



Financial Services Employment Blog

Ask and You Shall Receive: New York City Contemplates Requiring All Employers to Consider Requests for Flexible Work Arrangements

By Anshel Joel "AJ" Kaplan, Cameron Smith and Cliff Fonstein

Seyfarth Synopsis: New York City is considering proposed legislation that would require all employers to consider employee requests for flexible work arrangements, increase the administrative burdens on employers, and limit the grounds on which employers could deny certain requests.

Following its introduction in December 2016, the New York City Council's Committee on Civil Service on Labor conducted a public hearing on March 3, 2017 regarding a proposed ordinance, Bill No. 1399, which would require all New York City employers to consider employee requests for flexible work arrangements.

The proposed legislation, sponsored by Council Member Deborah Rose (D-Staten Island), would amend the New York City administrative code to provide an employee with the right (i) to request a modification in his or her work schedule at any time without fear of retaliation ("Right to Request"), and (ii) to receive a temporary, one-day, change in schedule due to certain personal emergencies, also without fear of retaliation ("Right to Receive").

With respect to the Right to Request, under the proposed law an employee could request in writing up to once per quarter flexible work arrangement accommodations such as a modified work schedule, additional shifts or hours, permission to exchange shifts with other employees, working from home, and changes in work duties. Once requested, the employer is required to engage in an interactive process with the employee "in good faith" to determine whether the request would be "inconsistent with business operations," a phrase the bill defines as an action that would cause the employer to violate a law, "a *significant* and identifiable burden of additional costs to the employer; or a *significant* and identifiable detrimental effect on the employer's ability to meet organizational demands." (emphasis added). The employer must notify the employee in writing of the decision within 14 days, and if denied, the basis of the denial.

With respect to the Right to Receive, an employer must grant an employee, up to four times per year, a temporary, one-day change to his or her work schedule due to a personal emergency. Personal emergencies include such occasions as a caregiving or personal health emergency (only if the employee does not have or cannot use paid sick leave), or accommodations necessitated by the employee or a family member being the victim of a family offense matter, a sexual offense, or stalking. The employee must notify the employer as soon as he or she becomes aware of the need for the change. The employer must keep track of all such Right to Receive requests so that, upon receiving a request, it can notify the employee how many requests he or she has used during the year. Additionally, on the third request in a year, the employer must notify the employee that he or she can only receive one additional temporary change for that year.

If passed the proposed legislation would add significantly to the administrative burden of employers. Not only would

employers have to adjust their work schedules, but they would also have to keep track of the 14-day response time for requests, as well as the number of Right to Receive requests used by each employee during the course of the year.

Following the hearing on March 3, 2017, the bill was “laid over in committee,” meaning no further action was taken on the bill. A vote on the bill has not yet been scheduled, and Mayor de Blasio has not yet indicated whether he will approve the bill. If passed, the bill would take effect 180 days following adoption.

We will continue to monitor this pending bill and report on any further developments.

If you would like further information regarding the proposed legislation, please contact your Seyfarth attorney, [Anshel Joel “AJ” Kaplan](#) at akaplan@seyfarth.com, [Cameron Smith](#) at casmith@seyfarth.com, or [Cliff Fonstein](#) at cfonstein@seyfarth.com.

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