

# New York City Employers Must Provide Temporary Work Schedule Changes to Employees for “Personal Events” Beginning July 18, 2018

Drinker Biddle

Article By

[Helen E. Tuttle](#)

[Drinker Biddle & Reath LLP](#)

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On January 19, 2018, New York City adopted Int. 1399-A (“Law”) which requires employers to provide most city-based employees with up to two temporary schedule changes per calendar year due to a “personal event.” The Law provides employers and employees a defined process about how to discuss schedule change requests, and also provides measures to protect employees from retaliation as a result of making a request for a temporary schedule change for a personal event. This Law becomes effective on July 18, 2018.

## What the Law Considers a “Personal Event” and Temporary Schedule Change

Under the Law, a “personal event” triggering an employee’s right to a temporary schedule change is defined as:

- The need for a caregiver to provide care to a minor child or Care Recipient; <sup>[1]</sup>
- An employee’s need to attend a legal proceeding or hearing for subsistence benefits to which the employee, a family member or the employee’s care recipient is a party; or
- Any circumstances that would constitute a basis for permissible use of safe

time or sick time pursuant to New York City's Earned Safe and Sick Time Act ("ESSTA").

A temporary schedule change means a limited change in the hours 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.

Employers must provide a request for a temporary change to an employee's work schedule two times during a calendar year for up to one business day per request. Employers can also allow employees to use two business days for one request, which relieves employers from granting such employees a second request for a temporary schedule change. Furthermore, allowing employees to take a requested temporary schedule change as unpaid leave satisfies an employer's obligation under the Law.

## **Employee Request Requirements**

An employee who wants to request a temporary schedule change for a personal event must comply with the following:

- Notify his or her employer or direct supervisor as soon as the employee becomes aware of the need for a temporary schedule change and indicate that the change is due to a personal event;
- Make a proposal to the employer for the temporary schedule change (e., swapping schedules, shifting hours, etc.), unless the employee seeks leave without pay; and
- Submit the request in writing; however, the employee's initial request does not need to be in writing, but such written request must be made to the employer as soon as feasible, but no later than the second business day after the employee returns to work following the end of the temporary schedule change. The employee's written request must provide the date for which the schedule change was requested, and explain that the schedule change was due to the employee's personal event. If the employee fails to submit a written request to the employer, the employer has no obligation to provide the employee with a written response.

## **Employer Response Requirements**

Upon receipt of an employee's request for a temporary schedule change resulting from a personal event an employer must respond "immediately." The employer's initial response, however, does not have to be in writing. An employer should respond to the employee's request in writing as soon as practicable, but no later than 14 days after the employee submits his or her request in writing.

An employer's written response to the employee must state the following:

- Whether the employer will agree to the temporary schedule change in the manner requested by the employee, or will provide the temporary schedule change as leave without pay (which does not amount to a denial);
- If the employer denies the request for a temporary schedule change, an

- explanation for the denial; and
- How many requests and how many business days the employee has left in the calendar year after taking into account the employer's decision regarding the employee's request.

## **Other Requests for Work Schedule Changes**

The Law also provides employees an opportunity to request a work schedule change as opposed to the temporary changes covered by the Law. In such cases, employee requests and employer responses must follow the same process outlined above or otherwise determined by the director of the Office of Labor Standards ("OLS"). Notably, the Law does not require employers to grant any requests for work schedule changes. Similar to temporary scheduling changes, however, employees who make such requests are protected by the non-retaliation provisions of the Law.

## **Employer Exemptions**

Employers may deny an employee's request for a temporary schedule change if the employee has already used his or her two requests, or if the employee was granted one schedule change covering two business days in the calendar year. In addition, an employer may deny an employee a temporary scheduling change if the employee:

- Has been employed by the employer for fewer than 120 days;
- Works fewer than 80 hours in New York City in a calendar year;
- Is covered by a valid collective bargaining agreement, and such agreement covers temporary changes to work schedules; <sup>[2]</sup>
- Is employed by an employer in the entertainment industry (e.g. theater, movie, television), except for employees:
  - Who primarily perform office or non-manual work related to the management or general business operations of the entertainment industry employer or the employer's customers; or
  - Whose primary duty is performing routine mental, manual, mechanical or physical work in connection with the care or maintenance of an existing building or location used by the employer.

## **Interplay with New York City's Earned Safe and Sick Time Act**

The Law provides that an employee is not required to use leave accrued under the ESSTA prior to requesting a temporary schedule change. In addition, unpaid leave given for a personal event under the Law does not run concurrently with ESSTA leave, and the ESSTA may not be used to satisfy the obligations of the Law. Further, the Law does not impact employees' rights and employers' obligations under any other federal, state, or local law regarding an employee's entitlement to leave or reasonable accommodation.

## **Penalties for Violations of the Law**

An employer that fails to provide an employee the required written response can be fined \$500 and be ordered to comply. Employers can avoid this fine, however, by

curing failures to provide employees a response within seven days of being notified of their failure by the OLS, and by providing OLS proof of the same.

In addition, pursuant to the Law's non-retaliation provisions, employers may be required to compensate impacted employees all compensatory damages and other relief required to make them whole. In addition, employers may be ordered to rescind any discipline issued, reinstate a terminated employee, and pay back pay for any loss of pay or benefits resulting from such discipline or other action taken in violation of the Law. Moreover, and in addition to compensatory damages, penalties for violations include \$500 for each violation not resulting in the termination of an employee and \$2,500 for each violation involving termination of an employee.

## **What New York City Employers Should do to Prepare**

- Review and update current policies and procedures regarding temporary schedule changes to ensure they are consistent with this new Law.
- Ensure that such policies and procedures are consistently applied to all employees' requests for temporary schedule changes in regards to personal events.
- Train managers who may receive requests for temporary schedule changes on the Law's requirements.

*Gregg Settembrino contributed to this post.*

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[1] For employees subject to a collective bargaining agreement when the Law takes effect on July 18, 2018, the Law will apply for them at the end date of their current collective bargaining agreement.

[2] The Law defines Care Recipient to mean a person with a disability who (i) is a family member or a person who resides in the caregiver's household and (ii) relies on the caregiver for medical care or to meet the needs of daily living.

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