BCLP. Client Intelligent

RetailLawBCLP

NEW YORK CITY FOLLOWS TREND IN PASSING PREDICTIVE SCHEDULING LAW FOR RETAIL

Jun 27, 2017

New York City has enacted a law banning "on-call scheduling" for retail employees. The law takes effect on November 26, 2017.

With "on-call scheduling," an employer requires an employee to be available to work, to contact the employer, or to wait to be contacted by the employer to determine whether the employee must report to work.

New York City's new law, Local Law § 20-1251 (Int. No. 1387-A), prohibits retail employers from cancelling, changing, or adding work shifts within 72 hours of the start of the shift. Retail employees may, however, request time off and switch shifts with their co-workers. Employers can revise employees' work schedules with less than 72 hours' notice under limited circumstances.

Retail employers must also: (1) post employees' schedule 72 hours before the beginning of the scheduled hours of work; (2) provide upon request a written copy of employee's schedule for any week worked within the past three years; and (3) provide upon request the current schedule for all retail employees at the work location.

New York City follows a number of other cities in implementing scheduling laws for retail employers. San Francisco set the trend when it enacted the Predictable Schedule and Fair Treatment for Formula Retail Employees Ordinance in 2015. Police Code section 3300G imposes penalties on employers for changing schedules on short notice, requiring one hour of "predictability pay" when schedules are changed with less than seven days but more than 24 hours of notice. Employees must receive additional pay if employers provide less than 24 hours' notice of a scheduling change or they are not called into work during an on-call period.

Despite its intent to provide greater predictability and stability for employees, a report by the California Retailers Association (CRA) characterizes San Francisco's scheduling law as unnecessary and frustrating for employees and employers. According to the CRA report on the law's impact one year after its implementation, many employees are deprived of the flexibility that working in retail affords them, and employers experience added administrative burdens and lack of flexibility.

Seattle enacted a more robust law. Municipal Code § 14.22 requires employers to provide additional compensation if retail employees' schedules are changed with less than two weeks' notice or when they are scheduled for "clopenings" - back-to-back shifts with less than a 10-hour break between shifts. The ordinance further allows employees to request a preferred schedule, requires employers to engage in an interactive process to discuss scheduling requests, prohibits employers from retaliating against employees who decline a shift added with less than two weeks' notice, and requires employers to offer shifts to existing staff before hiring additional workers.

Employers should monitor local ordinances for similar enactments in their cities, but also monitor developments at the state level which could preempt such ordinances.

For more information, contact the author or any member of the Retail team.

MEET THE TEAM

Merrit M. Jones

San Francisco

merrit.jones@bclplaw.com
+1 415 675 3435
