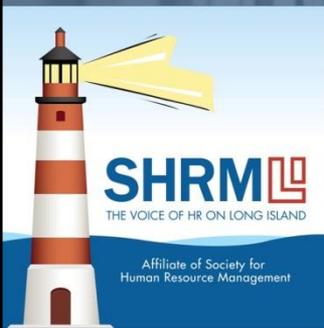


# Last Fridays “Lunch and Learn” Webinar:

## What’s Heating Up This Summer: Predictive Scheduling and Paid Family Leave

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# INTRODUCTORY STATEMENT

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# Predictive Scheduling – What Is It?

- ◆ Setting work hours that do not vary considerably from week to week; or
- ◆ Giving more notice of weekly work schedules to allow more time to adapt.
  - Providing more stability for individuals working in those roles.
- ◆ More commonly referred to by its opponents as “restrictive scheduling.”

# The Alternative: “Unpredictable” Scheduling

- ◆ Flexible scheduling allows employers to make last-minute staffing decisions based on the most up-to-date customer volume information.
  - Standard in the retail and service industries. Think “on-call” shifts.
- ◆ Critics argue that “unstable” work schedules prevent employees from receiving a steady flow of income and can jeopardize eligibility for certain benefits.
  - Difficulty securing childcare and transportation for shifts during which they have no certainty of work or wages.

# A Nationwide Trend

- ◆ San Francisco, which led the initiative, and Seattle have passed legislation promoting predictive scheduling in the retail industry.
- ◆ In April 2015, New York State Attorney General Eric Schneiderman launched an inquiry into the on-call scheduling practices of multiple national retailers in NY.
- ◆ In April 2016, Attorney Generals in seven other states and D.C. requested on-call scheduling information from multiple national retailers

# The NYC Fair Workweek Laws

- ◆ On May 30<sup>th</sup>, 2017, New York City Mayor Bill de Blasio signed into law a package of five bills, collectively known as the “Fair Workweek” laws.
- ◆ The laws become effective on November 26, 2017.
- ◆ The laws aim to ensure predictable paychecks and work schedules for retail and fast food employees.

# The Fast Food Industry

- ◆ The law requires fast food employers:
  - Post a worker's schedule at least 14 days in advance;
  - Pay a premium for schedule changes with less than 14 days notice;
    - \$15 - \$45 depending if hours are added or removed.
  - Offer available shifts to current employees before hiring new workers; and,
  - No "Clopening" - Provide employees a break of more than 11 hours between shifts.
    - Can still do it if employee receives an additional \$100.

# The Retail Industry

- ◆ Retail employers are prohibited from scheduling employees for “on-call” shifts.
- ◆ Retail employers also cannot cancel any scheduled hours, or demand that employees pick up additional hours, with less than 72 hours’ notice.
- ◆ Retail employers cannot require an employee to contact a retail employer to confirm whether or not the employee should report for a regular shift fewer than 72 hours before the start of such shift.

# The Retail Industry

- ◆ But, a retail employer still may:
  - Grant a retail employee time off pursuant to an employee's request;
  - Allow a retail employee to trade shifts with another retail employee; and,
  - Make changes to retail employees' work schedules with less than 72 hours' notice if the employer's operations cannot begin or continue due to specific circumstances set forth in this section.
- ◆ Retail employers must also keep copies of all schedules.

# Record-Keeping & Enforcement

- ◆ Retail and fast food employers must retain for a period of three years all records documenting compliance with the “Fair Workweek” package.
- ◆ Affected employees may pursue a private right of action in court or administrative enforcement through the Office of Labor Policy & Standards (OLPS).
  - Two-year statute of limitations for filing a complaint.
  - Possible compensatory, injunctive and declaratory relief, as well as back pay or other compensatory damages, and reasonable attorneys’ fees. Penalties ranging from \$500 to \$3,000 per violation.
- ◆ The New York City corporation counsel may commence a civil action where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations.

# What Should An Employer Do?

- ◆ Even if not in NYC, consider phasing out “on-call” scheduling if in the retail or fast food industry.
- ◆ Review payroll practices, scheduling procedures and document schedule changes.
- ◆ Review wage and hour compliance as varying schedules invoke potential overtime and minimum wage concerns.

# Paid Family Leave – An Update

- ◆ On July 19<sup>th</sup>, 2017 the regulations relating to the PFL law were finalized.
- ◆ Employers must offer the option to waive out of PFL coverage if the employee will not be eligible for benefits.
- ◆ Potential exists for employees to take 12 weeks of FMLA leave in 2017 and then 8 weeks of PFL in 2018 for same reason.
  - Be ready for potential staffing concerns!

