



Legislation Text

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A Local Law to amend the administrative code of the city of New York, in relation to requiring fast food employers to offer work shifts to current employees before hiring additional employees

Be it enacted by the Council as follows:

Section 1. Chapter 12 of title 20 of the administrative code of the city of New York is amended by adding a new subchapter 4 to read as follows:

Subchapter 4

Access to Hours

§ 20-1241 Offering additional shifts to current fast food employees. a. Before hiring new fast food employees, including hiring through the use of subcontractors, a fast food employer shall offer regular shifts or on call shifts that would otherwise be offered to a new fast food employee to the fast food employer's current fast food employees employed at all fast food establishments owned by the fast food employer, or at a subset of such fast food establishments as provided in rules promulgated pursuant to subdivision j. A fast food employer may not transfer fast food employees from locations other than the location where such shifts will be worked or hire new fast food employees, including subcontractors, to perform the work of fast food employees for such shifts, except as provided for in subdivisions f, g and i.

b. When shifts become available that must be offered to current fast food employees pursuant to subdivision a, a fast food employer shall post a notice that states the number of shifts being offered; the

schedule of the shifts; whether the shifts will occur at the same time each week; the length of time such fast food employer anticipates requiring coverage of the shifts; the number of fast food employees needed to cover the shifts; the process, date and time by which fast food employees may notify such fast food employer of their desire to work the shifts; the criteria such fast food employer will use for the distribution of the shifts; an advisement that a fast food employee may accept a subset of the shifts offered but that shifts will be distributed according to the criteria described in the notice; and an advisement that while fast food employees working at all locations owned by the fast food employer may accept offered shifts immediately, shifts will be distributed first to fast food employees currently employed at the location where the shifts will be worked. The fast food employer shall post such notice for three consecutive calendar days in a conspicuous and accessible location where notices to fast food employees are customarily posted, unless a shorter posting period is necessary in order for the work to be timely performed as may be prescribed by the rules of the director. The fast food employer shall also provide the notice in writing directly to each fast food employee electronically.

c. Subject to distribution of shifts pursuant to subdivision d, a fast food employee employed at any location owned by the fast food employer offering shifts may accept shifts immediately and may accept any subset of shifts offered.

d. A fast food employer shall distribute shifts, in accordance with the criteria contained in the notice required by subdivision b, to one or more fast food employees who have accepted such shifts and are employed at the location where such shifts will be worked. A fast food employer shall distribute shifts to fast food employees employed at locations other than the location where such shifts will be worked in accordance with subdivision f. A fast food employer's system for the distribution of shifts shall not violate any federal, state or local law, including laws that prohibit discrimination.

e. A fast food employee's written acceptance of an offer of shifts constitutes written consent to the addition of shifts if such consent is required by subdivision d of section 20-1221, but does not constitute a written request for a change in schedule as described in paragraph 2 of subdivision c of section 20-1222. A fast

food employer shall pay a schedule change premium to fast food employees who accept additional shifts offered pursuant to this section when required by section 20-1222.

f. If no fast food employee who is employed at the location where offered shifts will be worked accepts such shifts within three consecutive calendar days of the offer, or, in the case of shifts that are offered with less than three days' notice to a fast food employee before the start of such shifts, no less than 24 hours before the start of such shifts unless such 24 hour period is impracticable under the circumstances, the fast food employer may distribute such shifts to fast food employees from other locations who accept such shifts or may hire or contract for such new fast food employees as are necessary to perform the work described in, and in accordance with the criteria contained in, the notice posted pursuant to subdivision b; provided, however, that the fast food employer shall distribute such shifts to fast food employees from other locations who have accepted such shifts before such employer proceeds to hire or contract for new fast food employees for such shifts. In the case of shifts that are offered with less than 24 hours' notice to a fast food employee, the fast food employer shall wait as long as practicable under the circumstances before distributing such shifts to fast food employees from other locations or hiring or contracting for new fast food employees.

g. 1. If in accordance with subdivision b a fast food employer provides notice of additional shifts to all of its fast food employees and receives written confirmation from all fast food employees employed at the location where such hours will be worked before the expiration of the period for their acceptance pursuant to subdivision f that those fast food employees do not accept the shifts offered, or if some such fast food employees have accepted some but not all of the offered shifts and the fast food employer receives written confirmation from all other fast food employees employed at such location before the expiration of the period for their acceptance pursuant to subdivision f that they do not accept the shifts offered, such fast food employer may immediately distribute such shifts to fast food employees from other locations who accept such shifts in accordance with the criteria set forth in the notice posted pursuant to subdivision b.

2. If in accordance with subdivision b a fast food employer provides notice of additional shifts to all of

its fast food employees employed at all locations owned by the fast food employer or at a subset of such fast food establishments as provided in rules promulgated pursuant to subdivision j, and receives written confirmation from all such fast food employees before the expiration of the period for their acceptance pursuant to subdivision f that they do not accept the shifts offered, or if some such fast food employees have accepted some but not all of the offered shifts and the fast food employer receives written confirmation from all other fast food employees employed at all locations owned by that fast food employer or at a subset of such fast food establishments as provided in rules promulgated pursuant to subdivision j before the expiration of the period for their acceptance pursuant to subdivision f that they do not accept the shifts offered, the fast food employer may immediately proceed with hiring or contracting for new fast food employees to perform the work described in, and in accordance with the criteria set forth in, the notice posted pursuant to subdivision b.

h. A fast food employer is encouraged to make reasonable efforts to offer fast food employees training opportunities to gain the skills and experience to perform work for which such employer regularly has additional needs.

i. This subchapter shall not be construed to require any fast food employer to offer, or prohibit any fast food employer from offering, any fast food employee any shift or hours that must be paid:

1. At a rate not less than one and one-half times the fast food employee's regular rate of pay under subsection (a) of section 207 of title 29 of the United States code; or

2. At a rate governed by the overtime requirements of the labor law or the overtime requirements of any minimum wage order promulgated by the New York commissioner of labor pursuant to labor law article 19 or 19-A.

j. The director may promulgate rules regarding how and to which fast food employees offers of shifts pursuant to subdivision g shall be made by fast food employers that own at least 50 fast food establishments in the city based on the geographic distribution of such establishments.

§ 2. This local law takes effect on the later of 180 days after it becomes law or the date that a local law

amending the administrative code of the city of New York in relation to establishing general provisions governing fair work practices and requiring certain fast food employers to provide advance notice of work schedules to employees and to provide schedule change premium compensation when hours are changed after required notices, as proposed in introduction number 1396-A for the year 2016, takes effect, except that the director of the office of labor standards shall take such measures as are necessary for the implementation of this local law, including promulgating rules and conducting outreach and education, before such date.

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