

## New York City Employers Must Grant Temporary Work Schedule Changes under Bill Passed by City Council

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The New York City Council has passed a bill to protect employees in the City who seek temporary changes to their work schedules for a “personal event.” The bill also protects employees from employer retaliation for making certain other schedule change requests.

Passed on December 19, 2017, [Int. 1399-A](#) will amend Chapter 12 of title 20 of the administrative code of the City of New York (commonly referred to as the “Fair Workweek Law”) by adding a new subchapter 6. (For more on the Fair Workweek Law, see our articles, [New York City Issues Final Regulations, Notices, Forms, FAQs for Fast Food, Retail Workers Scheduling Law](#) and [New York City Issues Proposed Rules for Fast Food, Retail Workers Scheduling Law](#).)

The Mayor is expected to sign Int. 1399-A into law.

### Temporary Changes to Employee Work Schedule

Under Int. 1399-A, with limited exceptions, an employer must grant an employee’s request for a temporary change to the employee’s work schedule because of a “personal event.” The bill entitles employees to no more than two such requests in a calendar year, for up to one business day per request.

The employer also may fulfill its obligation by permitting an employee to use two business days for one request.

### Definitions

Under Int. 1399-A, 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

A “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 [pursuant to New York City’s Earned Sick Time Act (EST)]

The bill also provides the following definitions:

- “Business day” means any 24-hour period when an employer requires employees to work at any time.
- “Caregiver” means a person who provides direct and ongoing care for a minor child or a care recipient.
- “Care recipient” means a person with a disability who (i) is a family member or a person who resides in the caregiver’s household and (ii) relies on the caregiver for medical care or to meet the needs of daily living.
- “Minor child” means a child under the age of 18.

### Employee Obligations

Employees must notify their employer or direct supervisor as soon as the employee becomes aware of the need for a temporary work schedule change. The employee must inform the employer or direct supervisor that the change is due to a personal event. Unless he or she seeks leave without pay, the employee also

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must make a proposal for the temporary work schedule change.

The initial request need not be in writing. However, the employee must submit the request in writing as soon as practicable, but no later than the second business day after the employee returns to work after the temporary change to the work schedule. If the employee fails to submit a written request, the employer's obligation to respond in writing (detailed below) is waived.

### Employer's Response to Request

Employers must respond immediately after receiving an employee's initial request. However, the employer's initial response need not be in writing. Once the employee has submitted a request in writing, the employer must provide a written response (electronic format is permissible if that is easily accessible to the employee) as soon practicable, but no later than 14 days.

The employer's written response must include the following:

- 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 as leave without pay (which does not constitute a denial);
- If the employer denies the request for a temporary change to the work schedule, then it must provide an explanation for the denial; and
- The number of requests and business days the employee has left, pursuant to the bill, in the calendar year based on the employer's decision in the written response.

An employer may deny the employee's request only if 1) the employee has already exhausted his or her two requests in the calendar year, or 2) if an exemption (described below) applies.

### Other Requests for Work Schedule Changes

Int. 1399-A also protects employees' ability to request changes to their work schedules other than the temporary changes for a personal event that the employer must grant as described above. Employee requests for and employer responses to other schedule changes must follow the same process as described above or as otherwise promulgated by the director of the Office of Labor Standards.

### Exemptions

Employers may deny an employee's request for a temporary change to the employee's work schedule relating to a personal event based on one of the exemptions in Int. 1399-A.

The bill will not apply to any employee who:

1. Is covered by a valid collective bargaining agreement if such agreement waives the provisions of the bill and addresses temporary changes to work schedules;
2. Has been employed by the employer for fewer than 120 days;
3. Is employed by any employer whose primary business for which that employee works is the development, creation or distribution of theatrical motion pictures, televised motion pictures, television programs or live entertainment presentations, except for an employee whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers and except for an employee whose primary duty is performing routine mental, manual, mechanical or physical work in connection with the care or maintenance of an existing building or location used by the employer; or
4. Works fewer than 80 hours in the city in a calendar year.

### Earned Sick and Safe Time

Int. 1399-A also provides that an employee need not use leave accrued under EST before requesting temporary scheduling changes.

Any unpaid leave granted for a personal event under Int. 1399-A does not count toward employer obligations under EST. In addition, leave granted under EST does not count toward employer obligations under Int. 1399-A.

### Penalties Payable to Employee

Int. 1399-A imposes an administrative penalty, payable to the employee, in the amount of \$500 for employer violations. It also provides an order directing employer compliance with the bill for violations.

However, if an employer fails to provide the written response discussed above to a requesting employee, it may cure the violation without a penalty by presenting proof that it provided the employee the required written response within seven days after being notified of the opportunity to cure by the office of labor standards.

Employers in violation of Int. 1399-A also potentially may be liable for compensatory damages and civil penalties to the City under the Fair Workweek Law.

### Effective Date

Int. 1399-A's employee protections will take effect 180 days after the bill is signed into law. If employees

are covered by a valid collective bargaining agreement in effect on such date, then the law will take effect on the date of termination of such agreement.

Jackson Lewis will offer further updates on the law as agency guidance is available. Please contact the Jackson Lewis attorney with whom you regularly work for assistance in modifying your organization's practices to comply with the new law.

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