Fair Workweek Law: Frequently Asked Questions

The Department of Consumer and Worker Protection (DCWP) Office of Labor Policy & Standards (OLPS) enforces NYC’s Fair Workweek Law. The law covers workers regardless of immigration status. OLPS takes reports of employer retaliation and complainant confidentiality very seriously. See the sections on Retaliation, Complaints with OLPS, and Enforcement (within Overview) for more information about how OLPS protects workers.

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I. Overview of Fair Workweek Law

a. General

What are the main sections of the Fair Workweek Law?
NYC’s Fair Workweek Law requires retail and fast food employers in NYC to give workers predictable work schedules and requires fast food employers to give existing workers the opportunity to work open shifts before hiring new workers. Main sections of the law include:

- Advance Scheduling and Schedule Change Premiums: This section requires fast food employers to provide a written Good Faith Estimate of the days, times, locations, and total number of hours that a fast food worker can expect to work each week; 14 days’ (2 weeks’) notice of work schedules to fast food workers; and schedule change premiums when schedules are changed with less than 14 days’ notice.

- Minimum Time between Shifts: This section requires that a fast food worker consent in writing before being scheduled to work or working two (2) shifts over two (2) calendar days when the first shift ends a day and there are less than 11 hours between shifts. These shifts, known as “clopenings,” usually involve both closing and opening the establishment. The fast food employer must pay the fast food worker a $100 premium for working a clopening shift.

Workers who think they experienced retaliation, want to file a complaint, or want information about their rights under the Fair Workweek Law should contact OLPS at FWW@dca.nyc.gov or via 311. Employers who have questions about their responsibilities under the laws should contact OLPS at FWW@dca.nyc.gov or via 311.
• **Access to Hours:** This section requires fast food employers to offer any new shifts to existing workers at the location where shifts are available, followed by existing workers from other worksites before advertising new shifts externally or hiring a new employee. If existing workers do not accept open shifts, employers may then advertise for new workers.

• **On-Call Scheduling:** This section bans retail employers from scheduling on-call shifts and requires retail businesses to provide 72 hours’ (3 days’) advance notice of work schedules to retail workers.

**Brief Overview of Worker Rights**

**FAST FOOD WORKERS:**
- Written Good Faith Estimate of the days, times, locations, and total number of hours a worker can expect to work each week
- 14 days’ (2 weeks’) advance notice of work schedule
- Premium pay for all schedule changes with less than 14 days’ notice
- Written worker consent plus $100 premium to work clopening shifts
- Priority to existing workers to work newly available shifts before an employer hires new employees

**RETAIL WORKERS:**
- 72 hours’ (3 days’) advance notice of work schedule
- No on-call shifts
- No call-in shifts within 72 hours of the start of the shift
- No shift cancellations with less than 72 hours’ notice
- No shift additions with less than 72 hours’ notice unless worker consents in writing
- Updated written schedule if changes are made with less than 72 hours’ notice

**Can employees agree to waive their rights under the Fair Workweek Law?**
No. Employees cannot agree to waive their rights under the Fair Workweek Law.

**When did fast food and retail employers have to start complying with the Fair Workweek Law?**
Employers had to begin complying with the Fair Workweek Law on November 26, 2017.

**Exception:**
- If a retail worker is covered by a collective bargaining agreement (CBA) that is in effect on November 26, 2017, the worker is covered under the Fair Workweek Law on the day after the CBA expires.

b. **Workers**

**Which workers are covered by the Fair Workweek Law?**
The Fair Workweek Law covers:

- Fast food employees working in NYC
  *(Advance Scheduling and Schedule Change Premiums; Minimum Time between Shifts; Access to Hours)*
- All employees working in NYC at a covered retail business
  *(On-Call Scheduling)*

The law covers workers regardless of immigration status.
Who is considered a fast food employee?

Fast food employees are workers at fast food establishments in NYC who perform at least one of the following functions:

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

Workers may be employees of the fast food restaurant, the owner, or another company or individual that provides services at the fast food establishment. Salaried workers who are exempt from overtime requirements under New York State law are not covered by the Fair Workweek Law.

Workers do not need to live in NYC, but they must work in NYC.

Scenario:

Mary and Lester work for Sandra’s Sweepers, a company that provides custodial services to restaurants, including fast food establishments, in Queens. Are Mary, Lester, and Sandra’s Sweepers covered by the Fair Workweek Law?

Yes. Mary and Lester are fast food workers because they clean fast food establishments. Sandra’s Sweepers is a fast food employer because its workers perform covered functions at fast food establishments.

Scenario:

Pearl is a bookkeeper for Rose’s Roasts, a chain of chicken restaurants with 35 locations in New York and New Jersey. Pearl works in an office above the chain’s flagship restaurant in Jackson Heights. In March 2018, Pearl starts filling in as a part-time cashier in the restaurant at her location. Is Pearl a fast food employee?

Before March 2018, Pearl is not a fast food employee. Once Pearl starts working in the restaurant providing customer service, she is a fast food employee.

Who is considered a retail employee?

All employees of a retail employer are covered regardless of position or job title. There is no exception for supervisors or managers.

Exception:

- The law does not apply to any retail employee covered by a collective bargaining agreement in which the rights under the law are expressly waived and employee scheduling is addressed.

Does immigration status limit or change a retail or fast food worker’s rights under the law?

No. Retail or fast food workers have the same rights and protections under the Fair Workweek Law regardless of immigration status. OLPS does not collect any information about a worker’s immigration status to pursue a complaint.
**Are employees who work in NYC but live outside of NYC covered by the law?**
Yes. It does not matter where a retail or fast food employee lives as long as the employee works at a location in NYC.

**c. All Covered Workers and Employers**

**What is a chain?**
A chain is a group of employers that share a brand or standardized options for décor, marketing, packaging, products, and services.

Covered fast food establishments must be part of a chain.

Covered retail businesses do not have to be part of a chain; however, being part of a chain becomes important when counting the number of employees working for a retail employer.

**Does the law apply to employers that are not based in NYC?**
Yes. The law applies to all employers that fit the definition of a retail or fast food employer and that employ workers in NYC. The employer can be based outside of NYC. For example, a national fast food or retail chain’s establishments in NYC will be covered if they otherwise meet the requirements.

**Are workers who are hired by other companies to perform work at a retail business or fast food establishment covered by the law?**
Yes. Even if workers are hired by a subcontractor, temp firm, or another third party to work at a retail business or fast food establishment, they are covered by the law as long as they meet the definition of a retail or fast food employee.

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**Scenario:**

Roberto works full time as a janitor at the Doggy Supply Store, which is a retail employer under the law. Roberto was placed at the job by Janitors Daily, but Doggy Supply Store is his employer now. Is Roberto covered by the Fair Workweek Law?

Yes. Roberto is a retail employee because he is employed by Doggy Supply Store, a retail employer, even though Janitors Daily placed him in the job.

**Scenario:**

Marcia is employed as a security guard by Safer Security. She provides security services to two fast food restaurants and an office building. Is Marcia a fast food employee?

Yes. Marcia is considered a fast food employee because she performs security for two fast food restaurants.

**How do retail or fast food employees know who their employer is if more than one company is involved in the management of their job?**

Multiple individuals or businesses may be treated as a single employer based on how interrelated the businesses are and how much they share management and control of their workforce. A worker may also be jointly employed by more than one individual or business at the same time. Therefore, all employers involved in the management of retail or fast food workers may have obligations to those workers under the Fair Workweek Law.
d. Fast Food Employers

Which fast food employers does the law cover?
Fast food employers are employers who hire fast food employees to work at fast food establishments.

What is a fast food establishment?
A fast food establishment is a business that is part of a chain, primarily serves food and beverages, offers limited service, and is one of 30 or more such establishments nationally. Customers order food or drinks and pay before they sit down to eat or take their food to go, or they place an order for delivery off-site.

If the total number of a franchise brand’s fast food establishments is greater than 30, separately owned franchises must comply with the law.

Two or more “integrated entities” (related companies) that together own or operate 30 or more establishments qualify as fast food establishments.

Finally, fast food establishments located within other types of establishments, such as food courts in a mall or airport, may also be covered by the law.

Scenario:
A small business owner in NYC is the franchise owner of two fast food restaurants that are part of a chain headquartered in California with 300 national locations. Are the small business owner’s two NYC restaurants fast food establishments?
Yes. The two restaurants are part of a chain, serve fast food and drinks, offer limited service, and are among more than 30 establishments.

Scenario:
Java Juice Coffee and Juice Bar is a chain of over 30 establishments nationally with the primary purpose of serving coffee, juice, and snacks. Customers order their food or drinks and pay before sitting or taking their order to go. Maria works at a Java Juice Coffee and Juice Bar that operates within the Ditmas Plaza Mall in Brooklyn. Is Java Juice Coffee and Juice Bar a fast food establishment?
Yes. Even though Java Juice Coffee and Juice Bar is located within another establishment, it is covered by the law.

What is an integrated enterprise?
An integrated enterprise is two or more business entities that share some degree of operations, ownership, management, and control of labor relations.

Workers who think they experienced retaliation, want to file a complaint, or want information about their rights under the Fair Workweek Law should contact OLPS at FWW@dca.nyc.gov or via 311. Employers who have questions about their responsibilities under the laws should contact OLPS at FWW@dca.nyc.gov or via 311.
e. Retail Employers

**Which retail employers does the law cover?**

Retail employers employ retail workers at retail businesses. A retail business primarily sells consumer goods to the public at one or more stores in NYC and employs 20 or more workers in NYC.

**What are consumer goods?**

**Consumer goods** are goods primarily used for personal, household, or family purposes. Consumer goods include, but are not limited to, appliances, clothing, electronics, groceries, and household items.

**How do I determine if a retail business primarily sells consumer goods?**

The business primarily sells consumer goods if more than 50 percent of its sales transactions in a calendar year at one or more of its locations were directly to people buying the goods for personal use and not to manufacturers, wholesalers, or other resellers.

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**Scenario:**

When the Fabric Company first opened, its only business was selling orders of fabric to clothing manufacturers. It began opening smaller shops around NYC where it sells fabric kits and craft supplies directly to the public. For the last 12 months, more of its sales were to hobbyist crafters than to manufacturers. Does the Fabric Store primarily sell consumer goods?

Yes. The Fabric Company primarily sells consumer goods because more than 50 percent of its sales in the last year were directly to consumers buying the goods for personal purposes.
**Scenario:**

Hair Universe sells hair styling tools from around the world and has a very popular hair styling salon in the back of its store in Manhattan. Although 85 percent of the floor space is devoted to hair styling tools, only 30 percent of the company’s sales transactions are for hair styling tools. Does Hair Universe primarily sell consumer goods?

No. Less than 50 percent of Hair Universe’s sales are of consumer goods. Its hair styling service accounts for more sales.

**How do I count the number of employees working for a retail employer?**

For employers not part of a chain:

- Count all employees at all of the employer’s retail locations in NYC.

For employers part of a chain:

- Count all employees at all of the chain’s retail locations in NYC.

Count employees whether they work on a full-time, part-time, or temporary basis.

**Scenario:**

Tropics Clothing is a chain of stores that primarily sells clothing to consumers for personal use. There are eight stores in Brooklyn, employing 35 workers total. There is one Tropics Clothing store location in Staten Island that employs seven workers. Are the workers at the Staten Island Tropics Clothing store covered by the Fair Workweek Law?

Yes. The Staten Island store is part of a chain that primarily sells consumer goods (clothing) in NYC and employs more than 20 employees in NYC.

**If a retail employer’s total number of employees varies—sometimes more than 20 workers and sometimes fewer—is the employer required to follow the law?**

If the number of employees working for an employer changes, the employer should use the average number of employees who worked per week during the previous calendar year to determine if it is a covered employer. Employees include part-time, temporary, and seasonal workers.

**Scenario:**

The Festive Store sells party supplies for household use and hires additional temporary workers around holiday times throughout the year. Last year, it employed an average of 30 workers per week from January through December, but half of them were temporary seasonal employees. Currently, the Festive Store has only 12 employees. Does the Festive Store employ enough workers to count as a retail employer under the Fair Workweek Law?

Yes. Although the Festive Store’s worker count changes from week to week, the average number of weekly employees from the previous calendar year—30—is the number of employees that the Festive Store employs for purposes of the Fair Workweek Law. It does not matter if the workers are temporary or seasonal.

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Employers who have questions about their responsibilities under the laws should contact OLPS at FWW@dca.nyc.gov or via 311.
f. Notices of Rights

How must covered employers inform workers about the Fair Workweek Law?
Notices titled “YOU HAVE A RIGHT TO A PREDICTABLE WORK SCHEDULE”—one for retail workers and one for fast food workers—are available on the DCWP website at nyc.gov/dcwp. Covered employers must post the relevant notice where employees can easily see it at each NYC workplace. Notices should be printed on and scaled to fill an 11” x 17” paper.

In which language must an employer post the notice?
Employers must post the notice in English and in any other language that is the primary language of at least 5 percent of the workers at a workplace (1 out of 20, 5 out of 100, 10 out of 200, etc.), if the notice is available in that other language on the DCWP website.

Scenario:

There are 10 workers at a fast food establishment. Four workers speak Spanish primarily, and one worker speaks Polish primarily. All have limited English ability.

In which languages must the fast food employer post the required notice?

Forty (40) percent of the workers primarily speak Spanish, and 10 percent of the workers primarily speak Polish. Because Spanish and Polish are the primary languages of more than 5 percent of the workers at the worksite, the employer must get the required notice in English, as well as Spanish and Polish (if available), from the DCWP website and post the notices where workers can see them.

Where can covered employers find the required notices of rights?

Notices are available online at nyc.gov/dcwp.

OLPS will update the notices if there are any changes to the law. Monitor the DCWP website for updates.

g. Recordkeeping

What records must employers keep under the law?
Covered employers must retain electronic records documenting their compliance with the requirements of the Fair Workweek Law. Fast food and retail employers must retain records that show:

<table>
<thead>
<tr>
<th>FAST FOOD</th>
<th>RETAIL</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Workers’ hours worked each week, including date, time, and location</td>
<td>• Workers’ hours worked each week, including date, time, and location</td>
</tr>
<tr>
<td>• Good Faith Estimates of work hours provided to workers</td>
<td>• Workers’ written consent to any schedule changes that add more than 15 minutes to the schedule</td>
</tr>
<tr>
<td>• Workers’ advance written consent to work clopenings and to any changes that add more than 15 minutes to the schedule</td>
<td>• Each written schedule provided to workers</td>
</tr>
<tr>
<td>• Each written schedule provided to workers</td>
<td>• The dates schedules were posted and provided to workers and the dates of any schedule changes</td>
</tr>
<tr>
<td>• The dates schedules were posted and provided to workers and the dates of any schedule changes</td>
<td>• Documents reflecting compliance with the notice posting requirement</td>
</tr>
</tbody>
</table>

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Employers who have questions about their responsibilities under the laws should contact OLPS at FWW@dca.nyc.gov or via 311.

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• All premium payments to workers, including dates of the changed shift and amounts
• Documentation of any exceptions to premium pay, such as employee requests for schedule changes or voluntary swaps
• Documents reflecting compliance with the access to hours provisions of law, including notices of available shifts, employees’ responses, and shift assignment decisions
• Documents reflecting compliance with the notice posting requirement

How long must employers maintain records under the law?
Covered employers must retain records for a period of three (3) years.

Must an employer provide its records to OLPS?
Yes. If OLPS requests records as part of an investigation into compliance with or violations of the Fair Workweek Law, employers must provide the records.

What happens if a covered employer does not maintain records as required by the law?
An employer’s failure to maintain or produce records to OLPS may result in a “rebuttable presumption” against the employer in the event of a lawsuit or enforcement action. This means that the burden will be on the employer to show that the employer did not violate the law.

h. Enforcement

Who enforces the Fair Workweek Law?
OLPS enforces the Fair Workweek Law. Workers can contact OLPS to:

• File a complaint.
• Find out more about the Fair Workweek Law and other workplace laws.
• Get a referral for other resources to protect and enforce their rights under the Fair Workweek Law.

OLPS is committed to maintaining the confidentiality of complainants. See the section Complaints with OLPS for more information.

Must OLPS receive a complaint in order to investigate an employer?
No. OLPS can also investigate employers on its own initiative.

What does OLPS do to ensure that employers comply with the law?
OLPS conducts employer investigations that may include document requests, interviews with witnesses, and visits to worksites. If, as a result of an investigation, OLPS determines that an employer has violated one or more provisions of the Fair Workweek Law, OLPS will try to resolve the issues with the employer through settlement or file a petition at the Office of Administrative Trials and Hearings (OATH). OLPS also regularly conducts outreach and education to employers, workers, and the public about the Fair Workweek Law.

What happens if an employer violates the law?
Retail or fast food workers may be entitled to damages, additional payments, and other relief to remedy the harm done to them and any failure by an employer to comply with the law. In addition to payments owed to an employee, an employer may be liable for fines payable to New York City for violations of the law.

An employer might receive a court order requiring it to comply with the requirements of the law.

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Employers who have questions about their responsibilities under the laws should contact OLPS at FWW@dca.nyc.gov or via 311.

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What damages are owed to a worker from an employer that violated the law?
Fast food and retail employers may owe the potential damages outlined below. Note that damages and fines are on a per-instance, per-employee basis.

Potential Damages

<table>
<thead>
<tr>
<th>Violation</th>
<th>Per-instance damages to FAST FOOD EMPLOYEE</th>
<th>Per-instance damages to RETAIL EMPLOYEE</th>
<th>Fines to City</th>
</tr>
</thead>
<tbody>
<tr>
<td>On-call shift or shift change with less than 72 hours’ notice</td>
<td>N/A</td>
<td>$500 or damages and relief to remedy harm to affected worker, whichever is greater</td>
<td></td>
</tr>
<tr>
<td>Failing to provide work schedules in compliance with the law</td>
<td>$200</td>
<td>$300</td>
<td></td>
</tr>
<tr>
<td>Failure to pay premium or seek advance written consent (clopenings)</td>
<td>Unpaid $100 premium and $500</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>Failure to pay premium (other than clopening)</td>
<td>Unpaid premium and $300</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>Failure to provide or follow Good Faith Estimate</td>
<td>$200</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>Failure to obtain advance written consent (other than clopening)</td>
<td>$200</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>Violation of Access to Hours</td>
<td>$300</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>Retaliation</td>
<td>Erasing discipline and reinstatement; back pay; $500; and any other money or relief to remedy harm to affected worker(s)</td>
<td>Erasing discipline and reinstatement; back pay; $500; and any other money or relief to remedy harm to affected worker(s)</td>
<td></td>
</tr>
<tr>
<td>Retaliatory termination</td>
<td>Erasing discipline and reinstatement; back pay; $2,500; and any other money or damages to remedy harm to affected worker(s)</td>
<td>Erasing discipline and reinstatement; back pay; $2,500; and any other money or damages to remedy harm to affected worker(s)</td>
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</tbody>
</table>

What types of fines could covered employers have to pay for violating the law?
Fast food and retail employers may also be subject to the following fines:

- $500 for a first violation
- up to $750 for a second violation within a two-year period
- up to $1,000 for subsequent violations within a two-year period

See table above.
What remedies are available for a worker who has experienced retaliation?
Employers may be responsible for providing the following to each affected retail or fast food worker:

- Undoing any retaliatory discipline the worker may have experienced, such as removing a written warning from a worker’s personnel file or reinstating the worker
- Payments for any loss of wages or benefits resulting from the retaliation
- Payment of $500 (or $2,500 if the retaliation resulted in termination)
- Any other payments and relief required to remedy the harm done

See the section Retaliation.

If an employer had a worker sign a document saying that the worker gave up the right to relief under the Fair Workweek Law, can the worker still file a complaint with OLPS against the employer?
Yes. Any agreement to limit fast food or retail workers’ rights under the Fair Workweek Law is invalid. Also, OLPS might investigate the employer on its own initiative whether or not workers file a complaint.

What if an employer repeatedly violates the law?
When there is reason to believe that an employer is engaged in a pattern or practice of violations, the NYC Law Department may file an action in court against that employer seeking relief for workers, fines (including an additional fine of up to $15,000), and injunctive relief.

Scenario:
In April 2018, OLPS determines that Vitamin Life, a retail employer covered by the Fair Workweek Law, scheduled a worker for an on-call shift on three occasions. Vitamin Life is required to pay $500 for each violation, or a total of $1,500 in fines. In June 2018, Vitamin Life canceled an employee’s shift on three hours’ notice. How much might Vitamin Life need to pay for that violation?

Vitamin Life may be responsible for a fine of up to $750, in addition to any relief it is required to pay to workers.

II. Predictable Scheduling: FAST FOOD

This section is exclusively about scheduling and other protections for fast food workers. Go to Overview of Fair Workweek Law for general information about the law, covered workers and employers, notices of rights, recordkeeping, enforcement.

a. Advance Scheduling

What information do fast food employers need to provide workers when they start working?
Fast food employers must give workers a Good Faith Estimate (GFE) no later than their first day of work. The GFE is a written notification of the hours, days, and times that fast food workers can expect to work during their employment. The Good Faith Estimate is a long-term estimate and is different from work schedules for specific workweeks.

What must a fast food employer do if employees’ hours change?
When workers’ hours change on a long-term or indefinite basis, workers must receive an updated GFE as soon as possible and before workers receive their first changed work schedules. Fast food employers must update the GFE when a worker’s actual hours differ from the estimate after three (3) consecutive weeks or three (3) weeks in a six-week period.

Workers who think they experienced retaliation, want to file a complaint, or want information about their rights under the Fair Workweek Law should contact OLPS at FWW@dca.nyc.gov or via 311.
Employers who have questions about their responsibilities under the laws should contact OLPS at FWW@dca.nyc.gov or via 311.
Examples of situations requiring an update of the GFE:

- Three (3) out of six (6) weeks in which the **actual number of hours worked** differs by 20 percent from the GFE
- Three (3) out of six (6) weeks in which the **days** differ from the GFE at least once per week
- Three (3) out of six (6) weeks in which the **start and end times of a shift** (regardless if they are morning, afternoon, or night shifts) differ from the GFE by at least one (1) hour at least once per week and the **total number of hours changed** over the six-week period is at least six (6) hours
- Three (3) out of six (6) weeks in which the **locations** differ from the GFE at least once per week

**What other notice must fast food workers provide employees about scheduling?**

Fast food employers must give workers their complete written schedules, including both regular and on-call shifts, on or before each worker’s first day of work.

For schedules after the first work schedule, fast food employers must give workers their written schedules at least 14 days (2 weeks) before those schedules begin.

**Important:**

- No later than a new fast food employee’s first day of work, that worker must receive a GFE and an initial schedule that contains all shifts up through the first shift on the subsequent work schedule.
- Schedules after the initial work schedule must cover at least seven (7) calendar days.

**How must fast food employers notify employees about their schedules?**

Fast food employers must give workers their written work schedules in two (2) ways:

1. Physically post the schedules at workers’ workplaces in a location where employees will see them.
2. Provide each worker with that worker’s schedule in writing. Employers must send schedules electronically—for example, by text or email—if they normally communicate with workers in that way.

**When must fast food employers notify employees about their schedules?**

Fast food employers must provide workers with their written work schedules at least 14 days prior to the start of the workweek. For example, if the workweek starts on Monday, July 27, the employer must post the schedule for that workweek and also provide to each worker the schedule for that workweek on or before Sunday, July 12.

**What information do fast food employers need to include in a written notice of schedule?**

A written notice of schedule must include the dates, times, and locations of shifts and cover a seven-day period.

**What must fast food employers do if the schedule changes?**

Fast food employers must update the schedule within 24 hours of finding out about the need for the change, or as soon as possible, and provide notice to workers by posting the updated schedule and providing it to all affected employees directly. An employer must pay employees premium pay for any changes made to the schedule after the 14-day advance posting date.

See the section **Changes to Work Schedules and Schedule Change Premiums.**

**Are fast food employers required to give workers copies of previous schedules?**

Yes. If a fast food worker requests previous schedules, the employer must provide written work schedules for any week worked within the last three (3) years. The employer must provide the schedules within two (2) weeks of the worker’s request.
Are fast food employers required to give employees other workers’ schedules?
Yes. If a fast food worker requests other workers’ schedules, the employer must provide the most current version of the work schedule for all fast food workers at the work location. The employer must provide the schedules within one (1) week of the worker’s request.

Do fast food employers need to disclose a worker’s schedule to other workers if the worker is concerned about privacy or safety?
A worker who is a survivor of domestic violence, sexual abuse, or stalking may be entitled to a reasonable accommodation that an employer not disclose the worker’s schedule due to privacy and safety concerns.

If an employer grants a worker an accommodation based on that worker’s status as a survivor of domestic violence, stalking, or sexual assault, the employer cannot disclose that worker’s schedule if doing so would conflict with that accommodation. Under the NYC Human Rights Law, employers may not share with other employees the reasons for an accommodation.

b. Minimum Time between Shifts

Can fast food employers require employees to work shifts with less than 11 hours between them?
Fast food employers cannot schedule employees to work two (2) shifts over two (2) days with less than 11 hours between shifts when the first shift ends the previous calendar day or spans two (2) calendar days (a “clopening”) unless:

- The employee gives written consent AND
- The employer pays the worker a $100 premium per “clopening” worked

Scenario:
Ana works 11 a.m. to 7 p.m. Monday through Wednesday for Pizzuh, a fast food restaurant. Her employer texts a group of employees to see if anyone wants to work a 5 a.m. to 1 p.m. shift on Thursday. Ana responds with a text, “Sure, I’ll work that shift.” Ana works the shift. Is Pizzuh responsible for paying Ana a premium to work the shift?

Yes. Ana is working a “clopening” because her Thursday shift begins less than 11 hours after the end of her Wednesday shift. Ana volunteered for the shift and accepted it in writing. Pizzuh must pay Ana the $100 clopening premium, or the employer will be in violation of the law.
Scenario:

Ben’s regular schedule at Jill’s Place, a fast food establishment, is 10 p.m. to 5 a.m. Monday, Wednesday, and Thursday. A few weeks ago, he told his supervisor, Niki, that he wants to work some daytime shifts. One day at work, Niki tells Ben that he can start working the Friday 9 a.m. to 4 p.m. shift, as long as he continues to work his regular schedule. Must Jill’s Place pay Ben a premium? What responsibilities does Jill’s Place have to Ben under the Fair Workweek Law?

Ben’s Thursday night shift coupled with the new Friday daytime shift would be a “clopening” because they are 2 shifts over 2 days (Thursday and Friday) with only four hours between the first shift ending and the next shift beginning. Ben did not specifically request a Friday 9 a.m. to 4 p.m. shift, and did not do so in writing. Jill’s Place must get Ben’s consent to the new shift in writing and pay him a $100 premium each time he works the clopening shift.

What happens if fast food employers require an employee to work a “clopening” or fail to pay the premium?
Fast food employers must pay workers the required $100 premium and $500 in damages. Employers may also be ordered to comply with the law. Employers may also be subject to fines of $500 for first violations, up to $750 for second violations within a two-year period, and up to $1,000 for subsequent violations.

c. Access to Hours

What is access to hours?
The law’s access to hours provision requires fast food employers to offer available shifts to current employees before hiring new employees. This means giving current employees the opportunity to work an available shift—and, therefore, more hours—for the long term as part of their regular schedules going forward, not just one-off shifts of limited duration and hours.

Do fast food employers need to advertise newly available shifts in a certain way?
Yes. When fast food employers have new shifts available, before advertising for or hiring a new worker, they must notify current workers who have worked at least eight (8) hours within the past 30 days about available shifts at any of their locations in two (2) ways:

1. Post information at workers’ workplaces where workers will see it.* AND
2. Provide each worker with information electronically, which may include text or email.

*The employer must post the notice for three (3) consecutive days.

Who qualifies as a current worker (i.e., a current fast food employee) at a fast food establishment?
Fast food workers are considered to be current workers if they worked at least eight (8) hours within the past 30 days at any location, or if they are on the payroll when the new shifts are posted.

How do fast food workers find out how employers will notify them of available shifts?
Fast food employers must give current workers and new hires written notification of how the employer will notify workers of available shifts, and the employer must update that notification (i.e., give a new written notification to all employees) within 24 hours of any change to those procedures.
**What information do fast food employers need to include in the notice of available shifts?**

Notices of available shifts must include the following information:

1. Number of open shifts.
2. Information on which shifts will recur weekly.
3. Whether the shifts are permanent or temporary, and for how long the employer will need a worker to take on temporary shifts.
4. The number of workers needed to cover each shift.
5. How and when workers can accept shifts.
6. The employer’s procedure for assigning shifts; the procedure must include:
   a. The criteria the employer will use to assign shifts; for example, “Priority will be given to those with cashier’s experience.” In assigning shifts, employers must give priority to employees working at the location where shifts are available.
   b. A written notice to workers that they may accept a portion or subset of the offered shifts.
   c. A written notice to workers that shifts will be assigned according to the employer’s procedure and employees working at the location where shifts are available will receive priority in assignment.

**What if workers who accept the offered shifts don’t meet priority criteria?**

If multiple workers accept offered shifts, the employer must prioritize for assignment those who meet the stated criteria over those who do not. However, the employer may not deny workers a shift they accept because they do not meet the stated criteria, as long as no other workers accepted the shift who did meet the criteria.

**Scenario:**

Yummies Fast Food in the Bronx posts a notice of open shifts. It states that priority will be given to employees with cashier experience and employees who live in the Bronx. Leah is the only worker from the location where the shifts are open who accepts the shifts. Leah does not have cashier experience and does not live in the Bronx. Must Yummies Fast Food assign the open shifts to Leah?

Yes, the employer must assign the open shifts to Leah. Although Leah did not meet the criteria, no worker who does meet the criteria accepted the shifts. Also, Leah works at the location where shifts are available and, therefore, gets priority.
Before fast food employers can hire a new worker, what must they do to offer and assign available shifts?

Process to Offer and Assign Available Shifts

Notice of available shifts:
1. Posted 3 consecutive days at worksites
2. Provided in writing to each worker through electronic method, e.g., email, text

Are there exceptions for fast food chains with numerous fast food establishments in NYC in advertising newly available shifts?
A fast food employer that owns 50 or more fast food establishments in NYC may offer additional shifts to all current workers in NYC or just to current workers in the same borough as the establishment where the shifts are available.

How may fast food employers with any number of establishments take geography into consideration when offering newly available shifts?
While workers at the establishment where the new shifts are available get first priority, employers may set criteria for assigning shifts that take geography into consideration. For example, if additional shifts are available at a location in Queens, an employer may give priority to workers who live or work in Queens. If no current workers at the Queens worksite accept the offered shifts, the employer can assign shifts to interested workers from other locations in Queens before assigning those shifts to workers from outside of Queens.

If a fast food worker accepts a new shift that overlaps with an existing shift, does an employer have to assign the new shift to the worker?
Yes. If an employer completes its process for assigning shifts and an available shift remains for which a worker with an overlapping shift volunteered, the employer must award the new shift in place of the worker’s existing shift.

Workers who think they experienced retaliation, want to file a complaint, or want information about their rights under the Fair Workweek Law should contact OLPS at FWW@dca.nyc.gov or via 311. Employers who have questions about their responsibilities under the laws should contact OLPS at FWW@dca.nyc.gov or via 311.

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shift. The worker may keep the non-overlapping hours of the current shift and accept the hours of the new shift by giving written consent. The employer would then have to advertise any newly available hours resulting from the shift change.

Scenario:
Natasha works at Caliente Dogs, a fast food establishment. Her work schedule includes a shift on Mondays from 7 a.m. to 3 p.m. Caliente Dogs posted a notice to all of its employees about an additional shift at her worksite on Mondays from 9 a.m. to 5 p.m., a shift that overlaps with Natasha’s existing shift. Natasha accepts the shift because it will allow her to drop her child off at school in the morning without reducing her overall hours. No other worker requests the shift. Is Natasha entitled to the new shift?

Yes. Caliente Dogs must award the new shift to Natasha provided that she meets its criteria for assignment of the shift. In this case, Natasha is an existing worker at the location where the shift is available. Since an existing worker accepted the shift, Caliente Dogs cannot hire a new fast food worker to work the shift.

If a worker accepts a portion of the available shifts, does a fast food employer have to award them?
It depends. A worker may accept a portion of an available shift, but an employer is not required to award the employee a shift increment when:

1. Three (3) hours or less remain from the originally posted shift. AND
2. No other current worker accepts the remaining hours of the available shift.

Scenario:
Taco Lane notified employees of an additional shift on Saturdays from 1 p.m. to 9 p.m., an eight-hour shift. Max, a Taco Lane employee, is interested in accepting the shift but informs Taco Lane that he can work from 3 p.m. to 9 p.m., a six-hour shift increment. Two hours remain in the available shift and no other worker accepts the remaining two hours. Does Taco Lane need to award the shift to Max?

No. Taco Lane does not have to award the six-hour increment to Max because the remaining hours (2) are less than three (3) hours, and no current worker accepted to work the two hours.

If more than one worker accepts an available shift, what criteria can an employer use to determine how to assign shifts when multiple workers accept the same shift?
The employer can use any criteria it wants, as long as the criteria are not discriminatory or otherwise unlawful. For instance, an employer can choose to rely on job tenure, performance, or training concerns. However, employers must put in the posted notice the criteria for assigning available shifts. If no employees who meet the criteria accept the shifts, the employer must assign shifts to employees who do not meet the criteria but accepted the shifts.

If a fast food worker accepts a new shift that would put the worker’s weekly hours into overtime, does an employer need to assign the shift to the worker?
No. Fast food employers do not need to assign available shifts to workers when it would require the employer to pay that worker overtime. However, employers do need to assign the greatest number of hours possible.
without triggering the overtime requirement, unless the portion of the shift that remains is under three (3) hours and is not accepted by another worker.

If a worker accepts a new shift that would entitle the worker to an extra hour of pay for working a long day under New York State law, the employer may still need to assign the shift to the worker.

**Scenario:**

A fast food employer advertises a shift on Wednesday from 12 a.m. to 6 a.m. to its employees and includes in its criteria that it will give priority in assigning the shift to workers who work less than 32 hours per week. A worker who is scheduled to work 37 hours during the week is the only worker who accepts the additional shift. Does the employer have to assign the worker the shift?

The employer must award at least three (3) hours to the employee, but is not required to award the entire six-hour shift to the employee because working more than 40 hours would make the employee eligible for overtime pay.

On the other hand, if workers who work less than 32 hours per week had accepted the shift, the employer must assign the shift to one of the interested workers based on its criteria.

**Do a fast food employer’s responsibilities change if the employer hires a new worker through a subcontractor?**

No. The requirements to advertise available shifts to current employees remain the same as long as the new worker is considered a fast food worker under the law. See the section **Workers.**

**How long do fast food employees have to accept open shifts?**

After a fast food employer has provided notice of open shifts to existing fast food workers, those workers have three (3) days to accept the shifts. If the employer did not have three (3) days’ notice that the shift would become available, the employer must notify current workers about the available shift(s) as soon as practicable (possible), but no more than 24 hours after learning of the need, and the employer may temporarily fill the shift until the three-day posting ends by offering the additional shifts to current fast food employees.

**What are fast food employers’ responsibilities when they learn they need to fill a newly open shift in less than three days?**

When a fast food employer has less than three (3) days’ notice to fill an open shift, the employer must post notice of the shift as soon as practicable (possible), but no less than 24 hours after learning of the need. The employer may offer an existing fast food employee the opportunity to work the shift temporarily during the three-day notice period. In this situation, the employer will need to pay the worker any applicable schedule change premiums and get written consent. See the section **Changes to Work Schedules and Schedule Change Premiums.**

**Can fast food employers transfer workers between stores to cover shifts?**

Yes, if certain conditions are met. Fast food workers at all locations managed by the employer may express their willingness and availability to work available shifts. However, the employer must first assign shifts to workers who responded in time and already work at the location where shifts are available. If shifts still remain open, the employer must assign workers from other locations who responded in time to accept shifts.

If an employer wants to transfer existing employees before the end of three (3) days (or the time in which workers had to respond), all existing workers at the location of the available shift(s) must have either accepted or turned down the opportunity in writing.

Workers who think they experienced retaliation, want to file a complaint, or want information about their rights under the Fair Workweek Law should contact OLPS at FWW@dca.nyc.gov or via 311.

Employers who have questions about their responsibilities under the laws should contact OLPS at FWW@dca.nyc.gov or via 311.

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The law applies regardless of whether the employer would normally transfer workers between fast food locations.

**If fast food employers receive timely confirmation from all current workers at the location that they don’t want the available shifts, do employers still have to wait until the posting deadline before they can assign the open shifts to workers from other locations or to new workers?**

No. If all of the workers at the location with open shifts confirm in writing that they do not want the shifts before the posting deadline, the employer may immediately assign the shifts to workers from other locations who accepted. If existing workers at all other locations provide written confirmation that they do not want the available shifts, the employer may immediately hire new workers.

**If no current workers accept an open shift, can fast food employers reconfigure the shift or change the job they are looking to fill when they hire a new employee?**

No. The fast food employer must offer new employees the shifts and the jobs that were advertised in the notice to existing workers.

**What are a fast food employer’s responsibilities once they fill available shifts?**

Fast food employers must notify all employees who accepted shifts that the shifts are filled as soon as possible after filling them in the same way they had advertised open shifts.

**What happens if fast food employers do not offer available shifts to current workers?**

Fast food employers may be obligated to pay current workers $300 for each shift that was not genuinely offered to them, and they may be ordered to comply with the law. They may also be obligated to pay compensatory damages to current workers. Employers may also be subject to fines of $500 for first violations, up to $750 for second violations within a two-year period, and up to $1,000 for subsequent violations. See table on page 10.

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**Scenario:**

Jill’s Place, a chain of fast food establishments, is extending their hours for the summer and will be adding more shifts. Niki, the manager of the Brooklyn location, posts notices about two available shifts at the Brooklyn location and sends the notice to all Jill’s Place workers throughout the city, telling them that they have one day to respond. Steve, an employee at the Manhattan Jill’s Place, responds within a day, telling Niki that he would like one of the shifts. Sam, an employee at the Brooklyn Jill’s Place location, responds after two days to accept both available shifts. Ingrid, another Brooklyn employee, did not see the notice until the next day, but she did not respond because she believed it was too late. Steve, Sam, and Ingrid all meet the criteria established in Niki’s notice. Niki gives one available shift to Steve and hires Peter, a new worker, for the other shift. Did Jill’s Place violate the Fair Workweek Law?

Yes. Jill’s Place failed to give existing workers, including Ingrid, three (3) days to respond to the notice of available shifts before hiring a new worker. The employer also violated the law by not giving Sam first priority to work the open shifts.
d. Changes to Work Schedules and Schedule Change Premiums

**What happens if a fast food employer changes workers’ schedules?**
If a fast food employer changes workers’ schedules less than 14 days before the start of the schedule, the employer must pay each worker a schedule change premium as shown in the table below. Workers can accept or decline additional work time.

If workers accept additional work time, they must give advance consent in writing. The worker’s agreement must relate to a specific shift and cannot be a general or long-term statement of availability.

Workers may decline to work additional time without providing written confirmation. Workers have a right to decline to work additional time without any negative consequence.

Employers do not have to get workers’ written consent if work time is reduced.

**Schedule Change Premiums**

<table>
<thead>
<tr>
<th>Amount of notice of a change to the schedule</th>
<th>Additional work time or shifts</th>
<th>Change to shifts but no change to total work time</th>
<th>Reduced work time or shifts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 14 days’ notice but at least 7 days’ notice</td>
<td>$10 per change</td>
<td>$10 per change</td>
<td>$20 per change</td>
</tr>
<tr>
<td>Less than 7 days’ notice but at least 24 hours’ notice</td>
<td>$15 per change</td>
<td>$15 per change</td>
<td>$45 per change</td>
</tr>
<tr>
<td>Less than 24 hours’ notice</td>
<td>$15 per change</td>
<td>$15 per change</td>
<td>$75 per change</td>
</tr>
</tbody>
</table>

**Does the notice requirement for schedule changes apply to individual shifts or the start of the written work schedule?**
The notice requirement for schedule changes refers to the start date of the whole written schedule, not the date or times of individual shifts in the work schedule. A worker must have 14 days’ advance notice of the full schedule. An employer must pay premium pay for any changes made to the schedule after the 14-day, 7-day, or 24-hour amounts of notice pass, regardless of the date of the changed shift.

For example, a workweek starts on Monday, July 27. The employer cancels a shift originally scheduled for Thursday, July 30 (the fourth day of that workweek).

<table>
<thead>
<tr>
<th>If notice of cancellation is given:</th>
<th>Required premium is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>On or before Sunday, July 12</td>
<td>no premium</td>
</tr>
<tr>
<td>Between Monday, July 13 and Sunday, July 19</td>
<td>$20</td>
</tr>
<tr>
<td>Between Monday, July 20 and Saturday, July 25</td>
<td>$45</td>
</tr>
<tr>
<td>On or after Sunday, July 26</td>
<td>$75</td>
</tr>
</tbody>
</table>

**Are there any exceptions to the schedule change premium requirements?**
Yes. There are four exceptions to the premium pay requirement.

1. Fast food employers are not required to pay premiums for scheduling changes if they are unable to operate due to:
   - Threats to worker safety or employer property
   - Public utility failure

Workers who think they experienced retaliation, want to file a complaint, or want information about their rights under the Fair Workweek Law should contact OLPS at FWW@dca.nyc.gov or via 311.

Employers who have questions about their responsibilities under the laws should contact OLPS at FWW@dca.nyc.gov or via 311.
• Shutdown of public transportation
• Fire, flood, or other natural disaster
• Federal, state, or local state of emergency

2. **Fast food employers are not required to pay premiums when workers request schedule changes.**

Examples of worker requests for schedule changes include:

• Asking for time off
• Calling out
• Using safe/sick leave
• Lateness

For this exception to apply, the employer must keep written documentation showing that the employee requested or initiated the change. The written documentation must contain enough information to show the date of the shift and that the change was actually an employee request.

*Employers must pay premiums for the following types of schedule changes because they are not employee requests:*

• Manager makes a change to the written schedule that the employee did not request.
• Manager asks an employee to work more or less time.
• Employee must stay late to perform job duties.
• Employee leaves early at management’s request.
• Management or workforce management software—for example, a scheduling app used by the employer—asks for volunteers to work more or less time and an employee volunteers.

In these situations, the employer must pay premiums even if the employee consented in writing to the schedule change. Employers may not ask employees to sign documentation that falsely describes these types of changes as employee requests.

3. **Fast food employers are not required to pay premiums for scheduling changes when employees voluntarily trade shifts with one another.**

4. **Fast food employers are not required to pay premiums for adding time to the work schedule when the employer must pay overtime that week as a result of the extra time.**


**Scenario:**

Ashley normally works weekends but texts her manager, “Hi, I’d love to work some weekday shifts in the future. Please let me know if anything opens up.” The next month, when she’s at work on a Saturday, the manager tells Ashley she is scheduled to work that coming Tuesday. Ashley is pleased and provides written consent for the Tuesday shift. Is Ashley entitled to a schedule change premium?

Yes. Ashley is entitled to a $15 premium because she received less than 7 days’ notice to work an additional shift. Although she had requested more weekday shifts, her request was not for the shift specifically assigned to her, so there is no exception to the premium pay requirement. Ashley’s general, open-ended request for “weekday shifts” cannot be taken to mean consent for any schedule change; the employer would have to get written consent for any specific schedule change, as it did in this situation.

**Scenario:**

It is a rainy day and Yo FroYo, a fast food establishment, is having a slow day because of it. Pam, the manager, asks for volunteers to go home early. Pete agrees and leaves two hours before the end of his shift. Does Yo FroYo need to pay a premium to Pete?

Yes. Even though Pete “volunteered” to leave his shift early, he did so at the request of his employer. Because the change is a reduction in hours—not additional hours—the employer does not have to get written consent. However, the employer must pay a $75 premium because it reduced Pete’s work time with less than 24 hours’ notice.

**Scenario:**

Donut Street is a fast food restaurant covered by the law. Maya and Lila are both working 8 a.m. to 4 p.m. shifts. Sonia is scheduled to work 4 p.m. to 12 a.m., but she calls in to Donut Street at 3 p.m. to say that she’s going to need to use sick leave to care for her son who is home sick. She won’t arrive to work until 6 p.m. The manager asks Maya and Lila if either of them would like to volunteer to stay late and cover for Sonia. Maya volunteers and consents to working the additional two hours in writing. Does Donut Street need to pay a schedule change premium?

Yes. Donut Street needs to pay Maya a $15 premium in addition to any regular pay for working additional time with less than 24 hours’ notice. Even though the manager asked for “volunteers,” the employer initiated the schedule change, so there is no exception to the premium pay requirement. Sonia is not entitled to a premium because she voluntarily took time off. (But Sonia may have accrued paid sick leave, which she would be entitled to use in this situation.)
Scenario:

Pollos Locos is a fast food restaurant covered by the law. On the schedule posted on Sunday, May 31 for the week of Monday, June 15 through Sunday, June 21, Claudia was originally scheduled to work shifts on Monday, Tuesday, and Sunday. On Wednesday, June 3, Claudia receives a notification through the Pollos Locos scheduling app that a new shift on Friday, June 19 has been added to her schedule. Claudia tells her manager that she cannot work that Friday because she cannot find a babysitter on short notice. Her manager responds that she has to work or she will be considered a no-call, no-show. Claudia responds that she cannot work the new shift. After she does not report to work on Friday, her manager terminates her employment. Has there been a violation of the Fair Workweek Law?

Yes. Pollos Locos added the time to Claudia’s schedule without her advance consent and with less than 14 days’ notice. Claudia has a right to decline to work the Friday shift, which her manager rejected. Claudia is entitled to $200 in damages.

Also, by terminating her employment, Pollos Locos illegally retaliated against Claudia for exercising her rights. Claudia is entitled to have her discipline erased, reinstatement, back pay, and $2,500 in additional damages.

If, after talking with her manager, Claudia works the Friday shift, has there been a violation and does her manager owe her premium pay?

Yes to both.

Claudia has a right to decline to work the Friday shift, which her manager violated by pressuring her to work.

Also, because Claudia worked the Friday shift with less than 14 days’ notice, her manager owes her $10 in premium pay.

Does an employer need to get written consent and pay a premium to a worker filling in for another worker who called out unexpectedly?

Yes.

Do employers need to get written consent and pay a premium to workers assigned a shift when they respond to a posted notice about last-minute newly available shifts?

Yes. Even though the notice of available shift may not have mentioned premium pay, if there are changes to a worker’s schedule within a 14-day period, the employer owes the worker premium pay.

Are fast food employers required to pay workers a premium if the schedule changes by just a few minutes?

No. Employers only need to pay a premium if changes to a shift add up to more than 15 minutes per shift. OLPS does not require evidence of written consent when an employee works an extra 15 minutes or less. However, the worker must still be able to decline to work the additional time without any negative consequence.
Scenario:

Burger Bam provides Rashid with a schedule that includes a shift on Tuesday from 12 p.m. to 5 p.m. At approximately 5 p.m. on Tuesday, Rashid’s manager asks Rashid to work a few minutes more to assist with a large tour group that just came to the fast food establishment. Rashid agrees and finishes work at 5:12 p.m. Does Burger Bam need to pay Rashid a schedule change premium?

No. Burger Bam does not need to pay Rashid a schedule change premium because the change to his schedule was less than 15 minutes. Rashid may also respond that he cannot stay late, and his manager must let him leave.

Are managers who control worker schedules entitled to premium pay?
Hourly managers are entitled to premium pay, but only for schedule changes that their employer makes. The employer must get written consent when managers agree to work hours that are not on their written work schedule even if the managers change their own schedule without the employer asking.

When will fast food workers get paid the premium for schedule changes?
Fast food employers must pay premiums in the same pay period they pay workers for the relevant shift. Employers must provide a record of the premium either as part of pay stubs or separately.

Are premiums paid to workers for schedule changes included in workers’ wages?
No. Employers must note premiums separately on pay stubs or in some other written form. The premiums do not affect workers’ pay rates, including for overtime purposes.

What happens if fast food employers do not pay workers a premium for changing a schedule?
Fast food employers who fail to pay schedule change premiums may be liable to the worker for the unpaid premium plus $300 per instance.

What happens if fast food employers do not give workers a Good Faith Estimate or schedule as required or upon request?
Fast food employers who do not provide Good Faith Estimates or requested schedules may be required to pay that worker $200 for the violation, and OLPS may order that employer to comply with the law.

Employers may be subject to fines of $500 for first violations, up to $750 for second violations within a two-year period, and up to $1,000 for subsequent violations.

What happens if fast food employers do not update a worker’s Good Faith Estimate as required?
Fast food employers who do not update the Good Faith Estimate may be required to pay that worker $200 for the violation, and OLPS may order that employer to comply with the law.

Employers may be subject to fines of $500 for first violations, up to $750 for second violations within a two-year period, and up to $1,000 for subsequent violations. See table on page 10.
III. Predictable Scheduling: RETAIL

This section is exclusively about scheduling protections for retail workers. Go to Overview of Fair Workweek Law for general information about the law, covered workers and employers, notices of rights, recordkeeping, enforcement.

a. Schedules

When do retail employers need to provide employees with their work schedules?
Retail employers must provide employees with their next written work schedule, including dates, times, and locations of all shifts, no later than 72 hours (3 days) before the start of the schedule; schedules should cover seven (7) days.

How should retail employers provide schedules to employees?
Retail employers must physically post the schedule at the workplace where all workers at that location can see it. A retail employer must also send workers their work schedule via electronic means, such as text and email, if that is how the employer usually communicates with workers.

Do retail employers need to disclose a worker’s schedule to other employees if the worker is concerned about privacy or safety?
A worker who is a survivor of domestic violence, sexual abuse, or stalking may be entitled to a reasonable accommodation that an employer not disclose the worker’s schedule due to privacy and safety concerns.

If an employer grants a worker an accommodation based on that worker’s status as a survivor of domestic violence, stalking, or sexual assault, the employer cannot disclose that worker’s schedule if doing so would conflict with that accommodation. Under the NYC Human Rights Law, employers may not share with other employees the reasons for an accommodation.

What happens if a retail employer does not give employees their schedule 72 hours before the start of the work schedule?
The retail employer is violating the law and may be required to pay $300 to all affected workers, as well as any other damages or relief required to remedy the harm to the affected workers. The employer may also be liable for a fine of $500, and possibly more if it is not the first time the employer violated the law. See table on page 10.
Scenario:

Tanisha works for a covered retail employer at the employer’s one location in NYC. The employer’s schedules always cover Monday-Sunday with the first shift in the schedule starting at 1 p.m. on Monday. At 12 p.m. on Friday, while Tanisha is working at the location, Tanisha’s manager tells Tanisha that she will be working the 1 p.m. to 7 p.m. shifts the following Tuesday-Thursday. Before Tanisha leaves work on Friday at 1 p.m., she looks to see if the written schedule is posted and sees that it is not. Tanisha normally discusses scheduling with her manager by text, but does not receive any texts about her schedule. Did Tanisha’s employer violate the Fair Workweek Law?

Yes. Because the first shift on the new schedule begins on Monday at 1 p.m., Tanisha’s employer was required to post the schedule by 1 p.m. on Friday, which the employer failed to do. Although the manager talked to Tanisha about her schedule, Tanisha never received her written work schedule. The employer also failed to send the schedule to Tanisha by text, even though the manager regularly communicates with Tanisha about scheduling this way. Tanisha’s employer may be required to pay her $300 for the failure to post the schedule and $300 for failing to provide Tanisha with the written schedule directly.

Are retail employers required to give employees copies of previous schedules?
Yes. If a retail worker requests previous schedules, the employer must provide written work schedules for any week worked within the last three (3) years. The employer must provide the schedules within 14 days of the worker’s request.

Are retail employers required to give employees copies of other workers’ schedules?
Yes. If a retail worker requests other workers’ schedules, the employer must provide the most current version of the work schedule for all retail workers at the work location. The employer must provide the schedules within one (1) week of the worker’s request.

b. On-call Scheduling

What is an on-call shift?
An on-call shift occurs when a worker is required to be ready and available to work at the employer’s call for a period of time, regardless of whether the worker actually works or is required to report to a work location.

What is the difference between a regular shift and an on-call shift?
A regular shift is a span of consecutive hours at a work location (not including breaks that are less than two hours). Workers are paid to work regular shifts.

In practice, unless workers are told to and actually do report to a work location, workers are not paid for on-call shifts although they have made themselves available to work and cannot engage in their own activities.

Can retail employers schedule employees for on-call shifts?
No. Under the Fair Workweek Law, a retail employer may not schedule a worker for any on-call shifts.

What happens if retail employers schedule on-call shifts?
The retail employer is violating the law and may be required to pay $500 or damages and relief required to remedy the harm to the affected worker, whichever is greater. Employers may also be liable for a fine of $500 for each on-call shift, and more if they violate the law again. See table on page 10.

Workers who think they experienced retaliation, want to file a complaint, or want information about their rights under the Fair Workweek Law should contact OLPS at FWW@dca.nyc.gov or via 311.
Employers who have questions about their responsibilities under the laws should contact OLPS at FWW@dca.nyc.gov or via 311.
c. Advance Notice

**Can a retail employer cancel a worker’s shift?**
Yes, but only if the retail employer provides notice of the cancellation at least 72 hours before the start of the shift.

**Can a retail employer require an employee to work an additional shift with less than 72 hours’ notice?**
No. With less than 72 hours’ notice, retail employers cannot require employees to work an additional shift. Employers may offer the additional shift, and employees may accept or decline the shift. If employees agree to work the additional shift, they must give written consent.

However, retail employers may require employees to work an additional shift if they provide notice of the additional shift at least 72 hours before the start of the shift.

**What does it mean to consent in writing to the addition of a shift?**
An employee must agree to work the shift and say so in some written form, such as text, email, or handwritten or typed note or form. The employee’s agreement must relate to a specific shift and cannot be a general or long-term statement of availability.

**Are there any circumstances when a retail employer does not need to provide 72 hours’ notice before cancelling a shift?**
Yes. A retail employer may make changes to workers’ schedules less than 72 hours before the start of a shift if the employer is not able to operate due to:

- Threats to employee safety or employer property
- Public utility failure
- Shutdown of public transportation
- Fire, flood, or other natural disaster
- Federal, state, or local state of emergency

Employers may also grant employees time off at their request, for example to use sick leave, or allow an employee to trade shifts with another employee.

**What must a retail employer do if the schedule changes?**
If the schedule changes, the retail employer must update the schedule and notify all affected workers directly.

**Can retail employers require workers to check in to confirm whether or not they need to report to a shift?**
Under the law, a retail employer cannot require workers to check in within 72 hours of a scheduled shift to find out if they should report for the shift.

**Can retail employers allow workers to take time off?**
Yes. Employers can grant a worker’s request for time off, even if the request occurs within 72 hours of the worker’s scheduled shift. Providing time may be required under federal, state, or local law, including under NYC’s Paid Safe and Sick Leave Law.

**What happens if retail workers trade shifts with one another less than 72 hours before those shifts start?**
Retail employers can allow workers to trade shifts with one another, even if they trade within 72 hours of the start of the affected shift. Since the schedule change is initiated by employees—and not the employer—there is no penalty to the employer for the last-minute schedule change. However, the employer must update and repost the schedule and contact all affected workers.

Workers who think they experienced retaliation, want to file a complaint, or want information about their rights under the Fair Workweek Law should contact OLPS at FWW@dca.nyc.gov or via 311. Employers who have questions about their responsibilities under the laws should contact OLPS at FWW@dca.nyc.gov or via 311.
What if a retail employer cancels a worker’s shift or part of a shift with less than 72 hours’ notice?
It is illegal for a retail employer to cancel a shift or part of a shift with less than 72 hours’ notice. Employers may be liable for paying damages to the worker and fines to the City.

What if a retail employer cancels or shortens a worker’s shift after the employee arrived at work?
Cancelling or cutting a shift after a worker arrives at work is a violation of the Fair Workweek Law. The practice may also be a violation of the “call-in pay” provision of the New York State Labor Law, which requires employers to pay workers a minimum amount of call-in pay. Contact the New York State Department of Labor at labor.ny.gov for more information.

What happens if a retail employer changes a schedule without providing the proper notice?
Retail employers may be held responsible for $500 or damages and relief to remedy the harm to affected workers, whichever is greater. The employer may also be liable for a fine of $500 for each on-call shift, or more if the employer violated the law before.

Scenario:

On Saturday morning, Mohamad contacts his retail employer to say that he cannot work a Sunday shift because he is sick. The manager tells another worker, Ligia, that in the updated schedule she is now assigned to cover Mohamad’s Sunday shift the next day. Ligia would not have volunteered to work this shift, and has to hire a babysitter so she can cover the shift. Did the employer violate the Fair Workweek Law?

Yes. The employer required Ligia to work an additional shift with less than 72 hours’ notice and without her written consent. The employer may be required to pay up to $500 to Ligia (unless her babysitting costs and other damages are more than $500) and a fine of $500 (or more if the employer violated the law before).

On the other hand, if Mohamad told his employer on Saturday he couldn’t work Wednesday, the employer could assign Ligia to work Wednesday without getting her consent or violating the law.

IV. Retaliation

What is retaliation?
Retaliation is any action by an employer—or on an employer’s behalf—that could penalize or deter a worker or group of workers from exercising or attempting to exercise any right protected by the law. Retaliation includes:

- threats
- intimidation
- discipline
- discharge
- demotion
- suspension
- harassment
- cutting hours
- informing other employers about a worker’s actions under the law
- discrimination
- actions related to immigration status

Retaliation is illegal under the Fair Workweek Law. Employers may not retaliate against workers exercising their rights under the law, even if workers do not explicitly refer to the Fair Workweek Law.

Retaliation exists when the protected activity was a motivating factor for a retaliatory act, even if other factors also motivated the retaliatory act.

Workers who think they experienced retaliation, want to file a complaint, or want information about their rights under the Fair Workweek Law should contact OLPS at FWW@dca.nyc.gov or via 311. Employers who have questions about their responsibilities under the laws should contact OLPS at FWW@dca.nyc.gov or via 311.
Workers who think they experienced retaliation, want to file a complaint, or want information about their rights under the Fair Workweek Law should contact OLPS at FWW@dca.nyc.gov or via 311. Employers who have questions about their responsibilities under the laws should contact OLPS at FWW@dca.nyc.gov or via 311.

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Does the law protect workers from retaliation if workers mistakenly, but in good faith, exercise their rights?
Yes.

What remedies are available for a worker who has experienced retaliation?
Employers may be required to provide the following to each affected worker:

- Undoing any retaliatory discipline the worker may have experienced, such as restoring hours or removing a written warning from a worker’s personnel file
- Payment for any loss of wages or benefits resulting from the retaliation
- Payment of $500 (or $2,500 if the retaliation resulted in termination)
- Any other payments and relief required to remedy the harm done

V. Complaints with OLPS

Who can file a complaint about a potential violation of the Fair Workweek Law?
Any person, including retail and fast food workers and their representatives, or related organizations, may file a complaint about a possible violation of the Fair Workweek Law.

Where can I file a complaint?
You can file a complaint with OLPS. To reach OLPS:

- Call 311 (212-NEW-YORK outside NYC). Ask for “Fair Workweek Law.”
- Email FWW@dca.nyc.gov
- Visit nyc.gov/dcwp

OLPS can also give complainants information about employee rights or how to bring a private legal action in court against an employer.

How long do I have to file a complaint?
You must file a complaint within two (2) years of when you learned (or should have learned) of the violation of the Fair Workweek Law.

What happens after I file a complaint?
OLPS investigates the complaint. OLPS may request information or documents from a retail or fast food employer under investigation and interview witnesses. If OLPS determines that an employer violated the law, the employer may be responsible for money damages and other forms of relief to affected workers, as well as fines to the City. See table on page 10.

Are complainants’ identities kept confidential?
OLPS will keep the identity of complainants confidential unless disclosing their identity is necessary to resolve the investigation or is otherwise required by law. OLPS will notify complainants before disclosing their identity whenever possible and generally attempts to keep identities of workers confidential unless the worker consents.

Does my immigration status affect my ability to file a complaint?
No. All workers have the same rights and protections under the Fair Workweek Law, regardless of immigration status. OLPS does not collect any information about a worker’s immigration status to pursue a complaint.
VI. Private Right of Action

*Can individuals bring their own action in court against an employer?*

Yes.

Any person or organization, including a retail or fast food worker, alleging a violation of the Fair Workweek Law may bring a civil action in court to seek damages and other relief.

Individuals must bring an action under the Fair Workweek Law within two (2) years of the date that the individual learned, or should have learned, of the violation.

*Can an individual file a complaint with OLPS and bring a civil action at the same time?*

No.

If individuals file a complaint with OLPS first, they cannot bring their own lawsuit unless they withdraw the complaint in writing or OLPS dismisses the complaint “without prejudice,” generally meaning that the complaint was neither decided nor settled.

If individuals file a civil action in court first, they cannot file a complaint with OLPS unless the civil action is withdrawn or dismissed without prejudice. When a party files suit in court, the party must give notice of the lawsuit to OLPS.

OLPS may still investigate and pursue a case against an employer, even when a worker has a case pending against that employer in court.