



July 2018

## New York City Employers Required To Accommodate Temporary Schedule Change Requests

By Carolyn D. Richmond, Glenn S. Grindlinger and Gregg M. Kligman

As a reminder, effective July 18, 2018, New York City employers are required to accommodate employee requests for temporary schedule changes for employee “personal events.” This new requirement is in addition to any leave employers must provide their employees under the New York City Earned Safe and Sick Time Act (ESSTA).

Under this new law, employees who have been employed for more than 120 days and more than 80 hours during the calendar year, may request a temporary schedule change for a “personal event,” defined as:

- The need for an employee to provide care to a minor child or individual with a disability under the employee’s care who resides with the employee or is the employee’s family member;
- The need to attend a legal proceeding or hearing for subsistence benefits to which the employee, an employee’s family member or an individual under the employee’s care is party to; or
- Any circumstance that would qualify for use of safe/sick leave under ESSTA.

Employees may request a temporary schedule change to address qualifying personal events up to two times per year for the duration of no more than one business day or once per year for the duration of no more than two business days. Employers in the motion picture industry

and employees whose primary duty is performing routine mental, manual, mechanical or physical work in connection with the care or maintenance of an existing building are exempt from the law. In addition, the law exempts those employees covered by collective bargaining agreements if the agreement specifically waives the provisions of the new law.

In an effort to assist employers to comply with their obligations, the law includes examples of acceptable accommodations that employers may offer in response to a request for a temporary schedule change due to a qualifying personal event, which are:

- Using paid time off;
- Working remotely;
- Swapping shifts;
- Shifting work hours; and
- Taking short term unpaid leave.

However, while these options are included in the law as examples of acceptable accommodations, the law does not require that employers grant the requested accommodation, so long as an accommodation that is offered meets the employee’s needs.

An employee requiring a temporary schedule change for a qualifying personal event must notify their employer or direct supervisor of the

need for such an accommodation as soon as they become aware of the need, propose a specific schedule adjustment and inform the employer that it is due to a qualifying event. The employee need not make the request in writing. However, as soon as practicable, but no later than within two days of returning to work, the employee must state in writing the date for which the schedule change was requested and that the request was made for a qualifying personal event.

Upon receipt of the initial request, employers must respond immediately. However, the response need not be in writing. As soon as practicable, but no later than 14 days after the request, the employer must respond in writing.

The response must include:

- Whether the employer agrees to the temporary work schedule adjustment that the employee requested or if the employer will provide the temporary change as leave without pay, which does not constitute a denial;
- If the employer denies the request, an explanation for the denial; and
- How many requests and business days that the employee has left in the calendar year taking into account the employer's decision contained in the written response.

It is important to note that employees are not required to use leave accrued under ESSTA prior to requesting a temporary schedule change and any unpaid leave provided as a temporary schedule change accommodation does not count towards an employer's obligations under ESSTA. Moreover, leave granted pursuant to ESSTA does not count towards an employer's obligation to provide employees with temporary schedule changes due to qualifying personal events.

Employers, particularly retailers and fast food restaurants, must carefully examine their attendance policies and staffing practices to ensure that they can meet staffing needs while complying with the Fair Work Week Act, ESSTA, and the obligation to accommodate personal needs for temporary schedule changes.

For more information about this alert, please contact Carolyn D. Richmond at 212.878.7983 or [crichmond@foxrothschild.com](mailto:crichmond@foxrothschild.com), Glenn S. Grindlinger at 212.905.2305 or [ggrindlinger@foxrothschild.com](mailto:ggrindlinger@foxrothschild.com), Gregg M. Kligman at 212.878.7910 or [gkligman@foxrothschild.com](mailto:gkligman@foxrothschild.com) or any member of the firm's Labor & Employment Department.