

# New York City Fair Workweek Ordinance

## Frequently Asked Questions

### **Q. What is the New York City Fair Workweek Ordinance?**

**A.** The Fair Workweek Ordinance regulates the way that retail businesses schedule its employees. The ordinance includes these requirements:

- 72 hours' advance notice of work schedule
- Updated written schedule if changes are made with less than 72 hours' notice
- No on-call shifts
- No call-in shifts within 72 hours of the start of the shift
- No shift cancellations with less than 72 hours' notice
- No shift or hours additions with less than 72 hours' notice unless worker consents in writing

### **Q. Do the Ordinance requirements apply to all of my employees?**

**A.** The regulations apply to all hourly employees working in New York City, including all 5 New York City boroughs.

## **Work Schedules**

### **Q: How far in advance do I need to post a work schedule for employees?**

**A:** 3 days (72 hours) prior to the first day of the work schedule; posted schedules should cover 7 days.

### **Q. How should I provide notice of the schedule to my employees?**

**A.** You must physically post the schedule at your store location where all employees can see it. Additionally, you must communicate the schedule via electronic means (e.g. text or email) if that is how you usually communicate work schedules to your employees. Verbally discussing the schedule, without a written posting and/or electronic communication, is not sufficient to meet posting requirement.

- **Example:** Your store's schedules always cover Sunday – Saturday, with the first shift in the schedule starting at 10 a.m. on Sunday. By 10 a.m. on Thursday, you must have the written schedule posted in the store. In addition, you must also communicate the written schedule electronically (via text or email) by 10 a.m. on Thursday if that is how you usually communicate schedules with your employees.

### **Q. Can I disclose an employee's schedule to other employees if he or she is concerned about privacy or safety?**

**A.** It depends. If you have provided your employee with an accommodation based on that his or her status as a survivor of domestic violence, stalking, or sexual assault, you cannot disclose that employee's schedule if doing so would conflict with that accommodation. Under the NYC Human Rights Law, you may not share with other employees the reasons for an accommodation.

### **Q. Am I required to give employees copies of previous schedules?**

**A.** Yes. If an employee requests copies of a previous schedule(s), you must provide written work schedules for any week worked within the last three (3) years within 14 days of the employee's request. For assistance with this request, please contact your Manager or Brand Operations team.

**Q. Am I required to give employees copies of other employees' schedules?**

**A.** Yes. If an employee requests other workers' schedules, the employer must provide the most current version of the work schedule for all employees in their store. You must provide the schedules within one (1) week of the worker's request.

**On-call Scheduling**

**Q. What is an on-call shift?**

**A.** An on-call shift occurs when an employee is required to be ready and available to work at your request for a period of time, regardless of whether the employee actually works or is required to report to a work location.

In practice, unless an employee is told to and actually reports to a work location, he or she is not paid for an on-call shift, although he or she may have been available to work and could not engage in his or her own activities.

**Q. Can retail employers schedule employees for on-call shifts?**

**A.** No. Under the Fair Workweek Law, you may not schedule a worker for any on-call shifts.

**Advance Notice**

**Q. Can I cancel a worker's shift?**

**A.** Yes, but only if you provide notice of the cancellation at least 72 hours before the start of the shift.

**Q. Can I require an employee to work additional hours or an additional shift with less than 72 hours' notice?**

**A.** No. With less than 72 hours' notice, you cannot require employees to work additional hours or an additional shift. However, you may offer the additional hours or shift, and employees may accept or decline the hours or shift. If employees agree to work the additional hours or shift, they must give written consent.

- **Example:** On Saturday morning, an employee contacts you to say that he cannot work a Sunday shift because he is sick. To cover the shift, you tell another employee that she must cover the open shift on Sunday without receiving her written consent and update the posted schedule. However, the employee would not have volunteered to work this shift, and has to hire a babysitter so she can cover the shift. This would be a violation.

In the alternative, you should offer the second employee the opportunity to work voluntarily and obtain her written consent. If she does not voluntarily accept the additional shift, you should contact other employees to see if they will voluntarily accept the additional hours and/or shift and obtain their consent in writing.

**Q. What does it mean to consent in writing to the additional hours or shift?**

**A.** An employee must agree to work the additional hours or shift in some written form, such as text, email, or handwritten or typed note. The employee's agreement must relate to specific hours or shift and cannot be a general or long-term statement of availability.

**Q. Can I require an employee to work additional hours or shift(s) with more than 72 hours' notice?**

**A.** Yes, you may require employees to work additional hours or shift(s) if you provide notice of the additional hours or shift(s) at least 72 hours before the start of the shift.

**Q. Are there any circumstances when I do not need to provide 72 hours' notice before cancelling a shift?**

**A.** Yes. You may make changes to employees' schedules less than 72 hours before the start of a shift if the employer is not able to operate due to:

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

Note: Snow storms and other inclement weather may meet the above requirements if you reasonably believe that it will prevent our employees from arriving to work safely. In such cases, please follow the guidelines provided in the Attendance and Pay during Emergency Closings policy in the Associate Guide.

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

**Q. What must I do if the schedule changes?**

**A.** If the schedule changes, you must update the posted schedule and notify all affected workers directly (e.g., phone, text, in-person conversation).

**Q. Can I require employee to check in to confirm whether or not they need to report to a shift?**

**A.** Under the law, you cannot require employee to check in within 72 hours of a scheduled shift to find out if they should report for the shift.

**Q. Can I allow workers to take time off?**

**A.** Yes. You can grant a worker's request for time off, even if the request occurs within 72 hours of the worker's scheduled shift. Providing time may be required under federal, state, or local law, including under NYC's Paid Sick Leave Law.

**Q. What happens if employees trade shifts with one another less than 72 hours before those shifts start?**

**A.** You may allow employees to trade shifts with one another, even if they trade within 72 hours of the start of the affected shift. Since the schedule change is initiated by employees—and not the employer—there is no penalty to the employer for the last-minute schedule change.

**However, you must update and repost the schedule and contact all affected employees.**

**Q. Can I cancel an employee's shift or part of a shift with less than 72 hours' notice?**

**A.** No. You cannot cancel a shift or part of a shift with less than 72 hours' notice.

**Q. Can I cancel or shorten an employee's shift after the employee arrives at work?**

**A.** You should try not to change an employee's shift after they have arrived at work. However, if you must shorten an employee's shift due to lack of work, you may do so only with the employee's voluntary written consent, provided you pay any required call-in/reporting pay. As a reminder, all part-time employees and any full-time employees making less than \$12.00 an hour will automatically be paid 4 hours of call-in/reporting pay if they are sent home after working less than 4 hours.

**Damages and Fines**

**Q. What penalties may we see if we fail to comply with the Ordinance?**

**A.** If we are found in violation of the Fair Workweek Ordinance, we may be subject to payment of damages directly to the employee and additional fines to City according to the chart below:

<b>Violation</b>	<b>Damages to Employee</b>	<b>Fines to City</b>
On-call shift or shift change with less than 72 hours' notice	\$500 or damages and relief to remedy harm to affected worker, whichever is greater	<ul style="list-style-type: none"><li>• \$500 for violations leading to an initial legal action</li><li>• Up to \$750 for violations leading to a second legal action within a two-year period</li><li>• Up to \$1,000 for subsequent violations</li></ul>
Failing to provide work schedules in compliance with the law	\$300	

**Please remember that retaliation against any employee that asserts his or her rights under this ordinance, or cooperates with the City in enforcement, is strictly prohibited.**