



# Fair Workweek and Fast Food Deductions Laws: Frequently Asked Questions

The Department of Consumer Affairs (DCA) Office of Labor Policy & Standards (OLPS) enforces NYC's Fair Workweek and Fast Food Deductions laws. *The laws cover 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** 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.

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](mailto:FWW@dca.nyc.gov) or via 311.

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- **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.
- **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 going forward?***

No. Employees cannot agree to prospectively waive their rights under the Fair Workweek Law.

### ***When do fast food and retail employers have to start complying with the Fair Workweek Law?***

Employers must comply with the Fair Workweek Law beginning on Sunday, 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.

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### **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.

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**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.

**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.

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## 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.

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**Scenario:**

*Britney owns 25 Sandwichville restaurants that share décor, marketing, packaging, products, and services. She also owns 10 Sandwichville Express kiosks that share marketing, packaging, products, and services with the Sandwichville establishments. Britney owns a restaurant called Sushi Town that does not share branding with any other establishment. Which of Britney's restaurants are fast food establishments?*

Sandwichville and Sandwichville Express may be fast food establishments. They are part of a chain because they share a brand. Together, they total more than 30 establishments. However, they must meet the other requirements under the law.

Sushi Town is not a fast food establishment. It is not part of a chain despite also being owned by Britney because it has a different brand and does not use standardized décor, marketing, packaging, products, or services.

**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.

**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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## 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 DCA website at [nyc.gov/dca](http://nyc.gov/dca). 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 DCA 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 DCA 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/dca](http://nyc.gov/dca).

OLPS will update the notices if there are any changes to the law. Monitor the DCA 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:

#### **FAST FOOD**

- Workers’ **hours worked each week**
- Workers’ **shifts worked**, including date, time, and location
- **Good faith estimates** of work hours provided to workers
- Workers’ **written consent** to work *clopenings* and to schedule changes when required
- **Each written schedule** provided to workers
- **All premium payments** to workers, including dates and amounts, and where noted (pay stub, other written form)

#### **RETAIL**

- Workers’ **hours worked each week**
- Workers’ **shifts worked**, including date, time, and location
- Workers’ **written consent** to schedule changes when required
- **Each written schedule** provided to workers

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### ***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.

An employer might receive a court order requiring it to comply with the notice, posting, recordkeeping, and other requirements of the law.

### ***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 on page 10. Note that damages and fines are on a per-employee basis.

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## Potential Damages

Violation	Damages to FAST FOOD EMPLOYEE	Damages to RETAIL EMPLOYEE	Fines to City
On-call shift or shift change with less than 72 hours' notice	N/A	\$500 or damages and relief to remedy harm to affected worker, whichever is greater	<ul style="list-style-type: none"> <li>• \$500 for violations leading to an initial legal action</li> <li>• Up to \$750 for violations leading to a second legal action within a two-year period</li> <li>• Up to \$1,000 for subsequent violations</li> </ul>
Failing to provide work schedules in compliance with the law	\$200	\$300	
Failure to pay premium	Unpaid premium and \$300	N/A	
Failure to provide or follow Good Faith Estimate	\$200	N/A	
Failure to provide requested schedules	\$200	N/A	
Violation of Access to Hours	\$300	N/A	
Violation of Minimum Time between Shifts ( <i>Clopenings</i> )	\$500 plus the unpaid \$100 premium	N/A	
Retaliation	Erasing discipline and reinstatement; back pay; \$500; and any other money or relief to remedy harm to affected worker(s)	Erasing discipline and reinstatement; back pay; \$500; and any other money or relief to remedy harm to affected worker(s)	
Retaliatory termination	Erasing discipline and reinstatement; back pay; \$2,500; and any other money or damages to remedy harm to affected worker(s)	Erasing discipline and reinstatement; back pay; \$2,500; and any other money or damages to remedy harm to affected worker(s)	

### ***What types of fines could covered employers 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.

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### **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 prospectively 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 and a fine of up to \$15,000.

#### **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. 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.

#### **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.

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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.

***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 contacting all affected employees directly. An employer must pay employees premium pay for any changes with less than 14 days' notice.

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.

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**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.

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](mailto: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](mailto:FWW@dca.nyc.gov) or via 311.

**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**

**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.

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](mailto: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](mailto:FWW@dca.nyc.gov) or via 311.

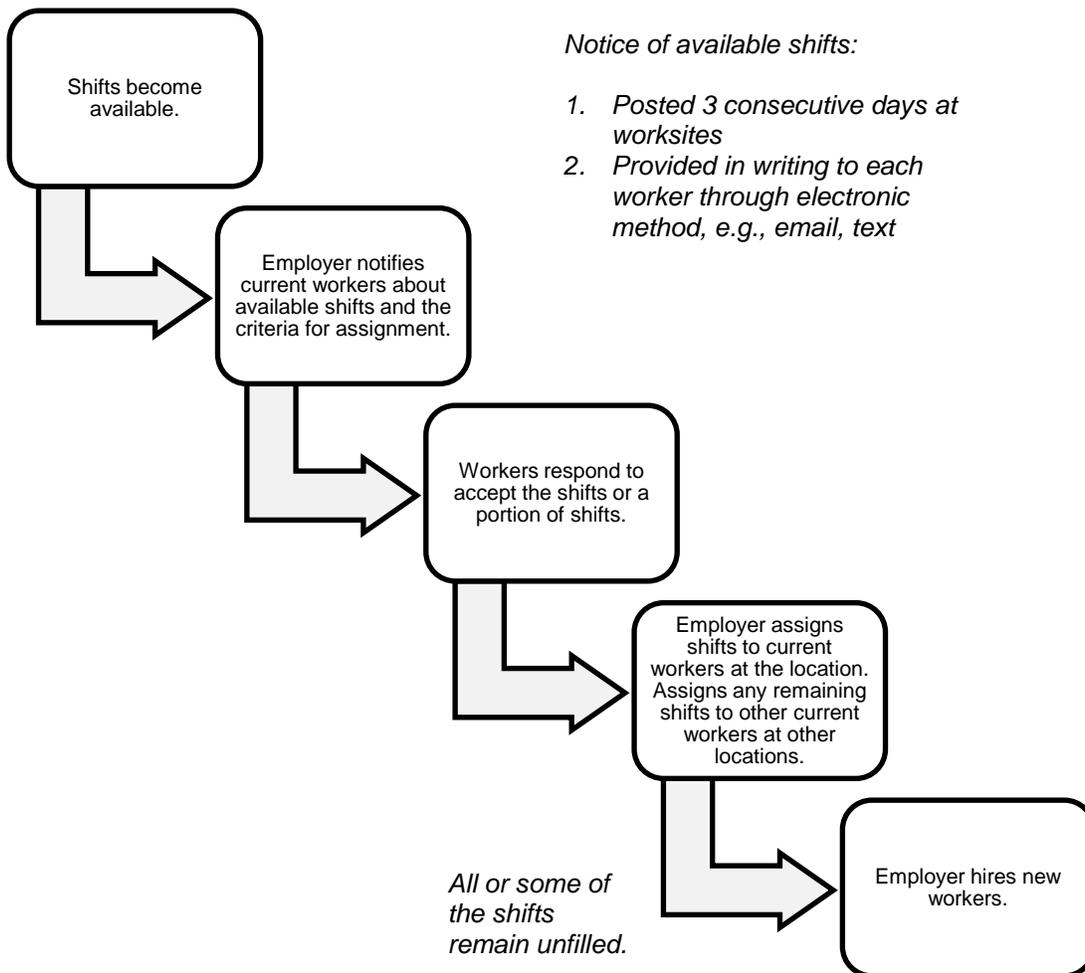
**Scenario:**

*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**



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Employers who have questions about their responsibilities under the laws should contact OLPS at [FWW@dca.nyc.gov](mailto:FWW@dca.nyc.gov) or via 311.

**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. 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.

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**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.

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.

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*Employers who have questions about their responsibilities under the laws should contact OLPS at [FWW@dca.nyc.gov](mailto:FWW@dca.nyc.gov) or via 311.*

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

Fast food employers may be obligated to pay workers whose rights were violated \$300 each, and they may 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. See table on page 10.

#### **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 shifts.

If workers *accept* additional shifts, they must give 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 an added shift without providing written confirmation.

Employers do not have to get workers' written consent if work time is reduced or other changes are made.

#### **Schedule Change Premiums**

<b>Amount of notice before the change is effective</b>	<b>Additional work time or shifts</b>	<b>Change to shifts but no change to total work time</b>	<b>Reduced work time or shifts</b>
Less than 14 days' notice but at least 7 days' notice	<b>\$10</b> per change	<b>\$10</b> per change	<b>\$20</b> per change
Less than 7 days' notice but at least 24 hours' notice	<b>\$15</b> per change	<b>\$15</b> per change	<b>\$45</b> per change
Less than 24 hours' notice	<b>\$15</b> per change	<b>\$15</b> per change	<b>\$75</b> per change

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Employers who have questions about their responsibilities under the laws should contact OLPS at [FWW@dca.nyc.gov](mailto:FWW@dca.nyc.gov) or via 311.

**Are there any exceptions to the schedule change premium requirements?**

Yes. 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
- Shutdown of public transportation
- Fire, flood, or other natural disaster
- Federal, state, or local state of emergency

Additionally, when workers request schedule changes to a specific shift, voluntarily take time off, voluntarily trade shifts, or when new shifts mean that the employer must pay overtime, employers do not need to pay schedule change premiums.

**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.)

***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. However, the worker must still consent in writing to any additional time worked.

**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 in writing 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.

***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.

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***When will fast food workers get paid the premium for last-minute 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.

***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. 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.

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*Employers who have questions about their responsibilities under the laws should contact OLPS at [FWW@dca.nyc.gov](mailto:FWW@dca.nyc.gov) or via 311.*

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.

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*Employers who have questions about their responsibilities under the laws should contact OLPS at [FWW@dca.nyc.gov](mailto:FWW@dca.nyc.gov) or via 311.*

***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.

**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.

*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](mailto: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](mailto:FWW@dca.nyc.gov) or via 311.*

**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 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.

**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](http://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. Overview of Fast Food Deductions Law

### a. General

The Fast Food Deductions Law requires fast food employers to deduct voluntary payments from workers' paychecks and send the payments to the nonprofit of workers' choosing, as long as the nonprofit has a registration letter from DCA.

#### ***Who does the law cover?***

The law covers **nonprofits**, **fast food employees**, and **fast food employers**. **Nonprofits** are organizations that are incorporated as nonprofits in the state of their incorporation. Qualifying nonprofits do not need to be incorporated in New York State. Labor unions are not nonprofits for purposes of the law. See Overview of Fair Workweek Law, **Workers** and **Fast Food Employers** sections.

#### ***When do fast food employers have to start complying with the law?***

Fast food employers must begin complying with the law on November 26, 2017.

#### ***Where can someone get more information about the Deductions Law?***

- Visit [nyc.gov/dca](http://nyc.gov/dca)
- Email [FWW@dca.nyc.gov](mailto:FWW@dca.nyc.gov)
- Call 311 (212-NEW-YORK outside NYC). Ask for "Deductions Law."

### b. Fast Food Workers

#### ***Does the law apply only to NYC fast food workers and employers?***

Yes.

Fast food workers who work in a fast food establishment in NYC are covered; they do not need to live in NYC.

The law covers fast food establishments in NYC; the chain's headquarters can be outside of NYC.

The nonprofit can also be based outside of NYC.

#### ***Does the law cover supervisors or managers at fast food establishments?***

Yes, as long as supervisors or managers are not employers, work at a fast food establishment in NYC, and perform at least one or more of the following functions:

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

#### ***How would fast food workers know if their employer is required to deduct and send contributions to their chosen nonprofit under the Deductions Law?***

A registration letter from OLPS confirms that a nonprofit has provided OLPS with the appropriate records and met the requirements to receive contributions through payroll deductions. Workers can sign authorizations at any time; an employer's obligation to deduct and send contributions only begins after the employer receives the nonprofit's registration letter and employee authorizations from the nonprofit.

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*Employers who have questions about their responsibilities under the laws should contact OLPS at [FWW@dca.nyc.gov](mailto:FWW@dca.nyc.gov) or via 311.*

## c. Nonprofits

### ***How can nonprofits qualify to receive contributions from fast food workers?***

To qualify to receive contributions, nonprofits must first register with OLPS. To register, the nonprofit must electronically submit the following to OLPS:

1. At least 500 current/un-revoked facially valid authorizations for contributions to that nonprofit signed by fast food workers in the previous 270 days
2. The nonprofit's name, address, email, website address (if they have one), and phone number
3. Title of the staff member at the nonprofit responsible for processing deduction and contribution paperwork, with a direct telephone number and email address
4. Proof that the nonprofit has an active nonprofit status that has not been suspended or dissolved in the nonprofit's state of incorporation
5. The nonprofit's last three federal tax filings, such as IRS Form 990 or equivalent financial information
6. Proof that the nonprofit has made required disclosures to the fast food workers

Once OLPS determines that the requirements for registration are met, OLPS will send the nonprofit a registration letter. The nonprofit gives this registration letter along with employee authorizations to fast food employers whose employees have authorized deductions and contributions to that nonprofit. The fast food employer is not required to deduct contributions from fast food workers' paychecks until the fast food employer receives the nonprofit's registration letter and employee authorizations.

### ***What is acceptable proof of active nonprofit status?***

Acceptable proof of active nonprofit status includes the following, issued within 120 days of registration:

1. Copy of an IRS affirmation or determination letter confirming the nonprofit's tax-exempt status
2. Letter from a state certifying that no part of the organization's earnings may benefit a private party
3. Certified copy of the organization's certificate of incorporation
4. Proof that the organization was listed in the IRS's online database of organizations eligible to receive tax-deductible donations

### ***Can a nonprofit file a complaint about a violation of the law?***

Yes, a nonprofit may file a complaint with OLPS, along with a copy of its registration letter, when a fast food employer does not honor a valid deduction authorization.

## d. Notice of Rights and Disclosures

### ***What information must fast food employers give employees about the law?***

1. Fast food employers must post a notice that explains workers' rights and employer obligations under the law, including the following statement explicitly notifying workers that labor organizations may not receive contributions:

*Labor organizations as defined by the National Labor Relations Act, employee organizations as defined by subdivision 5 of section 201 of the civil service law, and labor organizations as defined in subdivision 5 of section 701 of the labor law are not permitted to seek remittances under this chapter pursuant to subdivision b of section 20-1310 (Local Law 98 of 2017).*

2. Within five (5) days of receiving any authorization or revocation of deductions and contributions, the fast food employer must provide workers with a copy of the authorization or revocation.

*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](mailto: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](mailto:FWW@dca.nyc.gov) or via 311.*

3. Fast food employers must comply with [New York State law](#), which requires employers to list all deductions on wage statements (pay stubs).

OLPS will post the notice “YOU HAVE A RIGHT TO MAKE CONTRIBUTIONS TO NONPROFITS THROUGH YOUR EMPLOYER” on the DCA website [nyc.gov/dca](http://nyc.gov/dca). Employers must post the notice where employees can easily see it at each NYC workplace.

***What information do nonprofits need to provide to fast food workers who authorize deductions and contributions to that organization?***

By the time a fast food worker authorizes deductions and contributions, the nonprofit must provide the following disclosures to workers:

1. Nonprofit’s name, address, email, website address (if they have one), and phone number
2. Title of the staff member at the nonprofit responsible for processing deduction and contribution paperwork, with a direct telephone number and email address
3. Information about the nonprofit’s work, including mission, programs, and areas of focus
4. Nonprofit’s officers and directors, and names and titles of individuals who performed work for the not-for-profit within the previous five (5) years and either (i) are or were trustees of the not-for-profit or (ii) receive(d) more than \$100,000 in compensation in any single year
5. Nonprofit’s financial information, including sources of funding, budget, and expenditures
6. Proof that the nonprofit has an active nonprofit status that has not been suspended or dissolved in the nonprofit’s state of incorporation
7. The following statement explicitly notifying workers that labor organizations may not receive contributions deducted from fast food workers’ paychecks under this law:

*Labor organizations as defined by the National Labor Relations Act, employee organizations as defined by subdivision 5 of section 201 of the civil service law, and labor organizations as defined in subdivision 5 of section 701 of the labor law are not permitted to seek remittances under this chapter pursuant to subdivision b of section 20-1310 (Local Law 98 of 2017).*

***How can a nonprofit provide required disclosures to fast food workers?***

The nonprofit may satisfy the disclosure requirements by:

- Posting the information clearly and noticeably on a single webpage
- Printing the nonprofit’s website address in the authorizations or documents provided to employees and indicating that the legally required disclosures are on that webpage on the nonprofit’s website

The text on the webpage must be a minimum of 12 point sans serif font, and the address must be no more than 50 characters long.

The nonprofit may also satisfy the disclosures requirement by:

- Providing electronic copies of documents with disclosures directly to workers via email
- Providing hard copies of documents with disclosures directly to workers

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*Employers who have questions about their responsibilities under the laws should contact OLPS at [FWW@dca.nyc.gov](mailto:FWW@dca.nyc.gov) or via 311.*

### **What is acceptable proof that the nonprofit has provided the required disclosures?**

OLPS will accept the following as proof of the required disclosures:

1. Valid authorizations containing the URL of the webpage containing the disclosure along with screenshot(s) of the website OR
2. Signed and dated written acknowledgments of receipt of the required disclosures along with a copy or screenshot of the written disclosures workers received

Any screenshots of a website must include every version of the website in the date range of the authorizing signatures.

### **Is it possible for a nonprofit to violate the law?**

Yes. When a nonprofit makes false or misleading disclosures to fast food workers, the nonprofit has violated the law. The nonprofit must cure or correct those statements to fast food workers within 30 days. If a nonprofit violates the law twice in a two-year period, OLPS may revoke the nonprofit's registration.

#### **Scenario:**

*Steffi, a Pizzuh worker, receives a mailer inviting her to sign up to give regular deductions to Pie Justice. The mailer has the required disclosures, including a statement identifying the organization's Executive Director and asserting that he is a respected leader in the nonprofit community and a Nobel Peace Prize winner. Steffi provides an authorization to allow Pizzuh to make deductions from her paycheck and send contributions to Pie Justice. Steffi doesn't receive any other written material from Pie Justice. Steffi later finds out that Pie Justice's Executive Director is a convicted felon who had embezzled funds from a charity and who never won the Nobel Prize. Did Pie Justice violate the law?*

Yes. Pie Justice gave Steffi false and misleading information about its governance.

## **e. Authorization and Deductions**

### **For which nonprofit organizations must fast food employers honor requests for payroll contributions from fast food employees?**

Fast food workers can authorize contributions to any nonprofit of their choosing. Employers are only required to deduct and send payments to nonprofits that have provided a copy of their registration letter from OLPS and employee authorizations.

### **Can fast food workers authorize deductions and contributions to labor unions?**

Labor organizations may *not* receive contributions deducted from fast food workers' paychecks under NYC's Fast Food Deductions Law.

### **How can fast food workers authorize deductions and contributions to a nonprofit?**

Fast food workers may submit a written authorization to a nonprofit. If a worker submits the authorization to the fast food employer, the employer must submit it to the nonprofit. Once the nonprofit has received a registration letter from OLPS, and provided the letter and authorizations to the employer, deductions should begin.

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*Employers who have questions about their responsibilities under the laws should contact OLPS at [FWW@dca.nyc.gov](mailto:FWW@dca.nyc.gov) or via 311.*

Written authorizations must be signed and dated and include:

- Worker's name and address
- Amount, frequency, and start date of contributions
- Name, address, and contact information for the nonprofit organization
- Statement to workers notifying them that **deductions and contributions are voluntary and revocable**, immediately followed by the title of the person at the nonprofit to whom workers may submit written revocations and the nonprofit's email address.

***Are electronic signatures acceptable for the signed authorizations?***

Yes, a handwritten signature or a unique electronic signature are both acceptable. Before a nonprofit accepts a worker's electronic signature, the nonprofit must send the worker an email confirming that the worker authorized deductions from wages. A submission of an electronic signature must also include a verification that the associated individual is a "natural person." Each worker can have only one electronic signature.

***What if the nonprofit has not completed the registration process at the time the worker submits a written authorization?***

If the nonprofit has not completed the registration process with OLPS at the time the worker submits the authorization, the nonprofit should notify the worker when the worker can expect deductions to start. If the nonprofit plans to submit authorization more than 180 days after receipt, it must send the worker a letter 10 days before it submits the authorization to the fast food employer with the following information:

1. When the nonprofit will submit the authorization
2. Date by when deductions will begin
3. Contact information for the nonprofit's contact person

***When will deductions begin?***

A fast food employer cannot begin deductions earlier than the start date that a worker indicates in the written authorization. If the employer has received the nonprofit's registration letter, the employer must begin deductions by the first pay period 15 days after receiving the employee's written authorization.

*Note:*

- If the authorization or registration letter is sent to the employer by mail, email, or fax, it is assumed that the employer received it 10 days following the date of service.
- If the authorization or registration letter is personally delivered to the fast food employer, it is assumed that it was received on that date.

***When can nonprofits expect to receive contributions deducted from fast food workers' paychecks?***

Fast food employers must send contributions to nonprofits within 15 days of deducting the amount from a fast food worker's paycheck.

***How should fast food employers transfer payments to nonprofits?***

The nonprofit must notify a fast food employer in writing of the method by which deductions should be transferred to the nonprofit. The method and its associated costs must be reasonable and should be compatible with standard practices and the employer's existing practices for remitting deductions from workers' pay.

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*Employers who have questions about their responsibilities under the laws should contact OLPS at [FWW@dca.nyc.gov](mailto:FWW@dca.nyc.gov) or via 311.*

***Who is responsible for paying processing fees for deductions?***

Upon a fast food employer's written request, nonprofits must pay fees associated with processing deductions. The employer's written request must include the calculations on which the fees are based. The costs requested must be based on the actual costs to the employer, and the maximum amount per transaction, which includes the deduction and remittance, per employee is 30 cents, unless the employer seeks an exception due to higher costs. The nonprofit does not need to reimburse the employer more frequently than every two (2) weeks.

***Do fast food workers have to pay processing fees associated with their contributions?***

No. The employer cannot require workers to pay a fee to process the deductions and contributions. The deduction from workers' paychecks should equal the value of the contribution to the nonprofit without reduction for processing fees.

Employers may request that the nonprofit reimburse the employer for processing costs for deductions and payments to the nonprofit.

***What information does a fast food employer need to give nonprofits with the contributions?***

Upon a nonprofit's request, a fast food employer must provide the following:

- Fast food employer name
- Each contributing worker's:
  - Name
  - Work address
  - Home address
  - Phone number
  - Email address, if any
  - Unique identifier, such as an employee ID number
  - Amount of deduction
  - Date and payroll period of deduction
- Name of any contributing worker who separated from employment in the preceding payroll period

***Can fast food employers refuse to make deductions from a worker's paycheck even though they have the worker's written authorization and the nonprofit's registration letter?***

A fast food employer must honor a worker's authorization for deductions and contributions to a nonprofit unless the contribution is for less than \$3 per week (\$6 for a two-week pay period) or if the employee requests two deductions per pay period, in which case the employer is only required to make one deduction per pay period. But the law does not prohibit deductions under these circumstances.

***Can a fast food employer make deductions without a worker's permission?***

Deductions and contributions to nonprofits are voluntary and revocable. Fast food employers can only deduct payments upon receiving a written authorization that the fast food worker has signed.

***Does an authorization stay in place when there is a transfer of ownership of the fast food establishment?***

Yes. Valid authorizations remain in effect when a fast food employer succeeds another fast food employer in ownership or control of a fast food establishment.

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*Employers who have questions about their responsibilities under the laws should contact OLPS at [FWW@dca.nyc.gov](mailto:FWW@dca.nyc.gov) or via 311.*

## f. Revocation

### ***What if a fast food worker wants an employer to stop making deductions?***

Fast food workers can revoke an authorization for voluntary deductions. The worker should submit a written revocation by mail, fax, email, or web submission to the nonprofit, which will send that revocation to the fast food employer. Employers must end deductions by the first pay period 15 days after receiving the revocation from the nonprofit.

If an employee submits a revocation directly to the employer, the employer must give a copy of the revocation to the nonprofit within five (5) business days of receipt. When an employee submits a revocation directly to the employer, the employer must end deductions by the first pay period 15 days after the employer submits the revocation to the nonprofit.

## g. Recordkeeping

### ***Do fast food employers need to keep records relating to this law?***

Yes. Fast food employers must keep records of all authorizations and revocations, deductions, contributions to nonprofits, and proof of distribution and posting of the required notice. Employers must keep records for at least two (2) years. The employer's failure to maintain or produce records to OLPS may result in a "rebuttable presumption" against the employer. This means that the burden will be on the employer to show that the employer did not violate the law in any legal or enforcement action.

## h. Enforcement

### ***Who enforces the Deductions Law?***

OLPS enforces the Deductions Law. For more information:

- Visit [nyc.gov/dca](http://nyc.gov/dca)
- Email [FWW@dca.nyc.gov](mailto:FWW@dca.nyc.gov)
- Call 311 (212-NEW-YORK outside NYC). Ask for "Deductions Law."

### ***Must OLPS receive a complaint in order to investigate a fast food employer?***

No. OLPS can also investigate employers on its own initiative.

### ***What happens during an OLPS investigation?***

OLPS may request documents and inspect the fast food employer's business to determine if the employer is in compliance with or has violated the law. If OLPS finds that an employer has violated the law, OLPS will attempt to resolve the matter directly with the employer. If a resolution cannot be reached, OLPS will send the employer a notice of violation. OLPS may also issue a notice of violation if the employer fails to cooperate with the investigation.

### ***Can OLPS investigate nonprofits under the law?***

Yes. OLPS can investigate potential violations by a nonprofit under the Deductions Law and, in certain cases, may revoke a nonprofit's registration and may seek refunds from and interest against nonprofits that improperly accept contributions.

### ***What happens if a fast food employer or a nonprofit violates the Deductions Law?***

Nonprofits will be ordered to comply and may lose their registration if violations continue.

Fast food employers will be subject to an OLPS investigation and may owe fines and remedies. See the table on page 33. Workers and nonprofits may also bring lawsuits against fast food employers in court.

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*Employers who have questions about their responsibilities under the laws should contact OLPS at [FWW@dca.nyc.gov](mailto:FWW@dca.nyc.gov) or via 311.*

## Deductions Law Violations with Remedies and Fines

Violation	Possible Remedy/ Fine to NYC (Violator's Responsibility)	Remedy owed to ...
<b>Fast food employer's</b> failure to deduct or send contributions	All authorized contributions plus interest	Nonprofit
<b>Fast food employer's</b> first and second violation(s) of the law	Fine up to \$500 for each violation per employee	Fast food worker
<b>Fast food employer's</b> subsequent violation(s) of the law	Fine up to \$1,000 for each violation	
Retaliatory action by <b>fast food employer</b>	Reinstatement; back pay; any other appropriate relief	
<b>Fast food employer's or nonprofit's</b> failure to honor revocation and retention of deducted funds	Refund	Fast food worker
<b>Fast food employer's or nonprofit's</b> failure to refund deductions or contributions within 60 days after receiving revocation	Refund plus interest	
<b>Nonprofit's</b> intentional and material false or misleading disclosures to fast food workers	Cure within 30 days	Fast food worker
<b>Nonprofit's</b> second intentional and material false or misleading disclosures to fast food workers	Revocation of registration letter	

## V. 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 and Fast Food Deductions laws. Employers may not retaliate against workers exercising their rights under these laws, even if workers do not explicitly refer to the Fair Workweek and Fast Food Deductions laws.

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](mailto: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](mailto:FWW@dca.nyc.gov) or via 311.

**Scenario:**

Stanley manages the Bushwick branch of Macramé Mama, part of a chain of craft stores in Connecticut, New York, and New Jersey. Stanley tells Jack that he must work a 12-hour shift the next day. When Jack refuses, Stanley fires Jack and tells him he better leave before Stanley “clocks him one.” Janet and Peggy witness Jack’s firing. Which Macramé Mama workers experienced retaliation?

Jack, Peggy, and Janet all have experienced retaliation. Stanley penalized Jack by firing him and threatening him with physical harm. Janet and Peggy could have been reasonably deterred from exercising their rights after witnessing the incident between Stanley and Jack.

**What does it mean for a retail or fast food worker to “exercise their rights”?**

Workers may exercise their rights in a variety of ways. This list gives some examples of how workers may exercise their rights, but isn’t exhaustive, and includes:

<b>FAST FOOD Fair Workweek Law</b>	<b>RETAIL Fair Workweek Law</b>	<b>FAST FOOD Deductions Law</b>
<ul style="list-style-type: none"> <li>• Refusing to work a shift that was scheduled in violation of the law, such as:               <ul style="list-style-type: none"> <li>○ a shift they did not consent to work or for which they were not given 14 days’ advance notice</li> <li>○ 2 shifts over 2 days with fewer than 11 hours between shifts</li> </ul> </li> <li>• Requesting premium pay for a shift that was scheduled with less than 14 days’ notice</li> <li>• Requesting a copy of their schedule or a current version of all workers’ schedules at the fast food establishment where they work</li> <li>• Saying NO to a lawful request to take another shift with less than 14 days’ notice</li> <li>• Asking where the current written schedule is posted</li> <li>• Pointing out that the required notice of rights isn’t posted</li> <li>• Filing a complaint with OLPS for alleged violations of the law</li> <li>• Communicating with any person, including coworkers, about any violation of the law</li> </ul>	<ul style="list-style-type: none"> <li>• Refusing to work a shift that was scheduled in violation of the law, such as:               <ul style="list-style-type: none"> <li>○ an on-call shift</li> <li>○ a shift they did not consent to work or for which they were not given 72 hours’ advance notice</li> </ul> </li> <li>• Requesting a copy of their schedule or a current version of all workers’ schedules at the retail establishment where they work</li> <li>• Saying NO to a lawful request to take another shift with less than 72 hours’ notice</li> <li>• Asking where the current written schedule is posted</li> <li>• Pointing out that the required notice of rights isn’t posted</li> <li>• Filing a complaint with OLPS for alleged violations of the law</li> <li>• Communicating with any person, including coworkers, about any violation of the law</li> <li>• Participating in a court or administrative proceeding about an alleged violation of the law</li> </ul>	<ul style="list-style-type: none"> <li>• Signing an authorization</li> <li>• Submitting an authorization to deduct and make contributions from the worker’s paycheck to a nonprofit</li> <li>• Asking employers why deductions have not begun</li> <li>• Submitting a revocation of a prior authorization</li> <li>• Filing a complaint with OLPS for alleged violations of the law</li> <li>• Communicating with any person, including coworkers, about any violation of the law</li> <li>• Participating in a court or administrative proceeding about an alleged violation of the law</li> <li>• Informing another person of that person’s potential rights under the law</li> </ul>

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](mailto: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](mailto:FWW@dca.nyc.gov) or via 311.

**FAST FOOD – CONTINUED  
Fair Workweek Law**

- Participating in a court or administrative proceeding about an alleged violation of the law
- Informing another person of that person’s potential rights under the law

**RETAIL – CONTINUED  
Fair Workweek Law**

- Informing another person of that person’s potential rights under the law

***What should employees do if an employer retaliates or the employee fears retaliation?***

Workers should contact OLPS or an attorney if they fear retaliation or have experienced retaliation recently. OLPS takes reports of employer retaliation very seriously. Depending on the circumstances, OLPS may require an employer not to take retaliatory action, to reinstate a worker, and to comply with the law going forward. Workers may also receive payments of back wages, premium pay, and other relief.

***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

**VI. 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.

***Who can file a complaint about a potential violation of the Deductions Law?***

Fast food workers or their representatives or nonprofits may file a complaint about a possible violation of the Deductions Law.

***It is possible for a nonprofit, as well as a fast food employer, to violate the Deductions Law. See the section Nonprofits for more information about their responsibilities.***

***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” or “Deductions Law.”
- Email [FWW@dca.nyc.gov](mailto:FWW@dca.nyc.gov)
- Visit [nyc.gov/dca](http://nyc.gov/dca)

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

*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](mailto: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](mailto:FWW@dca.nyc.gov) or via 311.*

### ***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 or Deductions laws.

### ***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 (or a nonprofit, under the Deductions Law) violated the law, the employer (or nonprofit) may be responsible for money damages and other forms of relief to affected workers, as well as fines to the City. See tables on pages 10 and 33.

### ***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 and Deductions laws, regardless of immigration status. OLPS does not collect any information about a worker's immigration status to pursue a complaint.

## **VII. 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.

Any person harmed by a violation, including a fast food worker or a nonprofit, may bring their own action in court if they believe that a fast food employer has violated the Deductions Law.

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.

Individuals must bring an action under the Deductions Law within three (3) years.

### ***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.

*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](mailto: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](mailto:FWW@dca.nyc.gov) or via 311.*