers titled, “You Have a Right to Temporary Changes to Your Work Schedule”, a copy of which is attached hereto and is available at nyc.gov/dca.

Employers must post the required notice where employees can easily see it at each NYC workplace. The DCA has advised that notices should be printed on and scaled to fill an 11” x 17” paper. Employers must post the notice in English and in any language that is the primary language of at least 5 percent of the workers at a workplace, if the translation is available on the DCA website. Presently the notice is only available in English.

This law took effect on July 18, 2018 for covered, nonunion employees. The DCA has made clear that for union employees covered by a valid collective bargaining agreement, the law takes effect on the date of the termination of such collective bargaining agreement. The law further provides that it does not apply where a collective bargaining agreement explicitly waives the provisions of the law and addresses temporary changes to work schedules.

All employees who have worked for an employer for 120 days and have logged 80 hours of work in New York City are eligible to seek a temporary schedule change under the law. The law exempts employees who perform certain manual or non-office work for motion picture, television, or live entertainment employers.

The law defines a “temporary schedule change” as follows: “a limited alteration in the hours or times that or locations where an employee is expected to work”, including but not limited to: using paid time off, working remotely, swapping or shifting work hours, and using short-term unpaid leave.

The law defines a “personal event” as follows: 1) to provide care to a minor child (under 18) or to care for a family or household member with a disability who requires medical care or assistance with the needs of daily living; 2) to attend a legal proceeding or hearing to secure public benefits for the employee, a family member or employee’s child or care recipient; or 3) for any other reason covered under the New York City Earned Sick and Safe Time Act (“ESSTA”).

The law does not contain any provision requiring an employee to submit proof that the request for a temporary schedule change is for a qualifying reason. Employers are only permitted to deny an employee’s request if the employee has already exhausted the allotted requests in the calendar year. Employers are required to grant temporary changes two times per calendar year for up to one business day per request. If an employer permits an employee to use two business days for one request, granting a second request is not required.

Employers cannot require that employees utilize any sick time they may have accrued under the ESSTA before granting a temporary schedule change nor can an unpaid schedule change be counted against the employee’s ESSTA time. Employers are required to “immediately” provide an informal response to an initial request for a schedule change, and then provide a formal response in writing no later than 14 days after the employee submits his or her written request setting forth: (i) whether the employer agrees to the temporary change as requested by the employee, whether with or without pay; (ii) if the employer is denying the request, an explanation for the denial; and (iii) how many more requests for temporary schedule changes the employee has left in the calendar year after taking into account the employer’s decision on the current request.

New York City employers should, however, review their policies and practices to ensure they do not conflict with the new temporary scheduling law. Further, employers should train managers and HR personnel on the new law and develop a tracking mechanism to monitor such requests. Penalties for failing to grant such requests include \$500 for each violation not involving termination and \$2,500 for violations that involve termination.

If you have any questions or need assistance in revising your handbook or policies, please do not hesitate to contact David R. Rothfeld, Lois M. Traub, Alexander Soric, Robert L. Sacks, Michael Lydakis, Jennifer Schmalz, Jaclyn Ruocco or Joseph Tangredi.

This memo is provided for informational purposes only.

It is not intended as legal advice and readers should consult counsel to discuss how these matters relate to their individual circumstances.

You Have a Right to Temporary Changes to Your Work Schedule

Under NYC's Temporary Schedule Change Law, covered employees have a right to temporary changes to their work schedule for certain "personal events." Employers must post this notice where employees can easily see it at each NYC workplace.

Employees Covered by the Law

All employees who work 80+ hours per calendar year in NYC *and* who have been employed by their employer 120 or more days

The law applies regardless of immigration status.

Employers cannot punish, penalize, retaliate, or take any action against employees that might stop or deter them from exercising their rights under the law. Workers should immediately contact OLPS about retaliation. See below.

Employees NOT Covered by the Law

- Government employees
- Certain employees subject to a collective bargaining agreement
- Certain employees in motion picture, television, and live entertainment industries

Definitions

Personal event

A "personal event" can be any of the following:

- The need to care for a child under the age of 18
- The need to care for a "care recipient," a person with a disability who is a family or household member and relies on you for medical care or to meet the needs of daily living
- The need to attend a legal proceeding or hearing for public benefits to which the employee, a family member, or the employee's minor child or care recipient is a party
- Any other reason for which the employee may use leave under NYC's Paid Safe and Sick Leave Law

Temporary change

A "temporary change" means an adjustment to your usual schedule. This can include: using short-term unpaid leave, paid time off, working remotely, or swapping or shifting working hours.

Your Rights

Temporary change to work schedule on up to two (2) occasions each calendar year



The change must be to accommodate a *personal event*. See Definitions. Your employer must grant requests for up to:

- Two (2) separate occasions, each totaling one (1) business day
- OR
- One (1) occasion for up to two (2) business days

Freedom from retaliation for additional schedule change requests



You can request additional changes to your schedule. Employers are not required to grant additional requests; however, they cannot retaliate against you.

If you need a temporary change to your work schedule:

As soon as you become aware of the need for a temporary schedule change, request one from your employer or direct supervisor either orally or in writing. Your request should include the date of the change, that the change is due to a personal event, and propose the type of temporary change you want (for example, to work from home), unless you would like to use leave without pay.

- Your employer must respond immediately.
- **If you requested the schedule change orally (for example, in person or by phone),** you must submit a written request no later than the second business day after you return to work. Include in the written request the date of the temporary schedule change and that the change was due to a personal event. Your employer must provide a written response within 14 days. *If you do not submit a written request, your employer is not required to provide a written response but cannot deny your request because you did not submit a written request.*
- Make sure to keep all of your schedules and any communications with your employer about scheduling.

Ability to propose type of temporary change

You can propose the type of *temporary change* you would like when you request it. See Definitions.

Your employer must:

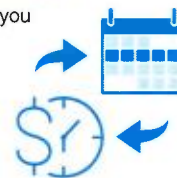
- Approve your proposal.
- OR
- Provide leave without pay.

Your employer may:

- Offer you the ability to use paid time off.
- Note: The law does not require employers to offer paid time off, and you do not need to accept such an offer.

Your employer may NOT:

- Require you to use leave earned under NYC's Paid Safe and Sick Leave Law for a temporary schedule change.



File a Complaint

The Department of Consumer Affairs (DCA) Office of Labor Policy & Standards (OLPS) enforces NYC's Temporary Schedule Change Law and other NYC workplace laws.

To file a complaint with OLPS, go to nyc.gov/dca or **contact 311** (212-NEW-YORK outside NYC) and ask for "Temporary Schedule Change Law." OLPS will conduct an investigation and try to resolve your complaint. **OLPS will keep your identity confidential unless disclosure is necessary to complete an investigation or is required by law.**

You can also file an action in court. However, you cannot have a complaint with OLPS and a claim in court at the same time.

Contact OLPS

Visit nyc.gov/dca, email olps@dca.nyc.gov, or **contact 311** (212-NEW-YORK outside NYC) and ask for "Temporary Schedule Change Law."



Bill de Blasio
Mayor

Consumer
Affairs

Lorelei Salas
Commissioner

You have a right to be given this notice in English and in any language that is the primary language of at least 5 percent of the workers at your workplace if the translation is available on the DCA website.