NYC Council to Consider Flexible Scheduling Legislation

New York City employers would be required to entertain employee requests for flexible work arrangements, among other requirements, under proposed legislation before the New York City Council (the "Council"). The Council's Committee on Civil Service and Labor (the "Committee") will conduct a hearing on the proposed legislation, along with five other bills, on March 3, 2017.

Specifically, Introduction No. 1399 would require employers to respond in writing within 14 days to employee requests for a flexible work arrangement - defined as "a work structure that alters the employer's regular terms and conditions of employment with respect to work schedule, duties or location" - and to engage in a good faith, interactive process "to assess the feasibility of a request for a flexible work arrangement to meet the employee's needs." Employers would be required to consider whether the request is "inconsistent with business operations" and to provide the rationale for any denial in writing to the requesting employee.

The proposed interactive process borrows from the requirements for considering requests for accommodations under the Americans with Disabilities Act and its state and local counterparts.

Int. No. 1399 defines flexible work arrangements to include such accommodations as modified work schedules, additional shifts or hours, changes in days of work, changes in work start and end times, permission to exchange work shifts with other employees, limitations on availability, part-time employment, job sharing arrangements, work from home or another location, reductions or changes in work duties, and reductions or changes in on-call shifts.

The bill would entitle employees to no more than one request for a flexible work arrangement per quarter.

Int. No. 1399 would also require employers to provide new hires "expected to work hours on a schedule" with a work schedule in writing reflecting the number of hours, times, and locations that the employee is expected to work.

Finally, the bill would require employers to grant employees temporary one-day changes in schedules for certain personal emergencies up to four times in a calendar year. Such circumstances include caregiving emergencies, personal health emergencies, or situations relating to the employee or a family member having been the victim of a family offense matter, a sexual offense, or stalking.

Employers would be prohibited from retaliating against employees exercising their rights under the bill.

Mayor de Blasio has not yet taken a position on Int. No. 1399.

The Committee will hear Int. No. 1399 with five bills addressing employee scheduling and other issues in the retail and fast food sectors. Unlike the other legislation being considered, however, Int. No. 1399 would be broadly applicable to employers in all sectors in New York City.

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Collectively, the remaining bills would prohibit the practice of on-call scheduling and impose certain predictable scheduling requirements on retail and fast-food establishments, prohibit so-called "clopening" shifts (back-to-back shifts spanning two days) in the fast food sector, require fast-food employers to offer additional hours to existing employees before hiring additional workers, and require fast-food employers to process payroll deductions for donations to non-profit organizations. These remaining bills reflect a conglomeration of certain "fair workweek" proposals announced by Mayor Bill de Blasio in September 2016 as well as bills proposed by individual Council Members without Mayor de Blasio's express support.

The New York City legislation reflects a growing trend by municipalities to address workplace scheduling, including ordinances enacted in San Francisco, Seattle, and Emeryville, CA. Legislation has also been introduced in Massachusetts, San Jose, CA, Minneapolis, MN, and Washington, D.C.

This post was authored by Matt Lampe, Martin Schmelkin, Michael Casertano, Remo Decurtins, and Jacqueline Bechara of Jones Day. The views and opinions expressed herein are those of the authors and do not necessarily reflect the views of Jones Day or the New York State Bar Association

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