

Fair Workweek Law in Fast Food: Frequently Asked Questions

The Department of Consumer and Worker Protection (DCWP) enforces NYC's Fair Workweek Law. This document answers many common questions about the law and how DCWP enforces it.

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I. Overview of Fair Workweek Law for Fast Food Workers

a. General

What are the protections available to fast food workers?

Under NYC's Fair Workweek Law, fast food workers in NYC have a right to predictable work schedules and the chance to pick up more hours before new workers are hired. Fast food workers also have a right to progressive discipline before being fired or losing work hours, and priority for reinstatement after a layoff. The law covers:

- **Regular Scheduling:** Employers must give fast food workers a regular schedule and 14 days' advance notice of each weekly schedule.
- **Consent to Changes:** Employers cannot cut a worker's hours without the worker's permission. Workers can also say no to working additional hours before hours are added to the schedule.
- **Schedule Change Premiums:** Employers must pay between \$10-\$75 for each change to a scheduled shift made less than 14 days before the first day on that work schedule.
- **Clopenings:** Employers cannot schedule a worker for back-to-back closing and opening shifts with less than 11 hours between the shifts without the worker's permission. If a worker consents in writing to work a clopening, the employer must pay the worker a \$100 premium for the shift.
- **Access to Hours:** Employers must offer newly available shifts to current employees before hiring new employees.
- **Progressive Discipline:** Employers must address most job performance problems through progressive discipline so that workers have an opportunity to improve and are not unjustly fired.
- **Layoffs:** Workers laid off when a business is suffering financially or closes have priority over current employees for available shifts if the business begins hiring again.

When did fast food employers have to start complying with the law?

Protections regarding advance scheduling, consent to additional hours, premium pay, clopenings, and access to hours took effect on November 26, 2017.

Protections regarding regular schedules, progressive discipline, hours reductions, and layoffs took effect on July 4, 2021.

b. Who is a Fast Food Employee?

Who is considered a fast food employee covered by these protections?

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

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

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 NYC's Fair Workweek Law.

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 NYC's 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.

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

No. Workers have the same rights and protections under the law regardless of immigration status. DCWP does not collect any information about a worker's immigration status to pursue a complaint.

Are employees who work in NYC but live outside of NYC covered by the law?

Yes. It does not matter where an employee lives as long as the employee works at a location in NYC.

For questions about the law or to file a complaint, contact DCWP at OLPS@dca.nyc.gov or call 311 and say "Fair Workweek Law."

Are workers who are hired by other companies to perform work at a 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 fast food establishment, they are covered by the law as long as they meet the definition of a fast food employee.

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.

c. Who is a Fast Food Employer?

Which fast food employers are required to comply with NYC’s Fair Workweek Law?

Under the law, **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 a chain?

A **chain** is a group of employers that share a brand or standardized options for décor, marketing, packaging, products, and services. To be covered by NYC's Fair Workweek Law, a fast food establishment must be part of a chain.

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.

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.

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 fast food employer and that employ workers in NYC. The employer can be based outside of NYC.

For example, a national fast food chain's establishments in NYC will be covered if they otherwise meet the requirements.

How do 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 fast food workers may have obligations to those workers under NYC's Fair Workweek Law.

II. Predictable Scheduling

a. Regular Schedules and Advance Scheduling

What is a regular schedule?

A regular schedule is stable week to week so employees know when they are expected to work. It should provide long-term scheduling predictability for employees and employers.

How is the regular schedule documented?

Employers must give the regular schedule to employees in writing, either on paper or electronically. The regular schedule must include:

- number of hours an employee can expect to work per week for the duration of the employee's employment;
- expected days, times, and locations of hours; and
- date the regular schedule takes effect.

Who should receive a regular schedule?

After July 4, 2021, each fast food employee must get a written regular schedule from the fast food employer.

When must an employer update the regular schedule?

When an employee's regular schedule changes for any reason, the fast food employer must give a written updated copy of the regular schedule to the affected employee as soon as possible and before the employee receives the first work schedule following the change.

Are there any restrictions on which shifts can be in a new hire's regular schedule?

Yes. Before placing available shifts in a new hire's regular schedule, employers must offer the shifts to current employees first. It is not sufficient to offer available shifts to current employees on a temporary basis before assigning them to a new hire on a regular basis. Current employees must have the chance to add newly available shifts to their regular schedules first. See *II. d. Access to Hours on page 16*.

Is the regular schedule requirement different from the previous "Good Faith Estimate" requirement?

Yes.

Before July 4, 2021, fast food employers had to give employees a "Good Faith Estimate" of the hours, days, and times they could expect to work during their employment.

As of July 4, 2021, the regular schedule requirement replaces the "Good Faith Estimate" requirement and puts new limitations on an employer's ability to reduce or change the total hours in an employee's regular schedule or work schedule.

What is the difference between a regular schedule and a work schedule?

The **regular schedule** contains a worker's recurring weekly shifts on a long-term and indefinite basis and does not correspond to any particular workweek. The regular schedule gives employees the schedule stability they need to plan other commitments in their lives, such as school, child care, or a second job.

The **work schedule** contains a worker's specific shifts in a given workweek. The work schedule for a given week may not always match the regular schedule.

What differences are allowed between the regular schedule and work schedule?

An employer may give an employee a work schedule that is different from the regular schedule, but if the difference in weekly scheduled hours is more than 15%, the employer must ask for the employee's consent to the differences.

An employer may also give an employee a work schedule that is different from the regular schedule if the employee has requested the changes.

What is considered a difference between the regular schedule and the work schedule?

Hours are different between a shift on the regular schedule and a shift on the work schedule if the start time, end time, day, or location of the shift is different. Shifts that do not appear on both the regular schedule and the work schedule are also differences. The 15% difference is calculated based on the whole regular schedule, not on an individual shift, so an employer may be under the 15% limit even if there are substantial changes to individual shifts. Note that premium pay and other requirements for schedule changes may still apply independent of the difference between a regular schedule and a work schedule.

Scenario:

Margot's regular schedule is Mondays through Thursdays from 9:00 a.m. to 3:00 p.m., a total of 24 hours per week. When she gets her work schedules for two upcoming workweeks 15 days in advance, she sees that her manager scheduled her to work on a Tuesday from 11:00 a.m. to 3:00 p.m. one workweek and on a Friday from 11:00 a.m. to 2:00 p.m. the other workweek. Otherwise, the shifts on her work schedules are the same as the shifts on her regular schedule. Her manager did not seek her consent to the differences between the regular schedule and the work schedules. Was this lawful?

Yes. The differences between the work schedules and the regular schedule were not more than 15%. Margot's manager was not required to seek her consent for the differences.

The difference for the first workweek was 8.3% (2 hours subtracted, divided by 24 hours in the regular schedule).

The difference for the second workweek was 12.5% (3 hours added, divided by 24 hours in the regular schedule).

Scenario:

Juana's regular schedule is Wednesdays through Sundays from 4:00 p.m. to 11:00 p.m., a total of 35 hours per week. Before issuing the work schedule for a workweek, Juana's manager asked her to start work on Wednesday at 9:00 a.m. Juana agreed, gave her consent in writing, and worked the Wednesday morning shift in addition to the Wednesday evening shift. Otherwise, the shifts on her work schedule were the same as the shifts on her regular schedule. Was this lawful?

Yes. The difference between the work schedule and the regular schedule was 20% (7 hours added, divided by 35 hours in the regular schedule). Juana's manager had to seek her consent to the differences before assigning her the Wednesday morning shift. Juana agreed to work the additional time before her employer made the change and gave her consent in writing.

Scenario:

Sam's regular schedule is Mondays from 9:00 a.m. to 2:00 p.m., Tuesdays from 11:00 a.m. to 8:00 p.m., and Fridays from 6:00 a.m. to 2:00 p.m. For an upcoming workweek, Sam sees that he is scheduled to work on Friday from 10:00 a.m. to 3:00 p.m. Otherwise, the shifts on his work schedule are the same as the shifts on his regular schedule. After the schedule is posted, Sam's manager tells him to sign a consent form about the difference. Sam signs the form. Is this lawful?

No. The difference between the work schedule and the regular schedule was 22.7% (4 hours removed and 1 hour added for a total of 5 hours difference divided by 22 hours in his regular schedule). Sam did not request the difference and did not consent to the difference as the law requires. Sam's signature on the form does not meet the law's requirement for written consent for two reasons:

1. his manager told him to sign the form without first giving him the opportunity to say no; and
2. his manager sought written consent *after* posting the schedule, not beforehand.

Can an employer change the regular schedule without an employee's input?

Generally, an employer may change an employee's regular schedule, as long as the employee's total hours stay the same or decrease by no more than 15% from the highest total hours in the employee's regular schedule within the previous 12 months.

An employer may not place a shift on an employee's regular schedule for times the employer knows the employee is not available to work; this may be considered a "constructive" discharge.

If a work schedule has more than 15% fewer hours than the regular schedule, is this a discharge?

Yes, unless the employee requested the reduction or consented to the reduction.

Is an employer required to keep updated information on file about the times an employee is available to work?

No. However, it may be reasonable to do this if the employer anticipates a need to change employees' regular schedules.

Are there additional types of changes an employer can make to the regular schedule if the employee requests or consents to the change?

Yes. With an employee's consent, or at the employee's request, the employer may reduce or increase the total number of hours on the employee's regular schedule by more than 15%. In these circumstances reductions to the regular schedule are not discharges.

What does worker "consent" mean in the context of a change in regular schedule total hours or a variance between the regular schedule and the work schedule?

Consent means an employee agreed to a change after having the opportunity to say no and without any pressure from the employer.

It is illegal for employers to require employees to give written consent to an increase or reduction in hours on the regular schedule or a variance between the regular schedule and the work schedule without giving employees a chance to say no. Employers must discuss changes with employees *before* posting work schedules. Employers must make clear to employees that there are no negative consequences for saying no.

If an employee changes their hours of availability, can the employer reduce the employee's hours on the regular schedule without the employee's consent?

Yes. If an employee changes the hours they are regularly available to work, this is considered an employee request to change the regular schedule, and the employer may reduce the regular schedule to the shifts the employee can still work. In this circumstance reductions to the regular schedule are not discharges.

The employer can add new shifts to the employee's regular schedule during the employee's hours of availability, and the employee must have the opportunity to work newly available shifts before the employer offers shifts to new hires. *See II. d. Access to Hours on page 16.*

If an employee regularly works more than 15 minutes past the scheduled end time of a shift, must the employer increase the hours on the regular schedule to match the variance?

It depends. The regular schedule should anticipate the work schedule. Employers should monitor frequent schedule changes and consider whether changes to the regular schedule are necessary to meet their ongoing labor needs.

What other notice must fast food employers give employees about scheduling?

Fast food employers must give workers their work schedules at least 14 days before the first day of each work schedule. New hires must receive the work schedule on or before the first day of work. The work schedule must cover at least seven (7) calendar days. For each shift, the work schedule must contain a date, location, start time, and end time.

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

Fast food employers must give workers their work schedules in two ways:

1. Physically post work schedules at workplaces in a location where workers will see them.
2. Give workers their work schedules in writing. Employers must send work schedules electronically—for example, by text or email—if they normally communicate with workers in that way.

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

Fast food employers must give workers their work schedules at least 14 days before the start of the workweek.

For example, if the workweek starts on Monday, July 26, 2021, the employer must post the schedule for that workweek and also give each worker the schedule for that workweek on or before midnight on Sunday, July 11, 2021.

What information must fast food employers include in the work schedule?

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

What must fast food employers do if they change the work schedule?

Fast food employers must update the work 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 work schedule and providing it to all affected employees directly. An employer must pay employees premium pay for schedule changes made by the employer with less than 14 days' notice.

If an employer gives employees work schedules that always match the regular schedule, does the employer still have to give employees work schedules?

Yes.

Can an employer ask for an employee's consent to a variance of more than 15% from the regular schedule after posting the work schedule?

No. The employer must discuss the proposed variance with the employee *before* the deadline for posting the work schedule. It is illegal to post a work schedule that contains a variance of more than 15% without first giving the employee an opportunity to consent or say no. Employers should always make changes to work schedules more than 14 days in advance.

If a fast food establishment is closed for a holiday, or for an unexpected emergency like severe bad weather, is a variance of more than 15% between the regular schedule and the work schedule considered a discharge or otherwise illegal without the employee's consent or request for the change?

No. A variance is not considered a discharge and is not counted as a variance between the regular schedule and the work schedule if it was caused by:

- threats to employees or the employer's property;
- failure of a public utility or shutdown of public transportation;
- fire, flood, or other natural disaster;
- government-declared state of emergency; or
- severe weather conditions that pose a threat to employee safety.

Can an employer let an employee take a day off if it causes a variance of more than 15% between the employee's regular schedule and the work schedule?

Yes. If an employee requests a variance of more than 15% from the regular schedule, then the employer may grant it. In this circumstance it is not considered a discharge.

What happens if fast food employers violate regular schedule or work schedule requirements?

Fast food employers who violate these requirements may be required to pay each affected worker \$200 for each violation for each workweek until the employer comes into compliance.

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

b. Changes to Work Schedules and Schedule Change Premiums

What happens if a fast food employer changes workers' work schedules?

If a fast food employer changes workers' work schedules less than 14 days before the first day on the work schedule, the employer must pay each worker a schedule change premium. *See table with Schedule Change Premium Amounts on page 10.* Workers can accept or decline additional work time.

If workers *accept* additional work time, the employer must obtain their consent in writing before the work schedule is posted. The worker's consent must relate to a specific shift and cannot be a general or long-term statement of availability.

Workers may *decline* to work additional time and do not have to put their refusal in writing. Workers have a right to say no to additional hours without any negative consequences.

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

What does worker "consent" mean in the context of additional hours?

Consent means an employee agreed to work additional hours after having the opportunity to say no and without any pressure from the employer.

It is illegal for employers to require employees to give written consent to work additional time without giving employees a chance to say no. Employers must make clear to employees that there are no negative consequences for saying no.

Can employees consent in writing after working additional time?

No. If an employee agrees to work additional time, the employer must obtain the employee's consent in writing no later than 15 minutes after the employee begins to work additional time. The employee's written consent must reflect the date, time, and method used to submit consent to the employer.

If an employer uses a **scheduling application or software** to obtain records of employee consent to work additional time, the software must record the date and time of transmission.

For questions about the law or to file a complaint, contact DCWP at OLPS@dca.nyc.gov or call 311 and say "Fair Workweek Law."

If an employer uses a **paper system**, the document must reflect the date and time consent was given. Employers cannot backdate an employee’s written consent to the date of the relevant schedule change.

Can employers collect employees’ written consent to work additional time all at once, such as at the end of the workweek?

No.

When must an employer obtain an employee’s written consent when an employee unexpectedly works late?

An employer must give the employee an opportunity to leave on time, regardless of whether the employee has completed all work assignments at the end of a scheduled shift.

If the employee chooses to work past the end of a scheduled shift, the employer must obtain the employee’s written consent no later than 15 minutes after the employee begins to work the additional time. It is a violation of the law if the employee gives written consent more than 15 minutes after the scheduled end time of the shift.

Does an employee’s written consent to a schedule change waive any premium owed?

No. Fast food employees cannot waive the right to a schedule change premium that is owed them. An employee’s consent to a schedule change does not create any exception to the requirement that employers pay a schedule change premium.

Schedule Change Premium Amounts

Amount of notice	Rate for additional hours	Rate if no impact on total hours	Rate for reduced hours
Less than 14 days’ notice	\$10 per change	\$10 per change	\$20 per change
Less than 7 days’ notice	\$15 per change	\$15 per change	\$45 per change
Less than 24 hours’ notice	\$15 per change	\$15 per change	\$75 per change

Are premium amounts calculated based on the date of the changed shift or the start of the work schedule?

The notice requirement for schedule changes refers to the first date on the work schedule, not the date or times of individual shifts in the work schedule. A worker must have 14 days’ advance notice of the full work schedule for the week. The amount of each schedule change premium owed is based on time elapsed between the first day on the work schedule and when the employee was notified of the schedule change. An employer must pay premium pay for any changes made to the schedule after the 14-day, 7-day, or 24-hour amounts of notice pass, regardless of the date of the changed shift. Any change that occurs on or after the day before the first day on the work schedule is a change with less than 24 hours’ notice.

For example, the first day on a work schedule is Monday, July 27, 2020. The employer cancels a shift originally scheduled for Thursday, July 30, 2020 (the fourth day of that workweek).

If notice of cancellation is given:	Required premium is:
On or before Sunday, July 12	no premium
Between Monday, July 13 and Sunday, July 19	\$20
Between Monday, July 20 and Saturday, July 25	\$45
On or after Sunday, July 26	\$75

Are there any exceptions to the schedule change premium requirements?

Yes. There are four exceptions to the premium pay requirement.

- 1. Fast food employers are not required to pay premiums for scheduling changes if they are unable to operate due to:**
 - Threats to employees or the employer's property
 - Failure of a public utility or shutdown of public transportation
 - Fire, flood, or other natural disaster
 - Federal, state, or local state of emergency
 - Severe weather conditions that pose a threat to employee safety
- 2. Fast food employers are not required to pay premiums when workers request schedule changes or the schedule change was initiated by the worker, not the employer.**

Examples of schedule changes that workers request or initiate include:

- Asking for time off
- Calling out
- Using safe and sick leave
- Lateness

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

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

- Manager makes a change to the written schedule that the employee did not request.
- Manager asks an employee to come to work early for a scheduled shift or to work an additional unscheduled shift.
- Employee continues to perform work past the end of the scheduled shift.
- Employee leaves early at management's request.
- Manager asks an employee to fill in for, or trade a shift with, another employee.
- Management or workforce management software—for example, a scheduling app used by the employer—asks for volunteers to work more or less time and an employee volunteers.
- Employee is fired or laid off.

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

- 3. Fast food employers are not required to pay premiums for scheduling changes when employees voluntarily trade shifts with one another.**
- 4. Fast food employers are not required to pay premiums for adding time to the work schedule when the employer must pay overtime that week as a result of the extra time.**

Scenario:

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

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

Scenario:

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

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

Scenario:

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

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

Scenario:

Pollos Locos is a fast food restaurant covered by the law. On the schedule posted on Sunday, May 30, 2021 for the week of Monday, June 14 through Sunday, June 20, Claudia was originally scheduled to work shifts on Monday, Tuesday, and Sunday. On Wednesday, June 2, Claudia receives a notification through the Pollos Locos scheduling app that a new shift on Friday, June 18 has been added to her schedule. Claudia tells her manager that she cannot work that Friday because she cannot find a babysitter on short notice. Her manager responds that she has to work or she will be considered a no-call, no-show. Claudia responds that she cannot work the new shift. After she does not report to work on Friday, her manager terminates her employment. Has there been a violation of the Fair Workweek Law?

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

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

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

Yes to both.

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

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

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

Yes.

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

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

Are fast food employers required to obtain written consent and 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. DCWP does not require evidence of written consent when an employee works an extra 15 minutes or less.

Scenario:

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

No. Burger Barn does not need to pay Rashid a schedule change premium because the change to his schedule was less than 15 minutes.

Is it possible to owe multiple premium payments for changes to the one shift?

Yes. An employer owes premium pay for each change to the work schedule. Therefore, if an employer makes multiple changes to the same shift, the employer must pay premium pay for each change.

Scenario:

Rashid receives a work schedule on Sunday, May 30, 2021 for the workweek beginning Monday, June 14, on which he is scheduled to work Thursday, June 17 from 12 p.m. to 5 p.m. On Tuesday, June 1, Rashid's manager posts and emails a new schedule, changing the end time of the shift on Tuesday, June 15 to 5:30 p.m. Thursday, June 17 is very busy and, at his manager's request, Rashid agrees in writing to work until 6:30 p.m. What premiums is Rashid owed?

Rashid is owed \$10 for the addition of time made on Tuesday, June 1 and \$15 for the second addition of time made on Thursday, June 17.

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.

Are employees entitled to premium pay when they are fired?

Yes. A fast food employer must pay an employee a schedule premium for shifts the employee was scheduled to work before being fired.

There is no exception to this requirement for employees terminated for just cause, including for egregious misconduct.

When will fast food workers get paid the premium for schedule changes?

Fast food employers must pay premiums in the same pay period they pay workers for the relevant shift. Employers must provide a record of the premium either as part of pay stubs or separately. The record of the premium must identify the date of each schedule change corresponding to each premium payment.

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 work schedule?

Fast food employers who fail to pay schedule change premiums may be liable to the worker for the unpaid premium plus \$300 for each failure to pay a required premium.

c. Minimum Time between Shifts (Clopenings)

Can fast food employers require employees to work “clopening” shifts?

Fast food employers cannot schedule employees to work two shifts over two 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 has an opportunity to decline to work the clopening.
- The employee consents and puts consent in writing. 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 consented to work the shift 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 4 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. Jill’s Place must give Ben an opportunity to decline to work the 9 a.m. to 4 p.m. shift. If he agrees, it must be in writing, and Jill’s Place must pay him a \$100 premium each time he works the clopening shift.

What does worker “consent” mean in the context of a clopening?

Consent means an employee has agreed to work a clopening after having the opportunity to say no and without any pressure from the employer.

It is illegal for employers to require employees to give written consent to work a clopening without giving the employee a chance to say no. Employers must make clear to employees that there are no negative consequences for saying no.

When a clopening is unscheduled, when must the employer obtain the employee’s consent?

Unscheduled clopenings commonly occur when there are more than 11 hours between two shifts on a schedule over two consecutive days, but the employee unexpectedly works late at the end of the first shift, resulting in less than 11 hours between the two shifts. When this happens, the fast food employer must give the employee an opportunity to start the second shift at least 11 hours later, so that the employee has enough time to travel home and rest. If the employee consents to start the second shift at the scheduled time, the employee’s consent to work a clopening must be in writing.

When a clopening is unscheduled, what premiums does the employer owe?

If an employee unexpectedly works late, the employer owes \$15 for an addition of time made with less than 7 days’ notice. The employer also owes an additional premium depending on the start time of the second shift. If the employee agrees to start the second shift at the scheduled time, the employer must obtain the employee’s consent in writing and pay the employee a \$100 clopening premium. If the employee chooses or agrees to delay the start time of the second shift, the employer must pay the employee a \$75 premium for a reduction in hours made with less than 24 hours’ notice.

May an employer avoid paying a premium for an unscheduled clopening by instructing an employee not to clock in until 11 hours have passed from the end time of the first shift?

No. When an employee arrives to work for the second scheduled shift at the scheduled time and there are less than 11 hours between the end of the first shift and the beginning of the second shift, the employee is entitled to a \$100 premium regardless of when the employee clocks in.

If an employee begins working the second shift late at the employer’s instruction so there are 11 hours between the end of the first shift and the beginning of the second, the employer owes the employee a \$75 premium for the last-minute reduction in work hours made with less than 24 hours’ notice.

What happens if fast food employers require an employee to work a “clopening” without obtaining the employee’s written consent or fail to pay the premium?

Fast food employers must pay workers the required \$100 premium and \$500 in damages for the failure to pay the premium and an additional \$500 for failure to obtain the employee’s written consent to work the clopening.

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.

d. Access to Hours

This section applies to current workers only. Under new provisions to the law, employers must also provide access to hours to workers laid off in the past 12 months. See III. c. Layoffs for Bona Fide Economic Reasons.

What is access to hours?

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

Do fast food employers need to advertise newly available shifts in a certain way?

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

1. Post a notice for three (3) consecutive days at workers’ workplaces where workers will see it. AND
2. Provide each worker with information electronically, which may include text or email.

Are employers required to follow the access to hours procedures to assign any available shifts to current employees?

Not necessarily.

Required

- A fast food employer must offer available shifts to current employees using the access to hours procedures before it hires new fast food employees or if it anticipates hiring new fast food employees.

Not Required

- An employer may assign shifts to current employees at the same business location in any non-discriminatory manner it chooses.

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
- 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. The employer must update that notification (i.e., give a new written notification to *all* employees) within 24 hours of any change to the procedures.

What information must fast food employers 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 any of the shifts in which they are interested.
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.*"
 - b. In assigning shifts, employers must give priority to employees working at the location where shifts are available.

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, if no other workers accepted the shift who did meet the criteria. In other words, the employer must prioritize a current employee for a shift assignment over any new hire.

Can an employer comply with the access to hours requirements by posting shifts made vacant by employees who quit?

No. In isolation such a system would be insufficient. A shift is "available" and must be offered to current employees any time a fast food employer decides or intends to schedule an employee to work the shift, whether or not any fast food employee was previously scheduled to work the shift.

Scenario:

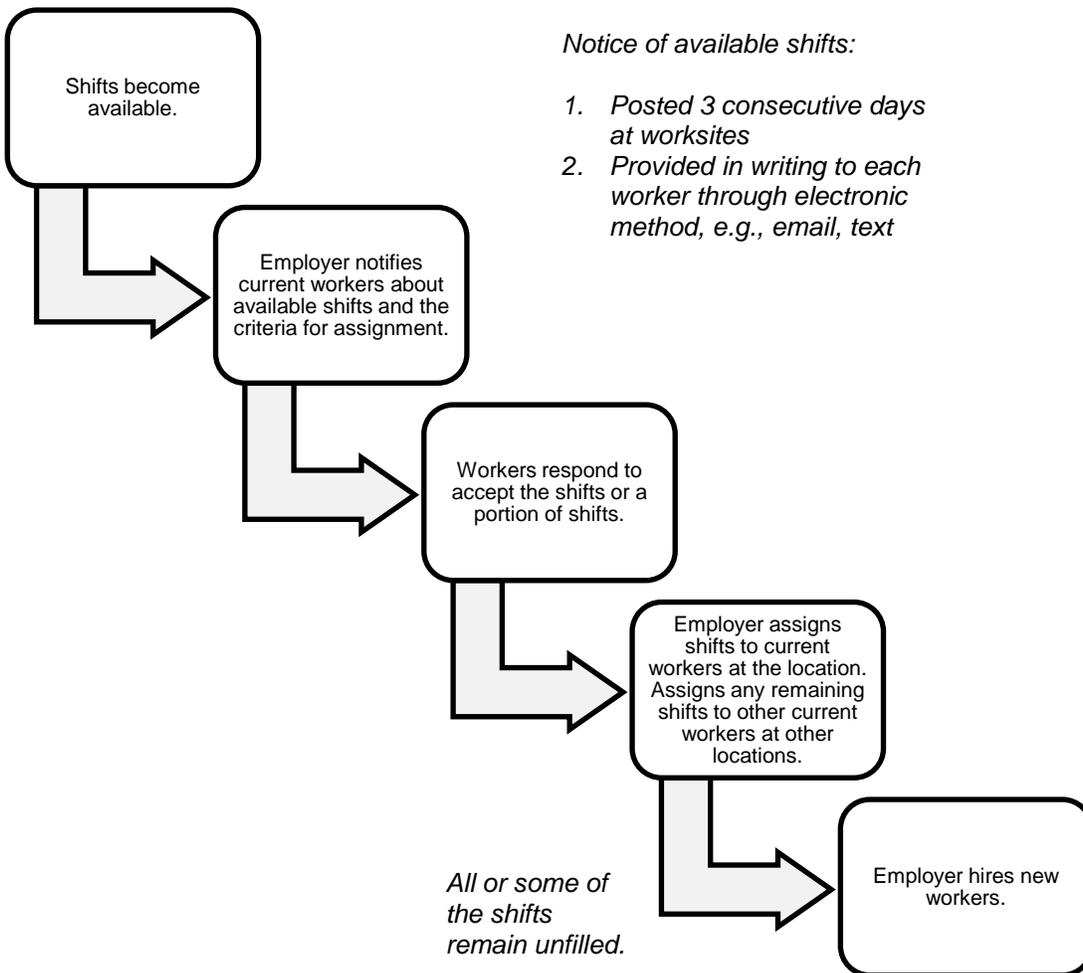
Yummies Fast Food in the Bronx posts a notice of open shifts. It states that priority will be given to employees with cashier experience and employees who live in the Bronx. Leah is the only worker from the location where the shifts are open who accepts the shifts. Leah does not have cashier experience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

Before placing available shifts in a new hire’s regular schedule, employers must offer the shifts to current employees first. Employers must follow all of the requirements for advertising available shifts, including the length of offer. It is not sufficient to offer available shifts to current employees on a temporary basis before assigning them to a new hire on a regular basis. Current employees must have the chance to add newly available shifts to their regular schedules first.

Process to Offer and Assign Available Shifts



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 or decline to work 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 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.

If an employer offers, and an employee accepts and is awarded, an available shift on a regular, recurring basis, should the shift be added to the employee's regular schedule?

Yes.

If an employer offers, and an employee accepts and is awarded, an available shift on a temporary, non-permanent basis, should the shift be added to the employee's regular schedule?

No. A shift that is temporary is not considered part of an employee's regular schedule. However, the access to hours procedures apply: an employer may not assign the shift to a new hire's regular schedule without first offering it as a shift that may be added to a current employee's regular schedule.

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 I. b. Who is a Fast Food Employee? on page 2.*

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 *II. b. Changes to Work Schedules and Schedule Change Premiums* on page 9.

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 staffing them in the same way they had advertised open shifts.

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

Fast food employers may be obligated to pay current workers \$300 for each shift that was not genuinely offered to them, and they may be ordered to comply with the law.

Employers may also be obligated to pay compensatory damages to current workers.

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

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.

III. Progressive Discipline, Layoffs, and Retaliation

a. Overview

What is a "discharge" under the law?

The law defines a discharge broadly and includes:

1. any time an employer ends an employee's employment for any reason (termination, firing, layoff, suspension);
2. "constructive" discharges (when certain working conditions make continuing to work intolerable or impossible, forcing an employee to quit); and
3. reductions in hours in a regular schedule or a work schedule by more than 15%.

When is it legal to fire a fast food employee?

Once a fast food employee has been employed for 30 days, an employer may only fire the employee if:

1. there is just cause to fire the worker; or
2. the business is suffering financially or closing, and employees with the least seniority are laid off as a result.

When is it legal to reduce a fast food employee's hours?

Reductions in hours are treated the same way as terminations from employment. After 30 days of employment, an employer cannot reduce employee's hours on the regular schedule or on the work schedule by more than 15% without just cause or unless the business is suffering financially, and the hours of employees with the least seniority are reduced first.

When an employee is fired or laid off, does the employer have to explain the reason?

Yes. Whenever an employee is discharged, the employer must give the employee a notice of discharge in writing. The notice must include:

- The date the employer gave the notice to the employee and the date of discharge
- The reason for the discharge
- If there was progressive discipline, each step taken and the dates

- The following statement: *It is illegal for a fast food employer to fire or lay off workers or reduce their hours by more than 15% without just cause or a legitimate economic reason. For more information about your rights or to file a complaint, visit nyc.gov/workers, email OLPS@dca.nyc.gov, or call 311 and ask for “Fair Workweek Law.”*
- If the discharge was a layoff, the following statement: *Laid-off employees have a right to get back their jobs or hours when new shifts become available. Unless you opt out, we must notify you about new shifts over the next 12 months. You may accept the shifts; however, we must give shifts to laid-off employees in order of seniority.*

If the employee challenges the discharge, the reasons that appear in the notice are the only ones that can be considered in court or arbitration. The employer cannot give a different justification for the discharge later.

When and how must a fast food employer provide a notice of discharge to a fast food employee?

The employer must give written notice to the fast food employee by email within five (5) days of the discharge. If the discharged fast food employee does not have an operational email address, the employer must mail the notice to the fast food employee’s most up-to-date mailing address using trackable mail.

What happens if a worker’s hours are cut unlawfully or a worker is fired unlawfully?

Employers may be required to return the worker to their prior schedule and pay the worker money, including lost wages and benefits. An employer may also be required to erase any unlawful discipline.

b. Just Cause and Progressive Discipline

What is just cause for a discharge?

There is just cause to fire a fast food employee, or reduce the employee’s total hours, when the employee repeatedly fails to perform their job duties or engages in misconduct. Unless an employee does something illegal or dangerous, however, the employer must give the employee retraining and an opportunity to improve. If the employee does not improve, the employer can only fire the employee after giving multiple disciplinary warnings in a year.

What is a progressive discipline policy?

It is a policy that contains a series of disciplinary responses when a fast food employee fails to perform job duties. The disciplinary measures must range from mild to severe, depending on the frequency and degree of the failure to perform duties. Every fast food employer must have a written progressive discipline policy that complies with the law and that the employer follows.

What must a progressive discipline policy include?

The progressive discipline policy must:

- let employees know what conduct will lead to discipline under the policy;
- describe graduated steps or responses (accrual of points, strikes) and how the employer applies them to different types of conduct and subsequent infractions.

Scenario:

Fast Food Express' written progressive discipline policy provides for two categories of infractions: minor and major. It contains examples of minor infractions, which include lateness of 1 hour or more, cash register undercounts or overcounts of less than \$50, improper cleaning, and other similar issues. It also contains examples of major infractions, which include insulting customers, refusal to perform an assigned task, and missing a scheduled shift for a reason unrelated to safe and sick leave. Minor infractions result in 1 point, and major infractions result in 3 points. A fast food employee may be terminated after receiving 6 points. The policy requires a manager to document in writing all points in the employee's personnel file, and the employee has an opportunity to respond. Does Fast Food Express' progressive discipline policy comply with the law?

Yes. The policy is written and gives employees reasonable notice of what conduct will lead to discipline and how the employer applies points and graduated responses to different types of conduct and subsequent infractions.

However, if the employer did not distribute the written policy to all employees, then the employer would be in violation of the law.

Do employees have access to the progressive discipline policy?

Yes. Fast food employers must distribute the written progressive discipline policy to fast food employees when they are hired and when there are any changes to the policy. Employees also have a right to request it.

Can a fast food employer terminate a fast food employee right away for just cause?

Except in cases of egregious misconduct or during an employee's probationary period, a fast food employer does not have just cause to terminate a fast food employee right away. The employer must first follow the written progressive discipline policy and give the employee an opportunity to improve. If the employee does not improve, then the employer may follow the procedures in the progressive discipline policy to end the employee's employment.

How long is a probationary period?

A fast food employer decides the length of the probationary period, but it cannot be longer than 30 calendar days from a fast food worker's first day of work.

How must a fast food employer use a progressive discipline policy?

Fast food employers must tell fast food employees why they are being disciplined and the consequence, if any, and they must give employees an opportunity to respond. Employers may not count discipline from more than a year ago toward future disciplinary action, including termination.

Scenario:

Muhammad's first day of work at Fast Food Express is June 1. As a new employee, he receives a handbook with his employer's attendance policy and progressive discipline policy. The attendance policy requires employees to give 2 hours' advance notice when they will miss a shift, unless the absence relates to an unforeseeable need to use safe and sick leave. The progressive discipline policy states that after three written warnings for violating a company policy or procedure, an employee may be terminated for cause.

On August 1, Muhammad does not come to work for his scheduled shift. It is a very busy day and, because of Muhammad's absence, customers have to wait a long time for their orders. Although Fast Food Express has an established progressive discipline policy, it decides it wants to terminate Muhammad right away because of the negative impact his absence had on business. Can Fast Food Express terminate Muhammad?

No. Under Fast Food Express' progressive discipline policy, the company may give Muhammad a first written warning but cannot terminate him.

Can an employer be more lenient with some employees than others?

No. Fast food employers must apply the progressive discipline policy to all fast food employees consistently.

What does it mean for a progressive discipline policy to be applied consistently?

An employer applies a progressive discipline policy consistently when all fast food employees are subject to the same progressive discipline and employees who commit similar infractions receive equal treatment.

What is the look back period for discipline?

Fast food employers may not consider discipline from more than 12 months (365 days) ago as a step toward applying more serious future discipline.

Scenario:

Johannes begins working for Grab and Go, a fast food establishment, on July 1, 2021. In 2021, Johannes is more than 1 hour late for work on August 15 and again on August 30. Johannes receives 1 point each time. On September 30, 2022, more than a year after his last lateness, Johannes is late again and receives 1 point. Assuming 3 points may lead to termination under Grab and Go's progressive discipline policy, can Grab and Go count Johannes' 2 points from 2021 when determining its disciplinary response in 2022?

No. Grab and Go may not count any lateness that occurred more than 12 months prior toward present discipline. In other words, Grab and Go can only apply the appropriate response for 1 point—not 3 points which could result in termination.

Scenario:

Food in a Flash, a fast food establishment, has a progressive discipline policy with the following steps for employee performance deficiencies:

Step 1: oral reprimand for the first occurrence

Step 2: written warning for the second occurrence

Step 3: mandatory retraining for the third occurrence

Step 4: final written warning for the fourth occurrence

Alex received an oral reprimand 13 months ago, a written warning 10 months ago, mandatory retraining 3 months ago, and has again failed to perform as expected. Can Food in a Flash count the Step 1 oral reprimand toward a Step 4 final written warning?

No. Food in a Flash may not count the oral reprimand since that discipline occurred more than a year ago. Since they cannot consider that step, they cannot proceed to a Step 4 final written warning for Alex.

However, Food in a Flash may consider the written warning as Step 1 and the mandatory retraining as Step 2 to apply another mandatory retraining (Step 3) for Alex. Those disciplines occurred within a year.

What employee conduct or behavior cannot be included in a fast food employer's progressive discipline policy?

A fast food employer cannot discipline fast food employees for exercising rights they have under local, state, or federal law.

Scenario:

Food in a Flash's progressive discipline policy requires an oral reprimand when a fast food employee calls out of work less than 2 hours before the employee's shift. Fran has worked for Food in a Flash for four months. Her child wakes up sick one morning, and Fran notifies her manager 1 ½ hours before her shift that she needs time off work to care for her child. Can Food in a Flash give Fran an oral reprimand?

No. Fran has rights under NYC's Paid Safe and Sick Leave Law. Under that law, employers may only require notice of the need to use safe and sick leave for unforeseeable reasons as soon as practicable. Fran provided notice as soon as she became aware that she needed to use sick leave. Food in a Flash cannot discipline Fran for exercising and using a protected right. Visit nyc.gov/workers for more information about NYC's Paid Safe and Sick Leave Law.

Scenario:

Fast Food Express's progressive discipline policy authorizes a written warning when a fast food employee is insubordinate to the manager on duty. Heather is finishing up her shift when Alejandro, the manager on duty, tells her that an employee scheduled to work the next day just called out sick. Alejandro tells Heather she needs to report to work the next day at 12 p.m. instead of her scheduled start time of 3 p.m. Heather says she cannot work the additional hours before her scheduled 3 p.m. shift because she has lunch plans with her friends. Can Fast Food Express write her up for insubordination?

No. Heather has rights under NYC's Fair Workweek Law. Under the law, fast food employers may not require fast food employees to work additional hours offered less than 14 days in advance. Heather had the right to decline the additional hours. Fast Food Express cannot discipline her for exercising her rights.

Are there any exceptions to the requirement to follow a progressive discipline policy when there is just cause to discharge an employee?

Yes. A fast food employer may fire a fast food worker for just cause for egregious failure to perform job duties or for egregious misconduct. The employer does not have to apply a progressive discipline policy in these circumstances.

What is egregious failure to perform job duties?

This is when an employee willfully fails to perform job duties in a manner that harms the health and safety of other fast food employees or members of the public.

What is egregious misconduct?

This is criminal conduct or conduct that seriously harms or immediately threatens the health and safety of other fast food employees or members of the public. Examples of egregious misconduct include but are not limited to:

- physical violence;
- verbal abuse;
- theft;
- intentionally tampering with another person's food.

Scenario:

Fast Food Express takes customer relations very seriously. Mica had been working for Fast Food Express for five months when a customer complains that she said, "just deal with it," when the customer reported being given the wrong size soda cup during the lunch rush. Can Fast Food Express terminate Mica right away for egregious misconduct?

No. Egregious misconduct is criminal conduct or conduct that seriously harms or immediately threatens the health and safety of other fast food employees or members of the public. Fast Food Express may begin applying its progressive discipline policy, but it cannot terminate Mica since her conduct did not rise to the level of egregious misconduct.

Scenario:

Jacob, a fast food employee, sexually assaults his colleague, Miranda, after a closing shift. Can Jacob's employer fire him for egregious misconduct? Or must the employer wait for the conclusion of any police investigation?

Jacob's employer does not have to wait for the conclusion of a police investigation to fire him for egregious misconduct. Jacob's conduct seriously harmed and immediately threatened Miranda's health and safety and may be criminal.

What factors are considered in an enforcement action or court case when an employee challenges a discharge?

If the employer claims the discharge was for just cause, factors that are considered include:

- The fast food employee knew or should have known the fast food employer's policy, rule, or practice that is the basis for the discipline. AND
- The fast food employer provided relevant and adequate training to the fast food employee. AND
- The fast food employer's policy, rule, or practice, including the use of progressive discipline, was reasonable and applied consistently. AND
- The fast food employer undertook a fair and objective investigation into the job performance or misconduct. AND
- The fast food employee violated the policy, rule, or practice or committed the misconduct that is the basis for the discipline or discharge.

Other relevant factors may also be considered in a "just cause" determination.

See III. c. Layoffs for Bona Fide Economic Reasons on page 29 for factors that are considered if the employer claims that the discharge was for a bona fide economic reason.

What is relevant and adequate training?

Relevant and adequate training is an initial and ongoing instruction on how the fast food employer expects the fast food employee to perform job duties, to conduct themselves in the fast food establishment, and to comply with workplace policies and procedures. It may include training on:

- preparing and serving food;
- cleaning;
- using tools and equipment;
- handling payments;
- interacting with customers;
- other typical job duties;
- workplace policies and procedures regarding attendance, punctuality, cooperation, and other standards of conduct;
- specific job duties or conduct where the employee failed to meet expectations.

What is a fair and objective investigation?

A fair and objective investigation requires that an employer issue discipline based on accurate information. The scope of investigation depends on the circumstances of the situation.

In some cases, a conversation with the employee may be enough.

In other cases, the employer may need to take additional relevant steps, such as speaking with other employees, observing the worksite, or reviewing documents.

How can an employer know whether an employee “knew or should have known” of the employer’s policy, rule, or practice?

Some policies, rules, or practices are written in employee handbooks or other training materials. Others may be conveyed orally. During the progressive discipline process, the employer should make sure the employee understands the relevant policy, rule, or practice that led to the disciplinary response and include a written summary of the conversation in the record of discipline.

c. Layoffs for Bona Fide Economic Reasons

When can an employer lay off a fast food employee?

An employer can only lay off employees if the employer:

- closes all or part of the business; or
- is experiencing a drop in profit, sales, or volume.

The employer must lay off employees in reverse order of seniority, with longest-serving workers laid off last.

What is a “bona fide economic reason” to lay off a fast food employee?

An employer has a “bona fide economic reason” to discharge a worker (or reduce a worker’s hours) if the employer can no longer employ the worker either because the employer is closing all or part of the business or because the employer is experiencing a downturn in business (i.e., a reduction in volume, production, sales, or profit). A discharge due to a bona fide economic reason is also known as a layoff.

How must a fast food employer prove that a discharge was for a bona fide economic reason?

Fast food employers must use business records to prove that a discharge was in response to a closing or a reduction in volume, production, sales, or profit. Records may include:

- a. financial records, such as tax returns, income statements, data showing historical trends in the industry, profit and loss statements, monthly gross revenue schedules, and balance sheets;
- b. records showing a reduction in business or a full or partial closing to comply with government-issued orders or health and safety guidelines; or
- c. records showing that operations could not continue due to: threats to employees or the employer’s property; failure of a public utility or shutdown of public transportation; fire, flood, or other natural disaster; government-declared state of emergency; severe weather conditions that pose a threat to employee safety.

When a fast food employer needs to cut shifts from its schedule, which employees may the employer discharge?

If a fast food employer needs to discharge an employee or reduce an employee’s regular schedule for a bona fide economic reason, the employer must choose the employee with the *least* seniority at the affected location.

What is seniority?

Seniority is the ranking of workers based on length of employment, starting from the first day of work, including any probationary period.

If a worker’s employment is interrupted by more than six months, the calculation for seniority restarts when the worker resumes work. However, the following interruptions do *not* restart the calculation:

- military service;
- illness;
- educational leave;
- any other leave protected by law;
- layoff due to a bona fide economic reason;
- unlawful discharge.

Scenario:

Fast Food Express hires Jaysen on January 1, 2022. Jaysen quits on March 1, 2022 and moves to California. After several months, he returns to New York, and Fast Food Express rehires him on July 1, 2022.

Fast Food Express hires Anthony on February 1, 2022.

Fast Food Express hires Yesenia on June 1, 2022.

Fast Food Express has no other employees at the location where Jaysen, Anthony, and Yesenia work. Jaysen works Saturdays and Sundays, Anthony works Mondays and Tuesdays, and Yesenia works Wednesdays and Thursdays. Due to a reduction in revenue on the weekends, Fast Food Express plans to close on Saturdays and Sundays and lay off one employee. Which employee can Fast Food Express discharge?

Fast Food Express can discharge Yesenia because she is the least senior. Jaysen is the most senior, followed by Anthony, and then Yesenia. Even though Jaysen separated from employment on March 1, 2022, his break from employment was less than 6 months, so his length of employment is still the longest.

It is irrelevant which days of the week employees are scheduled to work.

Who has the burden of proof to show that a discharge was lawful?

The fast food employer must prove that a discharge was based on just cause or a bona fide economic reason.

What information must the employer collect from employees upon discharge?

The fast food employer must request updated contact information from all laid-off fast food employees within five (5) days of discharge so the employer can send offers of reinstatement or restoration of hours over the next 12 months.

If more shifts become available after a fast food employer lays off workers, what are the employer's obligations?

Before a fast food employer can offer newly available regular shifts to current fast food workers or hire new fast food workers, the employer must make reasonable efforts to offer the shifts to employees who were laid off within the last 12 months in order of seniority.

Must fast food employers offer shifts to all fast food employees who were discharged for bona fide economic reasons?

A fast food employer does not need to offer reinstatement or restoration of hours to employees discharged for bona fide economic reasons who:

- have been discharged for longer than 12 months (365 days);
- notified the employer in writing that they do not want future shifts or, when applicable, do not want shifts for certain days, times, or locations;
- have not provided contact information or updated the contact information on file;
- have already been reinstated or had hours restored;
- refused reinstatement or restoration of hours at their previous location.

How much time do discharged fast food workers have to accept shifts offered by fast food employers?

Discharged fast food workers have seven (7) days to accept an offer of reinstatement or restoration of hours.

What information must fast food employers provide when notifying discharged fast food employees of available shifts?

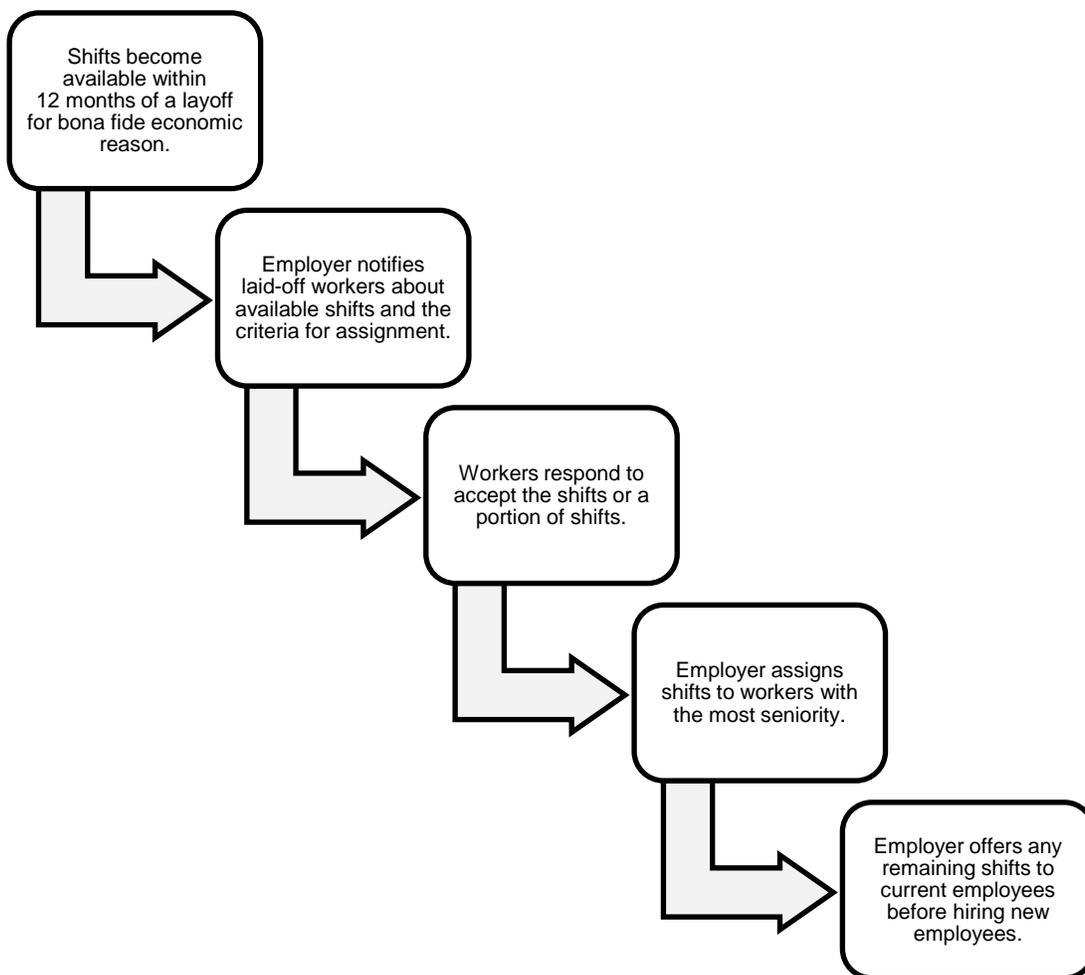
Fast food employers must include the following in the notification to discharged workers:

- days, times, and locations of the shifts;
- how the worker can accept the shifts;
- that the worker may accept a subset of the offered shifts;
- that shifts will be awarded to the most senior worker who accepts the shifts (if shifts are being offered to more than one worker).

What efforts must a fast food employer make to offer shifts to a fast food employee who was discharged for a bona fide economic reason?

Using the most updated contact information employees provided when they were laid off, a fast food employer must email, text, or call employees to offer available shifts.

For fast food employees whose hours were reduced for a bona fide economic reason, the employer must offer newly available shifts to the employee in person.



d. 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 law. Employers may not retaliate against workers exercising their rights under the law, even if workers do not explicitly refer to any specific law.

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

Scenario:

Stanley manages the Bushwick branch of McDougal’s, part of a chain of fast food restaurants 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 McDougal’s workers experienced retaliation?

Jack, Peggy, and Janet all have experienced retaliation. Stanley penalized Jack by firing him and threatened 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 fast food worker to “exercise their rights”?

Workers may exercise their rights under the law in a variety of ways. This list gives some examples but is not exhaustive:

- Refusing to work a shift that was scheduled in violation of the law, such as:
 - a shift they did not consent to work or for which they were not given 14 days’ advance notice
 - 2 shifts over 2 days with fewer than 11 hours between shifts
- Requesting premium pay for a shift that was scheduled with less than 14 days’ notice
- Requesting a copy of their schedule or a current version of all workers’ schedules at the fast food establishment where they work
- Saying NO to a lawful request to take another shift with less than 14 days’ notice
- Asking where the current written schedule is posted
- Pointing out that the required notice of rights isn’t posted
- Filing a complaint with DCWP for alleged violations of the law
- Communicating with any person, including coworkers, about any violation of the 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
- Telling a fast food employer that they believe the employer is not applying the progressive discipline policy properly or consistently
- Raising concerns about discrepancies between the regular schedule and the work schedule

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

Workers should contact DCWP or an attorney if they fear retaliation or have experienced retaliation recently. DCWP takes reports of employer retaliation very seriously. Depending on the circumstances, DCWP 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.

IV. Notice and Recordkeeping

a. Notice of Rights

How must covered employers inform workers about NYC's Fair Workweek Law?

The required notice "NYC FAST FOOD WORKERS' RIGHTS" is available on the DCWP website at nyc.gov/workers. Covered employers must post the notice where employees can easily see it at each NYC workplace. Notices should be printed on and scaled to fill an 11" x 17" paper.

In which language must an employer post the notice?

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

Scenario:

There are 10 workers at a fast food establishment. Four workers speak Spanish primarily, and one worker speaks Polish primarily. All have limited English ability. In which languages must the fast food employer post the required notice?

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

b. Recordkeeping

What records must employers keep under the law?

Covered employers must retain electronic records documenting their compliance with the requirements of NYC's Fair Workweek Law. Fast food employers must retain records that show:

- Workers' dates of employment and contact information
- Workers' **hours worked each week**, including date, time, and location
- **Each work schedule** provided to workers, including the dates, times, and methods by which each work schedule was provided to the employee
- **Each regular schedule**, including the dates, times, and methods by which each regular schedule was provided to each employee
- Each **written request or consent by a worker for a variation** between a regular schedule and a work schedule, including the date, time, and method by which the employee transmitted the request or consent to the employer
- Each employee **absence** (late arrivals, failure to report, leave usages)

- Workers' **advance written consent** or **request** to work clopenings, including the date, time, and method by which the employee transmitted the consent or request to the employer
- Dates and amounts of each **schedule change premium** and each **clopening premium** paid to each worker
- **Each written request or consent by a worker for a change** to a work schedule or regular schedule, including the date, time, and method by which the worker transmitted the request or consent to the employer
- Each **agreement among workers** to trade shifts, including the shifts traded and the date and time of the agreement
- Documents reflecting **compliance with the access to hours provisions of the law**, including the content of each shift offer, and the dates, times, and methods by which the shifts were offered, accepted, and awarded
- All **written policies on progressive discipline**, including the date and manner by which the policies were provided to fast food employees and proof of receipt
- **Records of disciplinary action taken** for each worker, including the date, conduct, consequence, and the employee's response
- **All notices of discharge** issued to workers, including proof of issuance and receipt
- For **discharges for a bona fide economic reason (layoffs)**, records to show that the layoff occurred in response to a reduction in volume, production, sales, or profit; that employees were properly discharged in reverse order of seniority; and that laid-off workers were offered reinstatement, as required by law, in order of seniority
- Any exception to the requirements of the Fair Workweek Law
- Documents reflecting compliance with the **notice posting** requirement

How long must employers maintain records under the law?

Covered employers must retain records for a period of three (3) years.

Must an employer provide its records to DCWP?

Yes. If DCWP requests records as part of an investigation into compliance with or violations of NYC's 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 DCWP 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.

May employers maintain required records electronically?

Yes. Employers may create or maintain any of the required records in a scheduling application or other electronic recordkeeping system. Employers must ensure that:

- electronically stored records are maintained in their original format for three (3) years;
- records can be exported to a non-proprietary, machine-readable data format;
- there are no restrictions in the recordkeeping system that would limit the employer's ability to produce required records to DCWP; and
- the electronic recordkeeping system does not overwrite or destroy any of the records an employer is required by law to maintain.

For example, scheduling applications must be configured so that when an employer makes updates to a work schedule, the system retains and does not overwrite the original version of the work schedule and the date it was provided to employees.

V. Enforcement

Who enforces NYC's Fair Workweek Law?

DCWP enforces the law. Workers can contact DCWP to:

- File a complaint.
- Find out more about the law.
- Get a referral for other resources to protect and enforce their rights under the law.

DCWP is committed to maintaining the confidentiality of complainants.

Who can file a complaint about a potential violation of NYC's Fair Workweek Law?

Any person, including fast food workers and their representatives, or related organizations, may file a complaint about a possible violation of the law.

Where can I file a complaint?

You can file a complaint with DCWP. To reach DCWP:

- Call 311 (212-NEW-YORK outside NYC). Ask for "Fair Workweek Law."
- Email OLPS@dca.nyc.gov
- Visit nyc.gov/workers

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

How long do I have to file a complaint?

You must file a complaint within two (2) years of when you learned (or should have learned) of the violation of the law.

What happens after I file a complaint?

DCWP investigates the complaint. DCWP may request information or documents from a fast food employer under investigation and interview witnesses. If DCWP determines that an employer violated the law, the employer may be responsible for money damages and other forms of relief to affected workers, as well as fines to the City.

Are complainants' identities kept confidential?

DCWP will keep the identity of complainants confidential unless disclosure is required by law. DCWP 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 NYC's Fair Workweek Law, regardless of immigration status. DCWP does not collect any information about a worker's immigration status to pursue a complaint.

Must DCWP receive a complaint in order to investigate an employer?

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

What does DCWP do to ensure that employers comply with the law?

DCWP conducts investigations that may include document requests, interviews with witnesses, and visits to worksites. If, as a result of an investigation, DCWP determines that an employer has violated one or more provisions of NYC's Fair Workweek Law, DCWP may seek monetary relief for workers, civil penalties, and/or commitments to future compliance through settlement or through litigation at the Office of Administrative Trials and Hearings (OATH).

For questions about the law or to file a complaint, contact DCWP at OLPS@dca.nyc.gov or call 311 and say "Fair Workweek Law."

Beginning January 1, 2022, workers who believe they were fired without just cause or laid off without a legitimate economic reason can request arbitration through a program administered by DCWP.

DCWP also regularly conducts outreach and education to employers, workers, and the public about NYC's Fair Workweek Law.

What happens if an employer violates the law?

Fast food workers may be entitled to monetary relief for an employer's violations. Employees whose hours were cut unlawfully or who were terminated without just cause may be entitled to back pay or reinstatement. In addition to payments owed to an employee, an employer may be liable for fines payable to the City for violations of the law.

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

What types of fines could covered employers have to pay for violating the law?

Fast food 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

If an employer had a worker sign a document saying that the worker gave up the right to relief under NYC's Fair Workweek Law, can the worker still file a complaint with DCWP against the employer?

Yes. Any agreement to limit fast food workers' rights under NYC's Fair Workweek Law is invalid. Also, DCWP might investigate the employer on its own initiative whether or not workers file a complaint.

What if an employer repeatedly violates the law?

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

VI. Private Right of Action and Arbitration

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

Yes.

Any person or organization alleging a violation of NYC's Fair Workweek Law may bring a civil action in court to seek damages and other relief.

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

Can individuals file private arbitrations instead of going to court or filing a complaint with DCWP?

Yes.

Beginning January 1, 2022, DCWP will administer a private arbitration program that employees alleging wrongful discharge may use instead of the DCWP complaint or civil litigation process. This arbitration process is only available for wrongful discharge cases.

Can an individual file a complaint with DCWP and bring a civil action or arbitration at the same time?

No.

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

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

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