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Temporary Schedule Change Law: Frequently Asked Questions

The Department of Consumer Affairs (DCA) Office of Labor Policy & Standards (OLPS) enforces NYC's Temporary Schedule Change Law. The law covers workers regardless of immigration status. OLPS takes reports of employer retaliation and complainant confidentiality very seriously. See the sections on Retaliation, Complaints, and Enforcement for more information about how OLPS protects workers.

OVERVIEW OF THE LAW

What does the Temporary Schedule Change Law do?

NYC's Temporary Schedule Change Law requires employers to grant a "temporary change" to hours, times, or locations of work to accommodate a worker's "personal event." Employees have the right to two (2) temporary schedule changes per year—up to one (1) business day per request, or two (2) business days for one request. The law also prohibits retaliation against workers who request schedule changes, even if the employer is not required to grant the change under the law.

What is a "personal event"?

A personal event occurs when an employee needs to:

- Care for a minor child for whom the employee provides direct and ongoing care.
- Care for an individual ("care recipient") with a disability for whom the employee provides direct and ongoing care to meet the needs of daily living and who is a family member or who resides in the caregiver's household.
- Attend a legal proceeding or hearing for public benefits for the employee, a family member, or the employee's minor child or care recipient.
- Use leave for acceptable reasons under NYC's Paid Safe and Sick Leave Law, including:
 - Care and treatment of the employee or a family member
 - Assistance or other safety measures if the employee or a family member may be the victim of any act or threat of domestic violence or unwanted sexual contact, stalking, or human trafficking

How can I learn more about NYC's Paid Safe and Sick Leave Law?

For more information about employer responsibilities and employee rights under NYC's Paid Safe and Sick Leave Law, visit nyc.gov/dca.

What is a "temporary change"?

A "temporary change" is a limited change to an employee's usual schedule, including in the hours, times, or locations an employee is expected to work. The change can include: using short-term unpaid leave, paid time off, working remotely, shifting working hours, or swapping working hours with a coworker.

Employees have a right to a temporary change to their work schedule on up to two (2) occasions each calendar year to accommodate a personal event.

What is a “business day”?

A business day means any 24-hour period during which an employee is required to work for any amount of time.

What else does the law provide for workers?

Employees also have a right to be free from retaliation for additional schedule change requests. Employees can request additional changes to the times, days, and locations they are expected to work, regardless of whether their employer is required to grant those additional changes. Employers cannot retaliate against employees for making additional schedule change requests.

When do employers have to start complying with the law?

Employers must comply with the Temporary Schedule Change Law effective Wednesday, July 18, 2018.

Can employees agree to waive their rights under the Temporary Schedule Change Law going forward?

No. Employees cannot agree to waive their rights under the Temporary Schedule Change Law; for example, a document saying that employees cannot request changes to their schedules and signed by employees is invalid.

Scenario:

Rose notifies her employer on July 20 that she will need to change her schedule on July 24. She needs to care for her 4-year-old daughter, Sophia, because Sophia’s childcare provider will be unavailable in the afternoon. Rose, who is scheduled to work on July 24 from 8 a.m. until 4 p.m., proposes working from 6 a.m. until 2 p.m. on that day instead. Is Rose’s employer required to allow Rose to change her hours as she proposed under the Temporary Schedule Change Law?

No. Although Rose’s employer must grant Rose a temporary change to her work schedule on up to two occasions each calendar year, her employer does *not* have to grant the specific type of temporary change proposed by Rose. Instead, her employer can tell Rose that she can take unpaid leave from 2 p.m. to 4 p.m. to accommodate her personal event.

COVERED WORKERS AND EMPLOYERS

Who can request a temporary change to their schedule?

All employees who work 80 hours or more per calendar year in New York City *and* who have been employed by their employer for 120 or more days can request a temporary change to their work schedule. Employees covered by the Temporary Schedule Change Law include:

- Full-time employees
- Part-time employees
- Transitional jobs program employees
- Employees who are family members but not owners (except in agriculture)
- Employees who live outside of New York City

Immigration status does not affect an employee’s rights under the law. OLPS does not request or collect information about an employee’s immigration status in order to pursue a complaint.

Which employees are not covered by the law?

Employers do not have to provide temporary schedule changes to the following employees:

- Employees who work 80 hours or less a calendar year in New York City
- Employees who have not been employed by their employer for 120 or more days
- Employees of federal, state, or local government
- Certain employees subject to a collective bargaining agreement that waives the law's provisions and addresses temporary schedule changes
- Certain employees in motion picture, television, and live entertainment industries

Scenario:

Frederica has been employed full time as lead groomer by her employer, Werking Dog Pup Salon, for five years. Dwayne started working part time for Werking Dog more than four months ago and has worked more than 120 hours. Are Frederica and Dwayne covered by the Temporary Schedule Change Law?

Yes. Both Frederica and Dwayne have worked for their employer for 120 or more days *and* have worked 80 or more hours in a calendar year.

However, IF Dwayne had worked fewer than 80 hours for Werking Dog, then he would not be a covered employee, and Werking Dog would not be required to grant a temporary change to his work schedule.

REQUESTING TEMPORARY CHANGES TO WORK SCHEDULES

When should employees request a temporary change to their work schedule?

As soon as employees become aware of the need for a temporary change to their work schedule due to a personal event, employees should request one from their employer or direct supervisor.

For what purposes can an employee request a temporary change to a work schedule?

An employee may request a temporary change to:

- Care for a minor child for whom the employee provides direct and ongoing care.
- Care for an individual ("care recipient") with a disability for whom the employee provides direct and ongoing care to meet the needs of daily living and who is a family member or who resides in the caregiver's household.
- Attend a legal proceeding or hearing for public benefits for the employee, a family member, or the employee's minor child or care recipient.
- Use leave for acceptable reasons under NYC's Paid Safe and Sick Leave Law, including:
 - Care and treatment of the employee or a family member
 - Assistance or other safety measures if the employee or a family member may be the victim of any act or threat of domestic violence or unwanted sexual contact, stalking, or human trafficking

Who is a "minor child" under the law?

A "minor child" is a person under the age of 18.

Who is a caregiver?

An employee is considered to be a caregiver if the employee provides ongoing or direct care to a minor child or "care recipient."

Who is considered a “care recipient” under the law?

A care recipient is a person with a disability who is a member of the employee’s family or household and who relies on a caregiver for medical care or to meet daily living needs.

Who is a family member?

The law recognizes the following as an employee’s family member:

- Any individual whose close association with the employee is the equivalent of family
- Child (biological, adopted, or foster child; legal ward; child of an employee standing *in loco parentis*)
- Grandchild
- Spouse (current or former regardless of whether they reside together)
- Domestic Partner (current or former regardless of whether they reside together)
- Parent
- Grandparent
- Child or Parent of an employee’s spouse or domestic partner
- Sibling (including a half, adopted, or step sibling)
- Any other individual related by blood to the employee

How does the law define “domestic partner”?

Under the law, a “domestic partner” is a person with a domestic partnership registered under Section 3-240 of the NYC Administrative Code. For more information about the requirements and procedure for registering as domestic partners, go to

http://www.cityclerk.nyc.gov/html/marriage/domestic_partnership_req.shtml.

What are public benefits?

Public benefits, or what the Temporary Schedule Change Law calls “subsistence benefits,” may include government-provided cash or vouchers that improve the physical welfare of the recipient, including benefits for food, utilities, shelter, and health and disability services, health insurance, access to home healthcare services, heat and utility bill assistance, or Social Security Income/Disability. For more information about public benefits, visit nyc.gov and search “public benefits.”

Scenarios:

Harry and Roz are married and have lived with Roz's best friend, Christine, since Christine had a stroke. Christine needs 24-hour care, and Harry requests a day off from his employer to provide care to Christine because Roz has a doctor's appointment. Must Harry's employer comply with the Temporary Schedule Change Law in granting or denying Harry's request?

Yes. Harry's request qualifies as a personal event under the Temporary Schedule Change Law. Christine is considered a care recipient, a person with a disability who is a member of Harry's household. Harry is considered a caregiver who provides direct and ongoing care to Christine.

Cara and Cliff are divorced and have a hearing at Family Court regarding child support for their 6-year-old son, Sam, who lives with Cliff. If Cliff asks for a temporary change to his work schedule to attend the hearing, must his employer comply with the Temporary Schedule Change Law in responding to his request?

No. A child support hearing is not a qualifying personal event under the Temporary Schedule Change Law. Only hearings or legal proceedings for public benefits for the employee or the employee's minor child or care recipient are a qualifying personal event.

To qualify as acceptable leave under NYC's Paid Safe and Sick Leave Law, the need for leave would need to be due to an act or threat of domestic violence or unwanted sexual contact, stalking, or human trafficking.

How should employees request a temporary change to their work schedule?

As soon as employees become aware of the need for a temporary change to their work schedule, they should request one from their employer or direct supervisor either orally or in writing. The request should include:

- Date of the temporary schedule change
- That the change is due to a personal event
- Proposed type of temporary change, such as using unpaid time off, a schedule swap, or change in work hours

If employees requested the schedule change orally (for example, in person or by phone), they must submit a written request within two business days after they return to work. The written request should include the date of the temporary schedule change and that the change was due to a personal event. Employees should keep copies of their schedules and all communications with their employers about scheduling.

How must an employer respond when an employee requests a temporary schedule change?

An employer must respond immediately.

However, when an employee submits a written request following a temporary schedule change, the employer must provide a written response within 14 days. The response must include:

- If the request was granted or denied
- How the request was accommodated (if granted); for example, whether the employer agreed to the employee's proposed temporary change or provided leave without pay
- Reason for denial (if denied). The only two lawful reasons for denying a request are: 1) if the employee exceeded the number of allowable requests under the law or 2) if the employee did not have a qualifying reason for the request.
- Number of requests the employee has made for temporary schedule changes
- How many days the employee has left in the calendar year for temporary schedule changes

If the employee does not submit a written request, the employer is not required to provide a written response but *cannot deny the request because the employee did not submit a written request.*

Can an employer deny an employee's request if the employee does not provide documents proving the need for the temporary change, like a doctor's note or court records?

No. The law requires employees requesting a temporary change to inform their employer that they are requesting a temporary schedule change because of a "personal event" and does not require them to submit any other documents with their request or provide proof of the "personal event." The only two lawful reasons for denying a request are: 1) if the employee exceeded the number of allowable requests under the law or 2) if the employee did not have a qualifying reason for the request. An employer may discipline employees under its standard disciplinary policy if it learns that employees did not have a "personal event" but represented that they did.

If an employer requires an employee to take unpaid leave for a temporary schedule change, does that constitute a denial of the employee's request?

No. Requiring an employee to take unpaid leave, no matter what type of temporary change the worker proposed, is not a denial under the Temporary Schedule Change Law. An employer may not, however, require an employee to use leave earned under NYC's Paid Safe and Sick Leave Law for a temporary schedule change.

How long can the schedule change last?

Temporary schedule changes may last up to one (1) business day per occasion. A business day is defined as any 24-hour period during which an employee is required to work for any amount of time. Alternatively, the employee may request—and the employer may allow—up to two (2) business days for a single occasion. If an employer provides an employee with one temporary schedule change for two days, that employer does not need to grant a subsequent temporary schedule change request in that calendar year.

Do employers need to maintain written policies regarding temporary schedule changes?

No, but employers' policies must meet or exceed the requirements of the Temporary Schedule Change Law.

May an employer maintain a policy that requires employees to request a temporary change a specified amount of time prior to the need for a temporary change?

No. An employee may request a temporary change as soon as practicable after becoming aware of the need for a temporary change, which may be as late as, and in some cases after, the date the temporary change takes place.

Can an employer prohibit employees from taking temporary schedule changes on specific days of the year?

No. The Temporary Schedule Change Law does not allow employers to prohibit employees from using a temporary change on specific days. The only two lawful reasons for denying a request are: 1) if the employee exceeded the number of allowable requests under the law or 2) if the employee did not have a qualifying reason for the request.

Does the law require employers to pay employees for leave granted as part of a temporary schedule change?

No. The employer may offer the employee *the option* to use accrued leave time, such as vacation time, paid time off, or other types of leave. The employer may not require employees to use safe and sick leave for a temporary schedule change or to use paid safe and sick leave prior to requesting a temporary schedule change. The employer may require the employee to take unpaid leave instead of granting the type of temporary change the employee proposes in the temporary change request.

Scenarios:

Helen is an employee of Quality Dry Cleaning. Helen asks her manager, Lionel, if she can switch shifts with her coworker, Glenda, because Helen needs to attend a hearing regarding a restraining order against someone who has been stalking her. Helen then submitted the request in writing as soon as the hearing was scheduled, three months in advance. How must Lionel respond to Helen's request?

Lionel must grant the request. Helen's request is for a qualifying personal event because she is using leave for an acceptable reason under NYC's Paid Safe and Sick Leave Law. Lionel must provide a written response within 14 days since Helen submitted a written request.

If Lionel's response to Helen states that she can take unpaid leave instead of swapping schedules with Glenda, does his response qualify as a denial under the Temporary Schedule Change Law?

No. Under the Temporary Schedule Change Law, employers may require employees to take unpaid leave rather than providing the temporary change proposed by employees in their request.

If Helen had requested one day of paid leave for her temporary change, could Lionel require Helen to find someone to switch shifts instead?

No. Under the Temporary Schedule Change Law, Lionel can lawfully grant Helen's request two ways:

1. Lionel can allow Helen to use paid leave as she requested. OR
2. Lionel can allow Helen to use leave without pay as the law allows.

If Helen never submits a written request for the temporary change, can Lionel deny Helen's request?

No. Under the Temporary Schedule Change Law, employees can submit requests either orally or in writing. Because Helen submitted a written request, Lionel is required to provide a written response. If Helen only made the request orally and did not submit a written request, it would be unlawful for Lionel to deny her request because she did not submit a written request.

If Helen already had temporary changes on up to two occasions in the current calendar year, how may Lionel respond to Helen's request?

Under the Temporary Schedule Change Law, Lionel could deny Helen's request, but he would have to explain in his written response that he was denying the request because Helen had already used two days of temporary schedule changes in the current calendar year.

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 Temporary Schedule Change Law. Employers may not retaliate against workers exercising their rights under the law, even if workers do not explicitly refer to the Temporary Schedule Change Law. Retaliation exists when the protected activity was a motivating factor for a retaliatory act, even if other factors also motivated the retaliatory act.

What does it mean for employees to exercise their rights under the Temporary Schedule Change Law?

Workers may exercise their rights in a variety of ways, including but not limited to:

- Requesting a schedule change or changes.
- Filing a complaint for alleged violations of the law with the Department of Consumer Affairs.
- Communicating with any person, including coworkers, about the law.
- Participating in a court proceeding regarding an alleged violation of the law.
- Informing another person of that person's potential rights.
- Mistakenly invoking their rights under the law.

Scenarios:

Julie has been employed as a bartender at a New York City restaurant for two years. She filed a complaint with OLPS when her manager, Isaiah, denied her request for a temporary change to her schedule to care for her disabled sister, Vicki. After the restaurant found out about the complaint, Julie was indefinitely assigned barback duties, work that is known at her workplace to be less desirable than bartending. Is Julie's demotion retaliation?

Most likely yes. Julie should contact OLPS as soon as possible so that OLPS can attempt to get Julie reinstated to her position as bartender.

Julie submitted a temporary change request in the same calendar year in which she had already used temporary changes to her schedule on two occasions. If Isaiah denied the schedule change request and demoted Julie to barback, would that demotion be retaliation?

Yes. Employees have a right to be free from retaliation for requesting additional changes to their schedule beyond what the employer is required to grant under the law.

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

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

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

Yes.

What remedies are available for a worker who has experienced retaliation?

Employers may be required to provide the following to each affected worker:

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

NOTICE OF RIGHTS

How must covered employers inform workers about the Temporary Schedule Change Law?

A notice titled “You Have a Right to Temporary Changes to Your Work Schedule” is available on the DCA website nyc.gov/dca. Covered employers must post the required 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 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 translation is available on the DCA website.

Scenario:

There are 20 workers at a spa. Four workers primarily speak Spanish, and two workers primarily speak Polish. All have limited English proficiency. In which languages must the employer post the required notice?

Twenty (20) 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 post the required notice in English, as well as Spanish and Polish (if translations are available on the DCA website nyc.gov/dca).

Where can covered employers find the required notice of rights?

The notice is available online at nyc.gov/dca.

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

RECORDKEEPING

What records must employers keep under the law?

Covered employers must retain electronic records documenting their compliance with the requirements of the Temporary Schedule Change Law. Examples of the types of records employers would maintain include documents recording temporary change requests and responses.

How long must employers keep records under the law?

Covered employers must retain records for a period of three (3) years, unless another law requires that the records be maintained for a longer period.

Must an employer provide its records to OLPS?

Yes. If OLPS requests records as part of an investigation into compliance with or violations of the Temporary Schedule Change Law, employers must provide the records.

What happens if a covered employer does not maintain records as required by the law?

An employer’s failure to maintain or produce records to OLPS may result in a “rebuttable presumption” against the employer in the event of a lawsuit or enforcement action. This means that the burden will be on the employer to show that the employer did not violate the law. Therefore, the best practice for an employer to be able to demonstrate that it abides by the law is to keep these records.

ENFORCEMENT

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

Employers may be subject to the following fines per employee:

- \$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

What damages are owed to a worker from an employer that violated the law?

An employer who does not comply with the Temporary Schedule Change Law may be liable to the employee for \$500 and any compensatory damages or other relief required to make the employee or former employee whole. OLPS may obtain a court order requiring the employer to comply with the law and to provide the employee with the requested schedule change, if still possible. If, however, the employer's violation was a failure to provide a written response to the employee's request, OLPS may give that employer the opportunity to cure the violation by providing proof of written response to the employee within seven (7) days of OLPS's notice of opportunity to cure.

What remedies are available for workers whose employer retaliated against them?

Employers may be responsible for providing the following to each affected employee:

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

Scenario:

In August 2018, OLPS determines that Benson's Bistro, an employer covered by the Temporary Schedule Change Law, denied temporary schedule change requests on five different occasions and for four different workers. Benson's Bistro was required to pay \$500 for each violation, or a total of \$2,500 in fines. In November 2018, Benson's Bistro denied another temporary schedule change request. How much might Benson's Bistro need to pay for that violation?

Benson's Bistro may be responsible for a fine of up to \$750, in addition to any relief that it owes the affected employee.

COMPLAINTS

Who can file a complaint about a potential violation of the Temporary Schedule Change Law?

Any person, including workers' representatives and related organizations, may file a complaint about possible violations of the law.

Where can someone file a complaint?

File a complaint with OLPS. To reach OLPS:

- Call 311 (212-NEW-YORK outside NYC). Ask for "Temporary Schedule Change Law."
- Email olps@dca.nyc.gov
- Visit nyc.gov/dca

How long does someone have to file a complaint?

Complainants should file a complaint as soon as the employee becomes aware of an issue, but within two (2) years of when the employee learned (or should have learned) of the violation of the Temporary Schedule Change Law.

What happens after someone files a complaint?

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

Are complainants' identities kept confidential?

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

Does my immigration status affect my ability to file a complaint?

No. All workers have the same rights and protections under the Temporary Schedule Change Law, regardless of immigration status. OLPS does not request, collect, or maintain any information about a worker's immigration status while investigating a complaint.

PRIVATE RIGHT OF ACTION

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

Yes. Any person or organization, including a worker, alleging a violation of the Temporary Schedule Change Law may bring a civil court case to seek monetary and other relief. Individuals must bring a lawsuit under the Temporary Schedule Change Law in civil court within two (2) years of the date that the individual learned, or should have learned, of the violation.

Can an individual who has filed a complaint with OLPS bring a civil court case at the same time?

No. If individuals file a complaint with OLPS, they cannot bring their own lawsuit unless they withdraw the complaint in writing or OLPS dismisses the complaint "without prejudice," generally meaning that the complaint was neither decided nor settled.

Can an individual who has filed a civil court case file a complaint with OLPS at the same time?

No. If individuals file a civil court case, they cannot file a complaint with OLPS until the civil court case is withdrawn or dismissed without prejudice. When a party files suit in court, the party must give notice of the lawsuit to OLPS. However, OLPS may still investigate and pursue charges against an employer, even when a worker has a case pending against that employer in court.

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