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Please note that businesses are responsible for knowing and complying with the most current laws, including any City Council amendments. The Department of Consumer Affairs (DCA) is not responsible for errors or omissions in this packet. The information is not legal advice. You can only obtain legal advice from a lawyer.

## **NEW YORK CITY ADMINISTRATIVE CODE**

### **TITLE 20: CONSUMER AFFAIRS**

### **CHAPTER 12: FAIR WORK PRACTICES**

#### **SUBCHAPTER 1: GENERAL PROVISIONS**

##### **§ 20-1201. Definitions.**

As used in this chapter, except as otherwise specifically provided, the following terms have the following meanings.

**Chain.** The term “chain” means a set of establishments that share a common brand or that are characterized by standardized options for decor, marketing, packaging, products and services.

**Director.** The term “director” means the director of the office of labor standards established pursuant to section 20-a of the charter.

**Employee.** The term “employee” means any person covered by the definition of “employee” set forth in subdivision 5 of section 651 of the labor law or by the definition of “employee” set forth in subsection (e) of section 203 of title 29 of the United States code and who is employed within the city and who performs work on a full-time or part-time basis, including work performed in a transitional jobs program pursuant to section 336-f of the social services law, but not including work performed as a participant in a work experience program pursuant to section 336-c of the social services law. Notwithstanding any other provision of this section, the term “employee” does not include any person who is employed by (i) the United States government; (ii) the state of New York, including any office, department, independent agency, authority, institution, association, society or other body of the state, including the legislature and the judiciary; or (iii) the city or any local government, municipality or county or any entity governed by section 92 of the general municipal law or section 207 of the county law.

**Employer.** The term “employer” means any person or entity covered by the definition of “employer” set forth in subdivision 6 of section 651 of the labor law or any person or entity covered by the definition of “employer” set forth in subsection (d) of section 203 of title 29 of the United States code. Notwithstanding any other provision of this section, the term “employer” does not include (i) the United States government; (ii) the state of New York, including any office, department, independent agency, authority, institution, association, society or other body of the state including the legislature and the judiciary; or (iii) the city or any local government, municipality or county or any entity governed by section 92 of the general municipal law or section 207 of the county law.

**Fast food employee.** 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 person’s 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. The term “fast food employee” does not include any employee who is salaried.

**Fast food employer.** The term “fast food employer” means any employer that employs a fast food employee at a fast food establishment.

**Fast food establishment.** 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 establishment” includes such establishments located within non-fast food establishments.

**Franchise.** The term “franchise” has the same definition as set forth in section 681 of the general business law.

**Franchisee.** The term “franchisee” means a person or entity to whom a franchise is granted.

**Franchisor.** The term “franchisor” means a person or entity who grants a franchise to another person or entity.

**Integrated enterprise.** The term “integrated enterprise” means two or more entities sufficiently integrated so as to be considered a single employer as determined by application of the following factors: (i) degree of interrelation between the operations of multiple entities; (ii) degree to which the entities share common management; (iii) centralized control of labor relations; and (iv) degree of common ownership or financial control.

**Office.** The term “office” means the office of labor standards established pursuant to section 20-a of the charter.

**On-call shift.** The term “on-call shift” means any time period other than an employee’s regular shift when the employer requires the employee to be available to work, regardless of whether the employee actually works and regardless of whether the employer requires the employee to report to a work location.

**Regular shift.** The term “regular shift” means a span of consecutive hours starting when an employer requires an employee to report to a work location and ending when such employee is free to leave a work location. Breaks totaling two hours or less are not an interruption of consecutive hours, provided that such breaks do not include time when the employee’s work location is closed. “Regular shift” does not include the hours worked by an employee who is called into work while on an on-call shift.

**Retail employer.** The term “retail employer” means any employer that employs a retail employee at a retail business. The term “retail business” means any entity with 20 or more employees that is engaged primarily in the sale of consumer goods at one or more stores within the city. For the purposes of this definition, “consumer goods” means products that are primarily for personal, household, or family purposes, including but not limited to appliances, clothing, electronics, groceries, and household items. In determining the number of employees performing work for a retail business for compensation, all employees performing work for compensation on a full-time, part-time or temporary basis shall be counted, provided that where the number of employees who work for an employer for compensation fluctuates, business size may be determined for the current calendar year based upon the average number of employees who worked for compensation per week during the preceding calendar year, and provided further that in determining the number of employees performing work for an employer that is a chain business, the total number of employees in that

group of establishments shall be counted.

Retail employee. The term “retail employee” means any employee who is employed by a retail employer.

Schedule change premium. The term “schedule change premium” means money that an employer pays to an employee as compensation for changes the employer makes to the employee’s work schedule, including: canceling, shortening or moving to another date and time shifts, including on-call shifts; adding additional hours to shifts already scheduled; adding previously unscheduled shifts to the work schedule; and not requiring employees to report to work during on-call shifts. Such payment is not wages earned for work performed by that employee but rather is in addition to wages.

Work schedule. The term “work schedule” means the regular shifts and on-call shifts that an employer assigns to an employee and includes the dates, times and locations where an employer requires an employee to work.

**§ 20-1202. Outreach and education.**

The director shall conduct outreach and education about the provisions of this chapter. Such outreach and education shall be provided to employers, employees and members of the public who are likely to be affected by this law.

**§ 20-1203. Reporting.**

The director shall report annually on the city’s website, without revealing identifying information about any non-public matter or complaint, on the effectiveness of its enforcement activities under this chapter. The report shall include the following information:

- a. Administrative actions.
  1. The number and nature of complaints received;
  2. The results of investigations undertaken, including the number of complaints not substantiated and the number of notices of violations issued;
  3. The number and nature of administrative adjudications;
  4. The number of complaints resolved through mediation or conciliation, if any; and
  5. The average time for a complaint to be resolved;
- b. Civil actions. The number, nature, and outcomes of civil actions commenced by the corporation counsel against employers involving violations under this chapter.

**§ 20-1204. Retaliation.**

- a. No person shall take any adverse action against an employee that penalizes such employee for, or is reasonably likely to deter such employee from, exercising or attempting to exercise any right protected under this chapter. Taking an adverse action includes threatening, intimidating, disciplining, discharging, demoting, suspending or harassing an employee, reducing the hours or pay of an employee, informing another employer that an employee has engaged in activities protected by this chapter, and discriminating against the employee, including actions related to perceived immigration status or work authorization. An employee need not explicitly refer to this chapter or the rights enumerated herein to be protected from retaliation.

**§ 20-1205. Notice and posting of rights.**

- a. The director shall publish and make available notices for employers to post in the workplace or at any job site informing employees of their rights protected under each subchapter of this chapter before the effective date of the local law that added each corresponding subchapter. Such notices shall be made available in a downloadable format on the city’s website in accordance with the requirements for language access as described in chapter 11 of title 23.

The director shall update such notices if any changes are made to the requirements of this chapter or as otherwise deemed appropriate by the director.

- b. In accordance with the rules of the office, every employer shall conspicuously post at any workplace or job site where any employee works the notices described in subdivision a of this section that are applicable to the particular workplace or job site. Such notices shall be in English and any language spoken as a primary language by at least five percent of employees at that location if the director has made the notice available in that language

**§ 20-1206. Recordkeeping.**

- a. Employers shall retain records documenting their compliance with the applicable requirements of this chapter for a period of three years and shall allow the office to access such records and other information, in accordance with applicable law and with appropriate notice, in furtherance of an investigation conducted pursuant to this chapter.
- b. An employer's failure to maintain, retain or produce a record or other information required to be maintained by this chapter and requested by the office in furtherance of an investigation conducted pursuant to this chapter that is relevant to a material fact alleged by the office in a notice of violation issued pursuant to this subchapter creates a rebuttable presumption that such fact is true.

**§ 20-1207. Administrative enforcement; jurisdiction and complaint procedures.**

- a. Jurisdiction. The director shall enforce the provisions of this chapter.
- b. Complaints and investigations.
  1. Any person, including any organization, alleging a violation of this chapter may file a complaint with the office within two years of the date the person knew or should have known of the alleged violation.
  2. Upon receiving such a complaint, the office shall investigate it.
  3. The office may open an investigation on its own initiative.
  4. A person or entity under investigation shall, in accordance with applicable law, provide the office with information or evidence that the office requests pursuant to the investigation. If, as a result of an investigation of a complaint or an investigation conducted upon its own initiative, the office believes that a violation of this chapter has occurred, the office may attempt to resolve it through any action authorized by section 20-a of the charter. Adjudicatory powers pursuant to this subchapter may be exercised by the director or by the office of administrative trials and hearings pursuant to section 20-a of the charter.
  5. The office shall keep the identity of any complainant confidential unless disclosure is necessary to resolve the investigation or is otherwise required by law. The office shall, to the extent practicable, notify such complainant that the office will be disclosing the complainant's identity before such disclosure.

**§ 20-1208. Specific administrative remedies for employees or former employees.**

- a. For violations of this chapter, the office may grant the following relief to employees or former employees:
  1. All compensatory damages and other relief required to make the employee or former employee whole;
  2. An order directing compliance with the notice and posting of rights and recordkeeping requirements set forth in sections 20-1205 and 20-1206; and
  3. For each violation of:
    - (a) Section 20-1204,
      - (1) Rescission of any discipline issued, reinstatement of any employee terminated and payment of back pay for any loss of pay or benefits resulting from discipline or other action taken in violation of section 20-1204;
      - (2) \$500 for each violation not involving termination; and
      - (3) \$2,500 for each violation involving termination;
    - (b) Section 20-1221, \$200 and an order directing compliance with section 20-1221;
    - (c) Section 20-1222, payment of schedule change premiums withheld in violation of section 20-1222 and \$300;
    - (d) Section 20-1231, payment as required under section 20-1231, \$500 and an order directing compliance with section 20-1231;
    - (e) Section 20-1241, \$300 and an order directing compliance with section 20-1241;
    - (f) Subdivision a of section 20-1251, the greater of \$500 or such employee's actual damages; and
    - (g) Subdivisions a and b of section 20-1252, \$300.
- b. The relief authorized by this section shall be imposed on a per employee and per instance basis for each violation.

**§ 20-1209. Specific civil penalties payable to the city.**

- a. For each violation of this chapter, an employer is liable for a penalty of \$500 for the first violation and, for subsequent violations that occur within two years of any previous violation of this chapter, up to \$750 for the second violation and up to \$1,000 for each succeeding violation.
- b. The penalties imposed pursuant to this section shall be imposed on a per employee and per instance basis for each violation.

**§ 20-1210. Enforcement by the corporation counsel.**

The corporation counsel or such other persons designated by the corporation counsel on behalf of the office may initiate in any court of competent jurisdiction any action or proceeding that may be appropriate or necessary for correction of any violation issued pursuant to sections 20-1207 through 20-1209, including actions to secure permanent injunctions, enjoining any acts or practices that constitute such violation, mandating compliance with the provisions of this chapter or such other relief as may be appropriate.

**§ 20-1211. Private cause of action.**

- a. Claims. Any person, including any organization, alleging a violation of the following provisions of this chapter may bring a civil action, in accordance with applicable law, in any court of competent jurisdiction.
  1. Section 20-1204;
  2. Section 20-1221;
  3. Subdivisions a and b of section 20-1222;
  4. Section 20-1231;
  5. Subdivisions a, b, d, f and g of section 20-1241;

6. Section 20-1251; and
  7. Subdivisions a and b of section 20-1252.
- b. Remedies. Such court may order compensatory, injunctive and declaratory relief, including the following remedies for violations of this chapter:
1. Payment of schedule change premiums withheld in violation of section 20-1222;
  2. An order directing compliance with the recordkeeping, information, posting and consent requirements set forth in sections 20-1205, 20-1206 and 20-1221;
  3. Rescission of any discipline issued in violation of section 20-1204;
  4. Reinstatement of any employee terminated in violation of section 20-1204;
  5. Payment of back pay for any loss of pay or benefits resulting from discipline or other action taken in violation of section 20-1204;
  6. Other compensatory damages and any other relief required to make the employee whole; and
  7. Reasonable attorney's fees.
- c. Statute of limitations. A civil action under this section shall be commenced within two years of the date the person knew or should have known of the alleged violation.
- d. Relationship to office action.
1. Any person filing a civil action shall simultaneously serve notice of such action and a copy of the complaint upon the office. Failure to so serve a notice does not adversely affect any plaintiff's cause of action.
  2. An employee need not file a complaint with the office pursuant to subdivision b of section 20-1207 before bringing a civil action; however, no person shall file a civil action after filing a complaint with the office unless such complaint has been withdrawn or dismissed without prejudice to further action.
  3. No person shall file a complaint with the office after filing a civil action unless such action has been withdrawn or dismissed without prejudice to further action.
  4. The commencement or pendency of a civil action by an employee does not preclude the office from investigating the employer or commencing, prosecuting or settling a case against the employer based on some or all of the same violations.

**§ 20-1212. Civil action by corporation counsel for pattern or practice of violations.**

- a. Cause of action.
1. Where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of this chapter, the corporation counsel may commence a civil action on behalf of the city in a court of competent jurisdiction.
  2. The corporation counsel shall commence such action by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief.
  3. Such action may be commenced only by the corporation counsel or such other persons designated by the corporation counsel.
  4. Nothing in this section prohibits (i) the office from exercising its authority under section 20-1207 through 20-1209, or (ii) a person alleging a violation of this chapter from filing a complaint pursuant to section 20-1207 or a civil action pursuant to section 20-1211 based on the same facts pertaining to such a pattern or practice, provided that a civil action pursuant to this section shall not have previously been commenced.
- b. Investigation. The corporation counsel may initiate any investigation to ascertain such facts as may be necessary for the commencement of a civil action pursuant to subdivision a of this section, and in connection therewith shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents, to administer oaths and to examine such persons as are deemed necessary.
- c. Civil penalty. In any civil action commenced pursuant to subdivision a of this section, the trier

of fact may impose a civil penalty of not more than \$15,000 for a finding that an employer has engaged in a pattern or practice of violations of this chapter. Any civil penalty so recovered shall be paid into the general fund of the city.

## **SUBCHAPTER 2: ADVANCE SCHEDULING AND SCHEDULE CHANGE PREMIUMS**

### **§ 20-1221. Advance scheduling.**

- a. No later than when a new fast food employee receives such employee's first work schedule, a fast food employer shall provide such employee with a good faith estimate in writing setting forth the number of hours a fast food employee can expect to work per week for the duration of the employee's employment and the expected dates, times and locations of those hours. If a long-term or indefinite change is made to the good faith estimate, the fast food employer shall provide an updated good faith estimate to the affected employee as soon as possible and before such employee receives the first work schedule following the change..
- b. A fast food employer shall provide a fast food employee with written notice of a work schedule containing regular shifts and on-call shifts on or before the employee's first day of work. For all subsequent work schedules, the fast food employer shall provide such notice no later than 14 days before the first day of any new schedule. Such work schedule shall span a period of no less than seven days and contain all anticipated regular shifts and on-call shifts that the employee will work or will be required to be available to work during the work schedule.
- c. A fast food employer shall:
  1. Provide fast food employees with written notice of the work schedule as required by subdivision b of this section by (i) posting the schedule in a conspicuous place at the workplace that is readily accessible and visible to all employees and (ii) transmitting the work schedule to each fast food employee, including by electronic means, if such means are regularly used to communicate scheduling information. The office may by rule establish requirements or exceptions necessary to ensure the privacy and safety of employees in connection with such posting and transmittal;
  2. Update such schedule within 24 hours of the employer's knowledge of a change or as soon as practicable if the change is effective within 24 hours, provide the revised written schedule to the affected employees and re-post the schedule in accordance with paragraph one of this subdivision; and
  3. Upon request by any fast food employee, and in accordance with the rules of the office, provide such employee with (i) such employee's work schedule in writing for any previous week worked for the past three years and (ii) the most current version of work schedules of all fast food employees who work at the same fast food establishment as the requesting employee, whether or not changes to the work schedule have been posted.
- d. A fast food employee may decline to work or be available to work additional hours not included in the initial written work schedule provided pursuant to subdivision b of this section. When a fast food employee consents to work or be available to work such hours, the employee's written consent must be obtained, which consent may be transmitted electronically or otherwise at or before the start of the shift.

### **§ 20-1222. Schedule change premium.**

- a. A fast food employer shall provide a fast food employee with the following schedule change premium amount, in addition to the employee's regular pay for shifts actually worked by the employee:
  1. With less than 14 days' notice but at least 7 days' notice to the employee, \$10 for each change to the work schedule in which:
    - (a) Additional hours or shifts are added pursuant to subdivision d of section 20-1221; or

- (b) The date or start or end time of a regular shift or on-call shift is changed with no loss of hours;
- 2. With less than 14 days' notice but at least 7 days' notice to the employee, \$20 for each change to the work schedule in which:
  - (a) Hours are subtracted from a regular or on-call shift; or
  - (b) A regular or on-call shift is cancelled;
- 3. With less than 7 days' notice to the employee, \$15 for each change to the work schedule in which:
  - (a) Additional hours or shifts are added pursuant to subdivision d of section 20-1221; or
  - (b) The date or start or end time of a regular or on-call shift is changed with no loss of hours;
- 4. With less than 7 days' but at least 24 hours' notice to the employee, \$45 for each change to the work schedule in which:
  - (a) Hours are subtracted from a regular or on-call shift; or
  - (b) A regular or on-call shift is cancelled; and
- 5. With less than 24 hours' notice to the employee, \$75 for each change to the work schedule in which:
  - (a) Hours are subtracted from a regular or on-call shift; or
  - (b) A regular or on-call shift is cancelled.
- b. A fast food employer shall pay the schedule change premiums required under this subchapter at such time as the employer pays an employee wages owed for work performed during that work week. Schedule change premium pay shall be separately noted on a wage stub or other form of written documentation and provided to the employee for that pay period.
- c. Notwithstanding subdivisions a and b of this section, a fast food employer is not required to provide a fast food employee with the amounts set forth in such subdivisions in the event that:
  - 1. The employer's operations cannot begin or continue due to:
    - (a) Threats to the employees or the employer's property;
    - (b) The failure of a public utility or the shutdown of public transportation;
    - (c) A fire, flood or other natural disaster;
    - (d) A state of emergency declared by the president of the United States, governor of the state of New York, or mayor of the city; or
    - (e) Severe weather conditions that pose a threat to employee safety, although where a fast food employer adds shifts to an employee's schedule to cover for or replace another employee who cannot safely travel to work, such employer shall provide the replacing or covering employee with the amounts set forth in subdivision a of this section;
  - 2. The employee requested in writing a change in schedule;
  - 3. Two employees voluntarily traded shifts with one another, subject to any existing employer policy regarding required conditions for employees to exchange shifts; or
  - 4. The employer is required to pay the employee overtime pay for a changed shift.

### **SUBCHAPTER 3: MINIMUM TIME BETWEEN SHIFTS**

#### **§ 20-1231. Minimum time between shifts.**

Unless the fast food employee requests or consents to work such hours in writing, no fast food employer shall require any fast food employee to work two shifts with fewer than 11 hours between the end of the first shift and the beginning of the second shift when the first shift ends the previous calendar day or spans two calendar days. The fast food employer shall pay the fast food employee \$100 for each instance that the employee works such shifts.



## SUBCHAPTER 4: ACCESS TO HOURS

### § 20-1241. Schedule change premium.

- a. Before hiring new fast food employees, including hiring through the use of subcontractors, a fast food employer shall offer regular shifts or on call shifts that would otherwise be offered to a new fast food employee to the fast food employer's current fast food employees employed at all fast food establishments owned by the fast food employer, or at a subset of such fast food establishments as provided in rules promulgated pursuant to subdivision j. A fast food employer may not transfer fast food employees from locations other than the location where such shifts will be worked or hire new fast food employees, including subcontractors, to perform the work of fast food employees for such shifts, except as provided for in subdivisions f, g and i.
- b. When shifts become available that must be offered to current fast food employees pursuant to subdivision a, a fast food employer shall post a notice that states the number of shifts being offered; the schedule of the shifts; whether the shifts will occur at the same time each week; the length of time such fast food employer anticipates requiring coverage of the shifts; the number of fast food employees needed to cover the shifts; the process, date and time by which fast food employees may notify such fast food employer of their desire to work the shifts; the criteria such fast food employer will use for the distribution of the shifts; an advisement that a fast food employee may accept a subset of the shifts offered but that shifts will be distributed according to the criteria described in the notice; and an advisement that while fast food employees working at all locations owned by the fast food employer may accept offered shifts immediately, shifts will be distributed first to fast food employees currently employed at the location where the shifts will be worked. The fast food employer shall post such notice for three consecutive calendar days in a conspicuous and accessible location where notices to fast food employees are customarily posted, unless a shorter posting period is necessary in order for the work to be timely performed as may be prescribed by the rules of the director. The fast food employer shall also provide the notice in writing directly to each fast food employee electronically.
- c. Subject to distribution of shifts pursuant to subdivision d, a fast food employee employed at any location owned by the fast food employer offering shifts may accept shifts immediately and may accept any subset of shifts offered.
- d. A fast food employer shall distribute shifts, in accordance with the criteria contained in the notice required by subdivision b, to one or more fast food employees who have accepted such shifts and are employed at the location where such shifts will be worked. A fast food employer shall distribute shifts to fast food employees employed at locations other than the location where such shifts will be worked in accordance with subdivision f. A fast food employer's system for the distribution of shifts shall not violate any federal, state or local law, including laws that prohibit discrimination.
- e. A fast food employee's written acceptance of an offer of shifts constitutes written consent to the addition of shifts if such consent is required by subdivision d of section 20-1221, but does not constitute a written request for a change in schedule as described in paragraph 2 of subdivision c of section 20-1222. A fast food employer shall pay a schedule change premium to fast food employees who accept additional shifts offered pursuant to this section when required by section 20-1222.
- f. If no fast food employee who is employed at the location where offered shifts will be worked accepts such shifts within three consecutive calendar days of the offer, or, in the case of shifts that are offered with less than three days' notice to a fast food employee before the start of such shifts, no less than 24 hours before the start of such shifts unless such 24 hour period is impracticable under the circumstances, the fast food employer may distribute such shifts to fast food employees from other locations who accept such shifts or may hire or contract for

such new fast food employees as are necessary to perform the work described in, and in accordance with the criteria contained in, the notice posted pursuant to subdivision b; provided, however, that the fast food employer shall distribute such shifts to fast food employees from other locations who have accepted such shifts before such employer proceeds to hire or contract for new fast food employees for such shifts. In the case of shifts that are offered with less than 24 hours' notice to a fast food employee, the fast food employer shall wait as long as practicable under the circumstances before distributing such shifts to fast food employees from other locations or hiring or contracting for new fast food employees.

- g.
  1. If in accordance with subdivision b a fast food employer provides notice of additional shifts to all of its fast food employees and receives written confirmation from all fast food employees employed at the location where such hours will be worked before the expiration of the period for their acceptance pursuant to subdivision f that those fast food employees do not accept the shifts offered, or if some such fast food employees have accepted some but not all of the offered shifts and the fast food employer receives written confirmation from all other fast food employees employed at such location before the expiration of the period for their acceptance pursuant to subdivision f that they do not accept the shifts offered, such fast food employer may immediately distribute such shifts to fast food employees from other locations who accept such shifts in accordance with the criteria set forth in the notice posted pursuant to subdivision b.
  2. If in accordance with subdivision b a fast food employer provides notice of additional shifts to all of its fast food employees employed at all locations owned by the fast food employer or at a subset of such fast food establishments as provided in rules promulgated pursuant to subdivision j, and receives written confirmation from all such fast food employees before the expiration of the period for their acceptance pursuant to subdivision f that they do not accept the shifts offered, or if some such fast food employees have accepted some but not all of the offered shifts and the fast food employer receives written confirmation from all other fast food employees employed at all locations owned by that fast food employer or at a subset of such fast food establishments as provided in rules promulgated pursuant to subdivision j before the expiration of the period for their acceptance pursuant to subdivision f that they do not accept the shifts offered, the fast food employer may immediately proceed with hiring or contracting for new fast food employees to perform the work described in, and in accordance with the criteria set forth in, the notice posted pursuant to subdivision b.
- h. A fast food employer is encouraged to make reasonable efforts to offer fast food employees training opportunities to gain the skills and experience to perform work for which such employer regularly has additional needs.
- i. This subchapter shall not be construed to require any fast food employer to offer, or prohibit any fast food employer from offering, any fast food employee any shift or hours that must be paid:
  1. At a rate not less than one and one-half times the fast food employee's regular rate of pay under subsection (a) of section 207 of title 29 of the United States code; or
  2. At a rate governed by the overtime requirements of the labor law or the overtime requirements of any minimum wage order promulgated by the New York commissioner of labor pursuant to labor law article 19 or 19-A.
- j. The director may promulgate rules regarding how and to which fast food employees offers of shifts pursuant to subdivision g shall be made by fast food employers that own at least 50 fast food establishments in the city based on the geographic distribution of such establishments.

## **SUBCHAPTER 5: ON-CALL SCHEDULING**

### **§ 20-1251. On-call scheduling prohibited.**

- a. Except as otherwise provided by law, a retail employer shall not:
  1. Schedule a retail employee for any on-call shift;
  2. Cancel any regular shift for a retail employee within 72 hours of the scheduled start of such shift;
  3. Require a retail employee to work with fewer than 72 hours' notice, unless the employee consents in writing; or
  4. Require a retail employee to contact a retail employer to confirm whether or not the employee should report for a regular shift fewer than 72 hours before the start of such shift.
- b. Notwithstanding subdivision a of this section, a retail employer may:
  1. Grant a retail employee time off pursuant to an employee's request;
  2. Allow a retail employee to trade shifts with another retail employee; and
  3. Make changes to retail employees' work schedules with less than 72 hours' notice if the employer's operations cannot begin or continue due to:
    - (a) Threats to the retail employees or the retail employer's property;
    - (b) The failure of public utilities or the shutdown of public transportation;
    - (c) A fire, flood or other natural disaster; or
    - (d) A state of emergency declared by the president of the United States, governor of the state of New York or mayor of the city.

### **§ 20-1252. Work schedules.**

- a. A retail employer shall provide a retail employee with a written work schedule no later than 72 hours before the first shift on the work schedule.
- b. A retail employer shall conspicuously post in a location that is accessible and visible to all retail employees at the work location the work schedule of all the retail employees at that work location at least 72 hours before the beginning of the scheduled hours of work and shall update the schedule and directly notify affected retail employees after making changes to the work schedule. Retail employers shall also transmit the work schedule by electronic means, if such means are regularly used to communicate scheduling information. The office may by rule establish requirements or exceptions necessary to ensure the privacy and safety of employees.
- c. Upon request by a retail employee, a retail employer shall provide the employee with such employee's work schedule in writing for any week worked within the prior three years and the most current version of the work schedule for all retail employees at that work location, whether or not changes to the work schedule have been posted.

### **§ 20-1253. Collective bargaining agreements.**

The provisions of this subchapter do not apply to any retail employee covered by a valid collective bargaining agreement, including an agreement that is open for negotiation, if (i) such provisions are expressly waived in such collective bargaining agreement and (ii) the agreement addresses employee scheduling.

**Note:** New York City businesses must comply with all relevant federal, state, and City laws and rules. All laws and rules of the City of New York, including the Consumer Protection Law and Rules, are available through the Public Access Portal, which businesses can access by visiting [www.nyc.gov/dca](http://www.nyc.gov/dca). The Law and Rules are current as of November 2017.

Please note that businesses are responsible for knowing and complying with the most current laws, including any City Council amendments. The Department of Consumer Affairs (DCA) is not responsible for errors or omissions in this packet. The information is not legal advice. You can only obtain legal advice from a lawyer.

**RULES OF THE CITY OF NEW YORK**  
**TITLE 6: DEPARTMENT OF CONSUMER AFFAIRS**  
**CHAPTER 7: OFFICE OF LABOR POLICY AND STANDARDS**

**SUBCHAPTER F: FAIR WORKWEEK**

**§ 7-601. Definitions.**

(a) As used in Title 20, chapter 12 of the New York City Administrative Code and this subchapter, the following terms have the following meanings, except as otherwise provided:

“Actual hours worked” means the number, dates, times and locations of hours worked by an employee for an employer, whether or not such hours differ from the work schedule provided in advance.

“Additional shift” is a shift not previously scheduled that would be offered to a new fast food employee but for the requirements of section 20-1241 of the Fair Workweek Law.

“Clopening” means two shifts with fewer than 11 hours between the end of the first shift and the beginning of the second shift when the first shift ends the previous calendar day or spans two calendar days.

“Current fast food employee” as that term is used in section 20-1241 of the Fair Workweek Law and these rules means a fast food employee who has worked at least eight hours in the preceding 30 days or is otherwise currently on the fast food employer’s payroll.

“Dates” as that term is used in subdivision (a) of section 20-1221 of the Fair Workweek Law means days of the week.

“Directly notify” as that term is used in subdivision (b) of section 20-1252 of the Fair Workweek Law means to deliver to an individual employee.

“Engaged primarily in the sale of consumer goods” as that term is used in the definition of “retail employer” in section 20-1201 of the Fair Workweek Law means greater than fifty percent of sale transactions in a calendar year at one or more locations in the City are to retail consumers.

“Fair Workweek Law” means chapter 12 of Title 20 of the Administrative Code of the City of New York.

“Good faith estimate” means the number of hours a fast food employee can expect to work per week for the duration of the employee’s employment and the expected days, times, and locations of those hours.

“New fast food employee” means an employee who has not worked at least eight hours in the

preceding 30 days for the fast food employer.

“Overtime pay” means payment (i) at a rate not less than one and one-half times the fast food employee’s regular rate of pay under subsection (a) of section 207 of title 29 of the United States Code; or (ii) at a rate governed by the overtime requirements of the labor law or the overtime requirements of any minimum wage order promulgated by the New York commissioner of labor pursuant to labor law article 19 or 19-A.

“Premium pay” means a schedule change premium required pursuant to section 20-1222 of the Fair Workweek Law or the payment a fast food employer is required to pay to a fast food employee who works a “clopening” pursuant to section 20-1231 of the Fair Workweek Law.

“Retail consumer” means an individual who buys or leases consumer goods and that individual's co-obligor or surety. Retail consumer shall not include manufacturers, wholesalers, or others who purchase or lease consumer goods for resale as new to others.

“Salaried” means not covered by the overtime requirements of New York state law or regulations.

“Shift” means an on-call shift or a regular shift.

“Shift increment” means a portion of a shift.

“Subset of shifts” means one or more shifts or shift increments.

“Time” as that term is used in section 20-1221(a) of the Fair Workweek Law regarding good faith estimate means start and end times of shifts.

- (b) As used in this subchapter, the following terms have the same meanings as set forth in section 12-1201 of the Fair Workweek Law: “fast food employee,” “fast food employer,” “fast food establishment,” “on-call shift,” “regular shift,” “retail employee,” “retail employer,” “schedule change premium,” “work schedule.

### **§ 7-602. Notice of Rights.**

The notice of rights required to be posted pursuant to section 20-1205 of the Fair Workweek Law shall be printed on and scaled to fill an 11x17 inch sheet of paper .

### **§ 7-603. Good Faith Estimate.**

- (a) If a fast food employer makes a long-term or indefinite change to the good faith estimate that has been provided to a fast food employee, the fast food employer shall provide an updated good faith estimate to the fast food employee as soon as possible and before the fast food employee receives the first work schedule following the change.
- (b) For purposes of this section and section 20-1221 of the Fair Workweek Law, “long-term or indefinite change” includes, but is not limited to:
- i. Three work weeks out of six consecutive work weeks in which the number of actual hours worked differs by twenty percent from the good faith estimate during each of the three weeks;
  - ii. Three work weeks out of six consecutive work weeks in which the days differ from the good faith estimate at least once per week;
  - iii. Three work weeks out of six consecutive work weeks in which the start and end times of at least one shift per week differs from the good faith estimate by at least one hour and the total number of hours changed for the six week period is at least six hours; or
  - iv. Three work weeks out of six consecutive work weeks in which the locations differ from the good faith estimate at least once per week.
- (c) Each occurrence of a long-term or indefinite change for which a fast food employer fails to

provide an updated good faith estimate before such employee receives the first work schedule following the change constitutes a violation of section 20-1221(a) of the Fair Workweek Law.

#### **§ 7-604. Work Schedules.**

- (a) On or before a fast food employee's first day of work, a fast food employer must provide such fast food employee with written notice of an initial work schedule containing all regular shifts and all on-call shifts the fast food employee will work until the start of the first shift of the next subsequent work schedule. The fast food employer must also issue an updated work schedule as required in paragraph (2) of subdivision (c) of section 1221 of the Fair Workweek Law.
- (b) A work schedule provided pursuant to section 20-1252 of the Fair Workweek Law must span a period of no less than seven days.

#### **§ 7-605. Posted Notice of Schedules.**

A fast food or retail employer may not post or otherwise disclose to other fast food or retail employees the work schedule of a fast food or retail employee who has been granted an accommodation based on the employee's status as a survivor of domestic violence, stalking, or sexual assault, where such disclosure would conflict with such accommodation.

#### **§ 7-606. Employee Consent and Minimal Changes to Shifts.**

- (a) Where a fast food employee's written consent is required to work additional hours pursuant to subdivision (d) of section 20-1221 of the Fair Workweek Law or where a retail employee's written consent is required to work an additional shift with less than 72 hours' notice pursuant to paragraph (3) of subdivision (d) of section 20-1251 of the Fair Workweek Law, such written consent must be provided in reference to a specific schedule change; general or ongoing consent is insufficient to meet such requirements.
- (b) A fast food employer may change a previously scheduled regular shift by 15 minutes or less without being obligated to pay the fast food employee a schedule change premium. A fast food employer will be obligated to pay the fast food employee a schedule change premium if total changes made to one shift exceed 15 minutes.

*Example:* A fast food employer provides a fast food employee with a schedule that includes a shift on Tuesday from 12 pm to 5 pm. At approximately 5:00 pm on Tuesday, the fast food employer asks the fast food employee to work a few minutes more to assist with a large tour group that just came to the fast food establishment. She agrees in writing and finishes the work at 5:12 pm. The fast food employer need not pay her the schedule change premium.

#### **§ 7-607. Notice and Offer of Additional Shifts.**

- (a) A fast food employer must notify a fast food employee in writing of the method by which additional shifts will be posted in accordance with section 20-1241 of the Fair Workweek Law upon commencement of a fast food employee's employment with the fast food employer and within 24 hours of any change to or adoption of a method.
- (b) The fast food employer must post notice of additional shifts for three consecutive calendar days. When a fast food employer has less than three days' notice of a need to fill an additional shift, the fast food employer shall post notice of the additional shift for three consecutive calendar days as soon as practicable and not more than 24 hours after finding out about the need to fill the shift. Where there is less than three days' notice, any existing fast food employee may be offered, on a temporary basis, additional shifts that take place prior to the conclusion of the three-day notice period.

*Example:* On Wednesday at 9 am, a fast food employer receives a call from a fast food

employee who tells her that she is quitting and she will not report for her regularly scheduled shift on Friday at 9 am. The fast food employer knew of the need to fill the shift 48 hours (or two days) in advance. The fast food employer may offer another existing fast food employee the shift on the first Friday, but must post the available shift with three days' notice to its employees and assign subsequent Friday 9 am shifts to its existing fast food employees in accordance with its criteria in accordance with section 20-1241 of the Fair Workweek Law and this subchapter before hiring a new employee.

- (c) A fast food employer that owns 50 or more fast food establishments in New York City may offer additional shifts, in accordance with subdivisions (a), (b), (f) and (g) of section 20-1241 of the Fair Workweek Law and in compliance with subdivision (b) of this section, to: (1) fast food employees who work at all locations in New York City, or (2) only to its fast food employees who work at its fast food establishments located in the same borough as the location where the shifts will be worked.
- (d) As soon as possible after a fast food employer has filled an additional shift, and using the same method compliant with section 20-1241 of the Fair Workweek Law by which the fast food employer communicated the offer of additional shifts, the fast food employer must notify all accepting fast food employees when the offered shift has been filled.

**§ 7-608. Accepting and Awarding Additional Shifts.**

- (a) A fast food employee may accept a subset of additional shifts offered by a fast food employer pursuant to section 20-1241 of the Fair Workweek Law.
- (b) A fast food employer must first award shifts or shift increments to current fast food employees at the location where the shifts will be worked, regardless of the employer's other criteria prescribed pursuant to subdivision (b) of section 20-1241 of the Fair Workweek Law.
- (c) A fast food employee may accept an entire shift offered by a fast food employer or any shift increment. A fast food employer is not required to award a fast food employee a shift increment accepted by the fast food employee when the remaining portion of the shift is three hours or less and was not accepted by another fast food employee or other fast food employees.

*Example:* A fast food employer notified employees of an additional shift on Saturdays from 1 pm to 9 pm, an eight-hour shift. A fast food employee informs the employer that she can work from 3 pm to 9 pm, a six-hour shift increment. Two hours remain in the additional shift and no other employee accepted the remaining two hours. Therefore, the employer need not award the six-hour increment to the employee.

- (d) When a fast food employee accepts a shift that was offered by a fast food employer pursuant to section 20-1241 of the Fair Workweek Law that overlaps with the fast food employee's existing shift, before hiring a new fast food employee for the offered shift, the fast food employer must award the fast food employee the offered shift in lieu of the fast food employee's scheduled shift. The fast food employer may not condition the award of the offered shift on a fast food employee's willingness to work both the non-overlapping hours of the existing shift and the offered shift.

*Example:* A fast food employee's work schedule includes a shift on Mondays from 7 am to 3 pm. The fast food employer notifies employees of an additional shift on Mondays from 9 am to 5 pm, a shift that overlaps with the fast food employee's existing shift. The fast food employee accepts the shift because it will allow the employee to drop the employee's child off at school in the morning without reducing

the employee's overall hours. The fast food employer must award the additional shift to the fast food employee before hiring a new fast food employee for the additional shift, provided the fast food employee otherwise meets the employer's criteria for distribution of the shift.

- (e) When a fast food employee accepts a shift that was offered by a fast food employer pursuant to section 20-1241 of the Fair Workweek Law that, if awarded to and worked by the fast food employee, would entitle the fast food employee to overtime pay, the fast food employer is not required to award the fast food employee the entire shift but, before hiring a new fast food employee for the entire offered shift, must award the fast food employee the largest shift increment possible that would not trigger overtime pay, provided that the remaining portion of the shift was accepted by another fast food employee or is three hours or more.

*Example:* A fast food employer offers a shift on Wednesday from 12 am to 6 am to its employees. A fast food employee who is scheduled to work 37 hours during the week accepts the additional shift. The employer must award at least three hours to the fast food employee but is not required to award the entire six-hour shift to the employee because working more than forty hours would result in the employee becoming eligible for overtime pay.

#### **§ 7-609. Employer Records.**

- (a) Fast food and retail employers must maintain and retain, in an electronically accessible format, contemporaneous, true, and accurate records documenting compliance with the requirements of the Fair Workweek Law for a period of three years.
1. Such records shall include documents that show:
    - i. Actual hours worked by each employee each week;
    - ii. An employee's written consent to any schedule changes, where required; and
    - iii. Each written schedule provided to an employee.
  2. Additionally, fast food employers must also maintain records in accordance with this subdivision that include documents that show:
    - i. Good faith estimates provided to employees pursuant to section 20-1221(a) of the Fair Workweek Law; and
    - ii. Premium pay to individual fast food employees and the dates and amounts of the payments, whether noted on an employee's wage stub or other form of written documentation.
- (b) Upon request, a fast food or retail employer must provide a fast food or retail employee with such employee's work schedule for any previous week worked for the past three years within 14 days of the employee's request.
- (c) Upon request, a fast food or retail employer must provide a fast food or retail employee with the most current version of the complete work schedule for all employees who work at the same location within one week of the employee's request, provided that an employer not disclose the work schedule of any employee who has been granted an accommodation based on the employee's status as a survivor of domestic violence, stalking, or sexual assault, where such disclosure would conflict with such accommodation.

#### **§ 7-610. Private Right of Action.**

- (a) A person who filed a complaint with the office pursuant to the Fair Workweek Law and who intends to withdraw the complaint to pursue a civil action shall withdraw the complaint in writing to the office prior to commencing a civil action that includes claims based on the Fair Workweek Law in accordance with paragraph (2) of subdivision (d) of section 20-1211 of the Fair Workweek Law.



- (b) A person who filed a civil action that includes any claims based on the Fair Workweek Law may file a complaint with the office upon a showing that the Fair Workweek Law claims in the civil action have been withdrawn or dismissed without prejudice to further action.
- (c) The withdrawal of a complaint filed with the office or the commencement of a civil action by a person does not preclude the office from investigating the fast food or retail employer, or commencing, prosecuting, or settling a case against the employer based on some or all of the same violations.

**§ 7-611. Waiver of Rights.**

Any agreement by an employee with the intent to prospectively waive or limit the employee's rights pursuant to the Fair Workweek Law shall be invalid as a matter of law.