CLIENT ALERT

New York City Imposes "Fair Workweek" Restrictions on Scheduling of Work for Retail and Fast Food Employees

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A package of "Fair Workweek" laws, taking effect November 26, 2017, will place sweeping restrictions on the scheduling of work by retail and fast food employers in New York City. The five new laws, signed by Mayor Bill DeBlasio on May 30, 2017, are generally aimed at ending so-called "abusive scheduling practices" and providing predictable paychecks and work schedules for retail and fast food employees. These laws also include notice, posting and record-keeping provisions, retaliation prohibitions, administrative enforcement procedures, and private causes of action. While the laws will almost certainly face legal challenge, employers in the retail and fast food sectors with operations in New York City should brace for – and plan for – the far-reaching impact of these laws on their operations.

Retail employers with 20 or more employees that are engaged primarily in the sale of consumer goods at one or more stores in New York City will be required to provide employees with, and post, work schedules at least 72 hours in advance. Retail employers will generally be prohibited from (i) scheduling employees for any on-call shifts, (ii) cancelling any regular shift with less than 72 hours' notice, (iii) requiring an employee to work, without his or her written consent, with less than 72 hours' notice, and (iv) requiring an employee to contact the employer to confirm whether or not to report to work less than 72 hours before the scheduled shift.

Covered fast food establishments, broadly defined as those businesses that are part of a chain with 30 or more establishments nationally, offering limited service, where patrons order food or drink items and pay before eating, will also be subject to several restrictions in scheduling fast food employees for work. For example, they will be required to provide new hires a written "good faith estimate" of the number of their expected weekly work hours, dates, times, and work locations, and a written work schedule. Thereafter, written work schedules must be provided no less than 14 days in advance, and updated within 24 hours of an employer's knowledge of a change. Fast food establishments that provide less than 14 days' notice of a work schedule change will, with certain exceptions, pay employees premiums ranging from $10 to $75. Fast food employees may not be required to work two shifts with fewer than 11 hours between them on multiple days, referred to as "clopenings." A premium of $100 must be paid to employees for each instance in which they work such shifts, and employers may permit such shifts only when the employee has provided his or her written request or consent to do so. Employers will also be required to post and provide notice of additional work shifts to their current fast food employees, and offer those shifts to employees at that location before distributing them to fast food employees at their other locations or hiring additional employees or subcontractors to staff them. Upon authorization from hourly fast food employees, employers must deduct from their paychecks voluntary contributions to covered not-for-profit organizations.

Employers with operations in New York City should first determine whether they are covered by any of these sweeping changes to retail and fast food work scheduling practices. Aside from considering potential legal challenges, covered employers should audit their scheduling practices, assess the costs and benefits of alternative approaches, develop or adopt existing scheduling

systems to comply with these requirements, including posting of notices and record-keeping, and prepare to provide adequate support and training to management and human resources personnel in order to ensure compliance.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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