HOME CARE CLIENT ALERT

Hodgson Russ LLP ATTORNEYS

Agencies with NYC Employees Must Comply with "Temporary Schedule Change" Law

July 12, 2018

Effective July 18, 2018, the New York City "Temporary Schedule Change" law (the Law) will require employers to grant two temporary schedule changes each calendar year to employees for qualifying "personal events." This alert describes the important implications of the Law on New York City employers.

Overview of the Law

The Law requires employers to grant an employee's request for a temporary change to the employee's work schedule, including a flexible work arrangement, because of a qualifying "personal event." A "temporary change" is defined as "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 entitles employees to no more than two requests of up to one business day each, per calendar year (or one combined request of two days).

A qualifying "personal event" is defined as (i) the need for a caregiver to provide care to a minor child or care recipient; (ii) 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 (iii) any circumstance that would constitute a basis for permissible use of safe time or sick time under the City's Earned Sick and Safe Time Act.

Procedures for Requesting A Temporary Schedule Change

The Law establishes the procedure by which employees and employers must communicate regarding the request for a temporary schedule change.

1. Employee Obligations

Employees are required to notify their employer or direct supervisor as soon as they become aware of the need for a temporary schedule change. The request must indicate the proposed schedule change and that the change is needed due to a personal event. The initial request does not have to be in writing but, as soon as is practicable and no later than the second day after the employee returns to work following the conclusion of the temporary schedule change, the employee must submit a written request, indicating the date for which the change was requested and that it was due to an employee's personal event. The employer may require that such request be submitted in electronic form if employees of the employer commonly use such electronic form to request and manage leave and schedule changes. If the employee fails to submit the written request, the employer's obligation to respond in writing is waived.

2. Employer Obligations

An employer who receives such an initial request shall respond immediately, but need not put such initial response in writing. As soon as is practicable, and no later than 14 days after the employee submits the request in writing, the employer shall provide a written response, which may be in electronic form if such form is easily accessible to the employee. An employer's written response shall include: (a) Whether the employer will agree to the temporary change to the work schedule in the manner requested by the employee, or will provide the temporary change to the work schedule

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as leave without pay, which does not constitute a denial; (b) If the employer denies the request for a temporary change to the work schedule, an explanation for the denial; and (c) How many requests and how many business days pursuant to this subchapter the employee has left in the calendar year after taking into account the employer's decision contained in the written response.

An employer may deny a request for a temporary change to the employee's work schedule relating to a personal event only if the employee has already exhausted the two allotted requests in the calendar year.

Exemptions from Coverage

The Law does not apply to employees who: 1) work less than 80 hours per year in New York City; 2) have worked for less than 120 days for the employer; 3) are covered by a CBA that waives coverage and addresses scheduling changes; or 4) perform manual or non-office work in the motion picture, television, or live entertainment industries.

Penalties

Penalties for violations may include compensatory damages and civil penalties payable to the City under the Fair Workweek law, as well an administrative penalty of $500 per violation, payable to the employee. Employers may also be directed to comply with notice posting and record-keeping requirements. An employer who fails to provide an employee with a written response, as required by the Law, may cure the violation without a penalty if it provides the written response within seven days of receiving the notice of the opportunity to cure.

Implications

Employers should train coordinators and supervisors who are involved in scheduling of employees about this law and its implications. In view of patient needs, employers should train supervisors on how to address last-minute staffing changes and what is permissible to say (and not say) to employees requesting temporary schedule changes. Employers should also ensure that they keep records related to compliance with the Law, including any communications from employees requesting time off under the Law. While notice of this law does not have to be provided to employees, employers should review their written policies and procedures to ensure existing processes and policies do not contravene the Law's mandates.

Please contact any one of our Home Care Group attorneys if you have questions about complying with the Law.

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Our Home Care Practice attorneys provide counsel to multiple home care agencies with respect to corporate, transactional, regulatory, reimbursement, compliance, wage and hour, wage parity enforcement, and litigation matters. With a broad understanding of the New York regulatory landscape, we help clients anticipate and respond to the increasingly complex rules governing the industry.

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