

STROOCK SPECIAL BULLETIN

New York City Law Requiring Temporary Schedule Changes Becomes Effective July 18, 2018

July 18, 2018

As of July 18, 2018, most New York City employers will be required to grant employee requests for two temporary schedule changes per calendar year for certain covered personal events. This means that subject to certain limited exceptions, an employer must permit an employee to change his or her work schedule for up to one business day if the request relates to:

- the need for a caregiver to provide care to a minor child or care recipient;
- 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
- any circumstance that would constitute a basis for permissible use of safe time or sick time under the Earned Safe and Sick Time Act.

A temporary change in schedule means a limited alteration in the hours, times or location of the employee's work, which may include such options as using paid time off, working remotely, swapping or shifting work hours and using short-term unpaid leave.

Mandatory Schedules Changes

An employer may not deny a request for a temporary schedule change unless the employee has already been granted two schedule changes – or one schedule change lasting more than one business day – in the calendar year. Even if the employee has not yet exhausted his or her right to a temporary schedule change, however, the employer may choose to grant an employee leave without pay instead of any other particular schedule change the employee requests.

Procedure

The law sets forth a mandatory procedure for requesting a temporary schedule change and for responding to such requests, summarized as follows:

- As soon as an employee becomes aware of the need for a temporary schedule change, the employee must notify his or her employer or direct supervisor, propose a temporary change, and inform the employer that the need for the request is due to a personal event;
 - The initial notice does not need to be in writing; however, as soon as is practicable thereafter, and not later than the second

business day following the employee's return to his or her regular schedule, the employee must submit a written request, including the date for which the change was requested and that it was due to a personal event.

- If the employer commonly uses electronic forms to manage leave and schedule changes, the employer may require an employee to use such electronic forms to request a temporary schedule change.
- Upon receipt of an initial request for a temporary schedule change, an employer must 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:
 - 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, an explanation for the denial; and
 - How many requests and how many business days the employee has left in the calendar year after taking into account the employer's decision with respect to the pending request.
 - If the employee does not submit a written request, the employer need not respond in writing.
 - An employer must follow the foregoing steps even if the employee has exhausted his or her rights to a temporary schedule change. Under such circumstances, however, the employer may deny the request.

An employee is also protected if he or she requests a change to a work schedule other than the temporary changes an employer is required to grant. Such requests, and an employer's response, should follow the foregoing procedure.

Additional Definitions

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For purposes of this law:

“Calendar year” means any regular and consecutive 12-month period determined by the employer.

“Caregiver” means a person who provides direct and ongoing care for a minor child or 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.

Exceptions

This law does not apply to any employee who:

- Is covered by a valid collective bargaining agreement if such agreement waives the provisions of the law and addresses temporary changes to work schedules;
- Has been employed by the employer for fewer than 120 days;
- Is employed in certain capacities by a company primarily engaged in the development, creation or distribution of theatrical or televised motion pictures, television programs or live entertainment presentations;
- Works fewer than 80 hours in the city in a calendar year.

Interaction with Other Laws

The statute does not affect an employer's obligation to comply with any other laws, including any obligation to provide a change to a work schedule as a reasonable accommodation.

Any unpaid leave granted pursuant to a request for a temporary schedule change cannot be counted against leave to which an employee may be entitled under the NYC Earned Safe and Sick Time Act, and Earned Safe and Sick Leave does not count towards an employer's obligation to provide

a temporary schedule change. Moreover, an employee is not required to exhaust leave under the NYC Earned Safe and Sick Time Act before requesting a temporary schedule change.

Remedies and Penalties

Violation of the law may result in compensatory damages and other relief required to make the employee whole, an order directing compliance, and a \$500 fine. An employer who fails to provide the required written response may cure such violation without penalty by providing a written response within seven (7) days of receiving notice of the opportunity to cure from the NYC Office of Labor Policy & Standards.

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