

## New York City Council Seeks Major Workplace Reforms for Fast Food, Retail Workers

By Richard I. Greenberg

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The New York City Council has introduced six bills as part of a legislative package intended to reform scheduling and workplace practices for fast food and retail workers in New York City.

The legislation, introduced on December 6, 2016, follows Mayor Bill de Blasio's September [announcement](#) that his administration plans to implement greater protections for approximately 65,000 hourly fast food workers in the city.

### On-Call Scheduling

[Intro 1387](#), sponsored by Council Member Corey Johnson (D-Manhattan), would ban the practice of "on-call scheduling" for retail employees.

Under the bill, employers would be prohibited from scheduling a retail employee for any on-call hours – requiring an employee to be available to work, to contact the employer, or to wait to be contacted by the employer, before determining whether the employee must report to work.

The bill also would prohibit employers from:

- canceling a work shift with fewer than 72 hours' notice;
- requiring a retail employee to work with fewer than 72 hours' notice, unless the employee consents in writing;
- requiring a retail employee to contact an employer to confirm whether the employee should report for his or her scheduled shift in the 72 hours before the start of the shift; and
- providing a retail employee with fewer than 20 hours of work during any 14-day period – this would be offset by any hours an employee uses as paid or unpaid leave during that 14-day period.

### Consecutive Work Shifts

[Intro 1388](#), also sponsored by Council Member Johnson, would ban consecutive work shifts in fast food restaurants involving both the closing and opening of the restaurant.

The bill would prohibit employers from requiring fast food employees to work back-to-back shifts, when the first shift closes the restaurant and the second shift opens it the next day, with fewer than 11 hours in between – unless the employee consents in writing.

If an employer does schedule such back-to-back shifts, it must pay the employee an additional \$100.

### Shifts to Current Employees

[Intro 1395](#), sponsored by Council Member Brad Lander (D-Brooklyn), would require fast food employers to offer work shifts to current employees before hiring additional employees.

The bill states that whenever a fast food employer has additional work shifts to provide in any fast food job position, the employer must first offer such shifts to current employees at the specific location where the additional shifts are needed before the employer can hire any additional employees or subcontractors (including temporary staffing agencies) to fill the shifts.

When shifts become available, the employer must conspicuously post the number and nature of all shifts being offered and assign additional shifts to any employee who has responded to the offer of work. Employers would be required to offer all available hours up until interested employees would be required to receive overtime pay, or until all current employees have rejected available hours, whichever comes first.

### Meet the Author



[Richard I. Greenberg](#)

Principal  
New York Metro  
New York City 212-545-4080  
[Email](#)

## Fair Work Week

Intro 1396, also sponsored by Council Member Lander, would create general provisions for a new “fair work week” chapter of the City’s Administrative Code that outlines oversight by the Department of Consumer Affairs.

The bill also would require fast food employers to provide employees with an estimate of their work schedule upon hire and regular work schedules outlining all shifts with 14 days’ advanced notice.

Moreover, it would require different premiums to be paid to the employee when a scheduling change is made with fewer than 14 days’ of notice. If additional hours are added to a shift, or if the start and end times of a shift are changed with no loss of hours, the employer must pay an additional \$15 for each shift. If hours are subtracted or if a shift is cancelled with notice to the employee of fewer than 14 days, but at least 24 hours, the employer must pay \$45 for each shift. If hours are subtracted or if a shift is cancelled with fewer than 24 hours’ notice to the employee, the employer must pay \$75 for each shift.

## Request for Modification

Intro 1399, sponsored by Council Member Deborah Rose (D-Staten Island), would give employees the right to request a modification in their work arrangements without fear of retaliation from their employer.

The bill establishes a process for employees, protected from retaliation, to make requests regarding a modified work schedule, part-time employment, job-sharing arrangements, changes in work duties, and working from another location. The employee must make the request in writing, no more than once each calendar quarter, and the employer must engage in an “interactive process” and consider the request in “good faith.” The employer would have to provide a written response, including an explanation in the case of a denial, within 14 days of the request.

The bill also establishes an employee “right to receive” certain changes to work arrangements in the event of a childcare emergency, personal health emergency, or in the event that an employee or a family member has been the victim of a family offense matter, a sexual offense, or stalking. The employer must grant such a request up to four times in a calendar year and for one business day for each request.

## Payroll Deduction

Intro 1384, sponsored by Council Member Julissa Ferreras-Copeland (D-Queens), would provide fast food workers with the ability to make voluntary contributions to not-for-profit organizations of their choice through payroll deductions. The purpose of this legislation is to make it easier for employees to support advocacy organizations working on their behalf.

The bill outlines standards for organizations eligible to receive the contributions. It also and establishes a minimum contribution of \$6 per biweekly paycheck and \$3 per weekly paycheck in order to minimize the burden to the employer.

## Definitions

For purposes of this legislative package, the term “fast food establishment” means any establishment:

- (i) that has as its primary purpose serving food or drink items;
- (ii) where patrons order or select items and pay before eating and such items may be consumed on the premises, taken out or delivered to the customer’s location;
- (iii) that offers limited service;
- (iv) that is part of a chain; and
- (v) that is one of 30 or more establishments nationally, including (A) an integrated enterprise that owns or operates 30 or more such establishments in the aggregate nationally or (B) an establishment operated pursuant to a franchise where the franchisor and the franchisees of such franchisor own or operate 30 or more such establishments in the aggregate nationally.

The term “fast food employee” means any person employed or permitted to work at or for a fast food establishment by any employer that is located within the city where such job duties include at least one of the following:

- customer service,
- cooking, food, or drink preparation,
- delivery,
- security,
- stocking supplies or equipment,
- cleaning, or
- routine maintenance.

All six bills within the package have been referred to the City Council's Committee on Civil Service and Labor. Before moving any further in the legislative process, the bills must receive a public hearing by the committee during which all stakeholders would have the opportunity to testify.

No further action on the legislative package is expected until 2017.

Please contact Jackson Lewis with any questions about this legislative package.

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