New York City Department of Consumer and Worker Protection

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Consumer and Worker Protection ("DCWP" or "Department") is proposing new rules to implement Local Laws 1 and 2 of 2021 ("LL 1 & 2") related to the Fair Workweek Law for fast food workers.

When and where is the hearing? DCWP will hold a public hearing on the proposed rule. The public hearing will take place at 11:00 AM on February 3, 2022. The public hearing will be accessible by phone and videoconference.

- To participate in the public hearing via phone, please dial (646) 558-8656
  - Meeting ID: 827 2204 5951
  - Passcode: 802 674

- To participate in the public hearing via videoconference, please follow the online link: https://us02web.zoom.us/j/82722045951?pwd=SDQxbnkvRWV4eHNaOXBXSXFmNDc5Zz09
  - Meeting ID: 827 2204 5951
  - Passcode: 802 674

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to DCWP through the NYC rules website at http://rules.cityofnewyork.us.

- **Email.** You can email comments to Rulecomments@dca.nyc.gov.

- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 436-0396. You can also sign up on the phone or videoconference before the hearing begins at 11:00 AM on February 3, 2022. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes. You must submit any comments to the proposed rule on or before February 3, 2022.

What if I need assistance to participate in the hearing? You must tell DCWP's External Affairs division if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You may tell us by telephone at (212) 436-0396 or by email at Rulecomments@dca.nyc.gov.

Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by January 31. 2022.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at http://rules.cityofnewyork.us/. A few days after the hearing, all comments received by DCWP on the proposed rule will be made available to the public online at http://www1.nyc.gov/site/dca/about/public-hearings-comments.page.

What authorizes DCWP to make this rule? Sections 1043 and 2203(f) of the New York City Charter and Chapter 12 of Title 20 of the New York City Administrative Code authorize the Department of Consumer and Worker Protection to make these proposed rules. The proposed rule was not included in the agency regulatory agenda because it was not anticipated at the time of publication of the agenda.

Where can I find DCWP's rules? The Department's rules are in Title 6 of the Rules of the City of New York.

What laws govern the rulemaking process? DCWP must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

The Department of Consumer and Worker Protection ("DCWP" or "Department") is proposing new rules to implement Local Laws 1 and 2 of 2021 ("LL 1 & 2").

LL 1 & 2 made changes to the existing provisions of the Fair Workweek Law for fast food workers, in particular replacing the good faith estimate with the regular schedule, restricting reductions of more than 15% to the regular schedule, and pegging weekly work schedules more closely to the regular schedule.

LL 1 & 2 also created new rights against arbitrary firing for fast food workers, limiting the circumstances in which a fast food worker can be fired to just cause or a bona fide economic reason.

The Department also proposes new rules to reflect the Department's almost four years of experience enforcing the Fair Workweek Law. These proposed rules would:

- Clarify certain defined terms.
- Identify the records an employer must maintain to document compliance with the applicable requirements of the Fair Workweek Law.
- Indicate how an employer may maintain records electronically.
- Define the term "consent" and related requirements.
- Clarify that minor schedule changes of 15 minutes or less are not subject to the Law's requirements.
- Provide the lookback date for determining the amount of schedule change premium owed.
- Indicate when a premium is owed for certain common types of schedule changes.
- Identify requirements related to unscheduled clopening shifts.
- Describe the circumstances under which an employer must offer available shifts to current fast food employees.
- Clarify the circumstances under which employers must offer available shifts to current employees.
- Eliminate access to hours requirements related to "shift increments".
- Eliminate access to hours requirements related to certain types of notices.
- Clarify provisions in section 20-1251(a) of the Law on cancelling a regular shift or requiring a retail or utility safety employee to work with less than 72 hours' notice, and associated employee relief.
- Implement Local Law 77 relating to utility safety employees

LL 1 & 2 and Sections 1043 and 2203(f) of the New York City Charter authorize the Department of Consumer and Worker Protection to make these proposed rules.

New material is underlined.
[Deleted material is in brackets.]

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Proposed Rule Amendments

Section 1. Subchapter F of Chapter 7 of Title 6 of the Rules of the City of New York is amended to read as follows:

PART 1: GENERAL PROVISIONS

§ 7-601 Definitions.

(a) As used in Title 20, chapter 12 of the New York City Administrative Code and this subchapter, the following terms have the following meanings, except as otherwise provided:

["**Actual hours worked**" means the number, dates, times and locations of hours worked by an employee for an employer, whether or not such hours differ from the work schedule provided in advance.

"**Additional shift**" is a shift not previously scheduled that would be offered to a new fast food employee but for the requirements of section 20-1241 of the Fair Workweek Law.]

"**Accept**" when used in reference to a shift or shifts at a fast food establishment means a fast food employee's communication to a fast food employer of their desire to work such shift or shifts in response to the notice of available shifts provided by the fast food employer.

"**Applied consistently**," as that phrase is used in section 20-1272(b)(3) of the Fair Workweek Law, means that fast food employees with similar job duties who are subject to the same progressive discipline policy received comparable treatment under that policy for similar infractions in similar circumstances.

"**Award**" has the same meaning as "distribute," as that term is used in the Fair Workweek Law. When the term "award" is used in reference to a shift at a fast food establishment, it means a fast food employer has added the shift to a fast food employee's regular schedule.

"**Baseline regular schedule**" means the highest total hours contained in a fast food employee's regular schedule within the previous 12 months, or the highest total hours contained in any subsequent reduced regular schedule to which such employee consented, which such employee requested, or which was made for just cause or a bona fide economic reason.

"**Clopening**" means two shifts with fewer than 11 hours between the end of the first shift and the beginning of the second shift when the first shift ends the previous calendar day or spans two calendar days.

"**Current fast food employee**" as that term is used in section 20-1241 of the Fair Workweek Law and these rules means a fast food employee who has worked at least eight hours in the preceding 30 days or is otherwise currently on the fast food employer's payroll, and has not been terminated from employment.

"**Clopening premium**" means the $100 payment required for each clopening shift worked pursuant to section 20-1231 of the Fair Workweek Law.

"**Consent**" means an employee's agreement after having a meaningful opportunity to decline, free from any interference, coercion, or risk of adverse action from the employer.

"**Contact information**" means the last-known phone number, email address, and mailing address provided to the employer.

["**Dates**" as that term is used in subdivision (a) of section 20-1221 of the Fair Workweek Law means days of the week.]

"**Directly notify**" as that term is used in subdivision (b) of section 20-1252 of the Fair Workweek Law means to deliver to an individual employee.

"**Engaged primarily in the sale of consumer goods**" as that term is used in the definition of "retail employer" in section 20-1201 of the Fair Workweek Law means greater than fifty percent of sale transactions [in a calendar year at one or more locations] in the City during the previous 12 months were of consumer goods [are] to retail consumers.

"**Fair Workweek Law**" means chapter 12 of Title 20 of the Administrative Code of the City of New York.

["**Good faith estimate**" means the number of hours a fast food employee can expect to work per week for the duration of the employee's employment and the expected days, times, and locations of those hours.]

"**New fast food employee**" means an employee who at the time of hire, has not [worked at least eight hours in the preceding 30 days for] previously been employed by or worked any hours for the fast food employer or who has no seniority due to an interruption in service of more than six months as set forth in section 20-1271 of the Fair Workweek Law.

"**Notice of Discharge**" means the written explanation that fast food employers are required to provide to discharged fast food employees pursuant to section 20-1272(d) of the Fair Workweek Law.

"**Offer**" when used in reference to a shift or shifts at a fast food establishment means the process by which a fast food employer notifies fast food employees of the availability of such shift or shifts pursuant to section 20-1241 of the Fair Workweek Law. While an "offer" of a particular shift may be made to a number of employees and/or former employees, the shift will be "awarded" to one employee (unless it is divided among two or more employees).

"**Overtime pay**" means payment (i) 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 (ii) 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.

["**Premium pay**" means a schedule change premium required, pursuant to section 20-1222 of the Fair Workweek Law or the payment a fast food employer is required to pay to a fast food employee who works a "clopening", pursuant to section 20-1231 of the Fair Workweek Law.]

"**Recurring shift**" means a shift that the fast food employer anticipates needing a fast food employee to fill indefinitely.

"**Regular schedule**" means a predictable, regular set of recurring shifts that a fast food employee will work each week.

"**Relevant and adequate training**," as that phrase is used in section 20-1272(b)(2) of the Fair Workweek Law, means instruction on how to perform the job duties, standards of conduct in the fast food establishment, or workplace policies and procedures. This may include training on: preparing and serving food, cleaning, using tools and equipment, handling payments, interacting with customers, and other typical job duties of fast food employees; workplace policies and procedures relating to attendance, punctuality, cooperation, and other standards of conduct required by the fast food employer; and any specific job duties or conduct for which a discharged fast food employee has previously failed to meet the fast food employer's expectations.

"**Retail consumer**" means an individual who buys or leases consumer goods and that individual's co-obligor or surety. Retail consumer shall not include manufacturers, wholesalers, or others who purchase or lease consumer goods for resale as new to others.

"**Salaried**," as that term is used in the definition of "fast food employee" in section 20-1201 of the Fair Workweek Law, means [not covered by the overtime requirements of New York state law or regulations] paid on a salary basis and meets all of the criteria for one or more of the exemptions from the minimum wage and overtime provisions of the Fair Labor Standards Act set forth in title 29, part 541 of the Code of Federal Regulations.

"**Scheduling application**" means a computer application used by an employer to create or manage employee schedules.

"**Shift**" means an on-call shift or a regular shift.

["**Shift increment**" means a portion of a shift.]

"**Subset of shifts**" means one or more shifts [or shift increments].

"[**Time**] **Times**" as that term is used in [section 20-1221(a) of the Fair Workweek Law regarding good faith estimate] relation to any shift or schedule, means start and end times of shifts.

(b) As used in this subchapter, the following terms have the same meanings as set forth in [section] sections [12-1201] 20-1201 and 20-1271 of the Fair Workweek Law: "bona fide economic reason," "department," "discharge," "employee," "employer," "fast food employee," "fast food employer," "fast food establishment," "just cause," "on-call shift," "probation period," "progressive discipline," "reduction in hours," "regular shift," "retail employee," "retail employer," "schedule change premium," "seniority," "utility safety employee," "utility safety employer," and "work schedule."

§ 7-602 Notice of Rights.

The notice of rights required to be posted[,] pursuant to section 20-1205 of the Fair Workweek Law shall be printed on and scaled to fill an 11x17 inch sheet of paper.

[§ 7-603 Good Faith Estimate

(a) If a fast food employer makes a long-term or indefinite change to the good faith estimate that has been provided to a fast food employee, the fast food employer shall provide an updated good faith estimate to the fast food employee as soon as possible and before the fast food employee receives the first work schedule following the change.

(b) For purposes of this section and section 20-1221 of the Fair Workweek Law, "long-term or indefinite change" includes, but is not limited to:

i. Three work weeks out of six consecutive work weeks in which the number of actual hours worked differs by twenty percent from the good faith estimate during each of the three weeks;

ii. Three work weeks out of six consecutive work weeks in which the days differ from the good faith estimate at least once per week;

iii. Three work weeks out of six consecutive work weeks in which the start and end times of at least one shift per week differs from the good faith estimate by at least one hour and the total number of hours changed for the six week period is at least six hours; or

iv. Three work weeks out of six consecutive work weeks in which the locations differ from the good faith estimate at least once per week.

(c) Each occurrence of a long-term or indefinite change for which a fast food employer fails to provide an updated good faith estimate before such employee receives the first work schedule following the change constitutes a violation of section 20-1221(a) of the Fair Workweek Law.]

[§ 7-604 Work Schedules.

(a) On or before a fast food employee's first day of work, a fast food employer must provide such fast food employee with written notice of an initial work schedule containing all regular shifts and all on-call shifts the fast food employee will work until the start of the first shift of the next subsequent work schedule. The fast food employer must also issue an updated work schedule as required in paragraph (2) of subdivision (c) of section 1221 of the Fair Workweek Law.

(b) A work schedule provided, pursuant to section 20-1252 of the Fair Workweek Law must span a period of no less than seven days.]

[§ 7-605 Posted Notice of Schedules.

A fast food or retail employer may not post or otherwise disclose to other fast food or retail employees the work schedule of a fast food or retail employee who has been granted an accommodation based on the employee's status as a survivor of domestic violence, stalking, or sexual assault, where such disclosure would conflict with such accommodation.]

[§ 7-606 Employee Consent and Minimal Changes to Shifts.

(a) Where a fast food employee's written consent is required to work additional hours, pursuant to subdivision (d) of section 20-1221 of the Fair Workweek Law or where a retail employee's written consent is required to work an additional shift with less than 72 hours' notice, pursuant to paragraph (3) of subdivision (d) of section 20-1251 of the Fair Workweek Law, such written consent must be provided in reference to a specific schedule change; general or ongoing consent is insufficient to meet such requirements.

(b) A fast food employer may change a previously scheduled regular shift by 15 minutes or less without being obligated to pay the fast food employee a schedule change premium. A fast food employer will be obligated to pay the fast food employee a schedule change premium if total changes made to one shift exceed 15 minutes.

Example: A fast food employer provides a fast food employee with a schedule that includes a shift on Tuesday from 12:00 P.M. to 5:00 P.M. At approximately 5:00 P.M. on Tuesday, the fast food employer asks the fast food employee to work a few minutes more to assist with a large tour group that just came to the fast food establishment. She agrees in writing and finishes the work at 5:12 P.M. The fast food employer need not pay her the schedule change premium.]

[§ 7-607 Notice and Offer of Additional Shifts.

(a) A fast food employer must notify a fast food employee in writing of the method by which additional shifts will be posted in accordance with section 20-1241 of the Fair Workweek Law upon commencement of a fast food employee's employment with the fast food employer and within 24 hours of any change to or adoption of a method.

(b) The fast food employer must post notice of additional shifts for three consecutive calendar days. When a fast food employer has less than three days' notice of a need to fill an additional shift, the fast food employer shall post notice of the additional shift for three consecutive calendar days as soon as practicable and not more than 24 hours after finding out about the need to fill the shift. Where there is less than three days' notice, any existing fast food employee may be offered, on a temporary basis, additional shifts that take place prior to the conclusion of the three-day notice period.

Example: On Wednesday at 9:00 A.M., a fast food employer receives a call from a fast food employee who tells her that she is quitting and she will not report for her regularly scheduled shift on Friday at 9:00 A.M. The fast food employer knew of the need to fill the shift 48 hours (or two days) in advance. The fast food employer may offer another existing fast food employee the shift on the first Friday, but must post the available shift with three days' notice to its employees and assign subsequent Friday 9:00 A.M. shifts to its existing fast food employees in accordance with its criteria in accordance with Section 20-1241 of the Fair Workweek Law and this subchapter before hiring a new employee.

(c) A fast food employer that owns 50 or more fast food establishments in New York City may offer additional shifts, in accordance with subdivisions (a), (b), (f) and (g) of section 20-1241 of the Fair Workweek Law and in compliance with subdivision (b) of this section, to: (1) fast food employees who work at all locations in New York City, or (2) only to its fast food employees who work at its fast food establishments located in the same borough as the location where the shifts will be worked.

(d) As soon as possible after a fast food employer has filled an additional shift, and using the same method compliant with section 20-1241 of the Fair Workweek Law by which the fast food employer communicated the offer of additional shifts, the fast food employer must notify all accepting fast food employees when the offered shift has been filled.]

[§ 7-608 Accepting and Awarding Additional Shifts.

(a) A fast food employee may accept a subset of additional shifts offered by a fast food employer, pursuant to section 20-1241 of the Fair Workweek Law.

(b) A fast food employer must first award shifts or shift increments to current fast food employees at the location where the shifts will be worked, regardless of the employer's other criteria prescribed, pursuant to subdivision (b) of Section 20-1241 of the Fair Workweek Law.

(c) A fast food employee may accept an entire shift offered by a fast food employer or any shift increment. A fast food employer is not required to award a fast food employee a shift increment accepted by the fast food employee when the remaining portion of the shift is three hours or less and was not accepted by another fast food employee or other fast food employees.

Example: A fast food employer notified employees of an additional shift on Saturdays from 1:00 P.M. to 9:00 P.M., an eight-hour shift. A fast food employee informs the employer that she can work from 3:00 P.M. to 9:00 P.M., a six-hour shift increment. Two hours remain in the additional shift and no other employee accepted the remaining two hours. Therefore, the employer need not award the six-hour increment to the employee.

(d) When a fast food employee accepts a shift that was offered by a fast food employer, pursuant to section 20-1241 of the Fair Workweek Law that overlaps with the fast food employee's existing shift, before hiring a new fast food employee for the offered shift, the fast food employer must award the fast food employee the offered shift in lieu of the fast food employee's scheduled shift. The fast food employer may not condition the award of the offered shift on a fast food employee's willingness to work both the non-overlapping hours of the existing shift and the offered shift.

Example: A fast food employee's work schedule includes a shift on Mondays from 7 am to 3 pm. The fast food employer notifies employees of an additional shift on Mondays from 9:00 A.M. to 5:00 P.M., a shift that overlaps with the fast food employee's existing shift. The fast food employee accepts the shift because it will allow the employee to drop the employee's child off at school in the morning without reducing the employee's overall hours. The fast food employer must award the additional shift to the fast food employee before hiring a new fast food employee for the additional shift, provided the fast food employee otherwise meets the employer's criteria for distribution of the shift.

(e) When a fast food employee accepts a shift that was offered by a fast food employer, pursuant to section 20-1241 of the Fair Workweek Law that, if awarded to and worked by the fast food employee, would entitle the fast food employee to overtime pay, the fast food employer is not required to award the fast food employee the entire shift but, before hiring a new fast food employee for the entire offered shift, must award the fast food employee the largest shift increment possible that would not trigger overtime pay, provided that the remaining portion of the shift was accepted by another fast food employee or is three hours or more.

Example: A fast food employer offers a shift on Wednesday from 12:00 A.M. to 6:00 A.M. to its employees. A fast food employee who is scheduled to work 37 hours during the week accepts the additional shift. The employer must award at least three hours to the fast food employee but is not required to award the entire six-hour shift to the employee because working more than forty hours would result in the employee becoming eligible for overtime pay.]

[§ 7-609 Employer Records] § 7-603 Recordkeeping.

(a) Fast food, [and] retail, and utility safety employers must create and maintain [and retain, in an electronically accessible format,] contemporaneous, true, and accurate records documenting compliance with the requirements of the Fair Workweek Law for a period of three years, as specified below.

1. [Such] Required records for fast food, retail, and utility safety employers. For fast food, retail, and utility safety employers, such records shall include documents that show:

i. Each employee's dates of employment and the last-known phone number, email address, and mailing address provided to the employer;

[i] ii. Actual hours worked by each employee each week, including the date, times, and location of all such hours;

[ii] iii. [An employee's written consent to any schedule changes, where required] Each work schedule, including the dates, times, and methods by which each work schedule was provided to each employee; and

[iii] iv. Each [written schedule provided to an employee] agreement among employees to trade shifts, including the shifts being traded and the date and time of such agreement.

2. [Additionally,] Required records for fast food employers. For fast food employers [must also maintain] only, such records [in accordance with this subdivision that] also must include documents that show:

i. [Good faith estimates provided to employees, pursuant to Section 20-1221(a) of the Fair Workweek Law] Each regular schedule, including the dates, times, and methods of provision to each employee; [and]

ii. [Premium pay to individual fast food employees and the dates and amounts of the payments, whether noted on an employee's wage stub or other form of written documentation] Each written request by an

employee for a change to a work schedule or for a reduction in hours on the regular schedule, including the date, time, and method of transmission to the employer.

iii. Each written consent by an employee to an addition of hours to a work schedule or to a reduction in hours on the regular schedule, including the date, time, and method of transmission to the employer;

iv. Each employee absence including but not limited to arriving late to work, not reporting to work, calling out sick or using other leave;

v. Each instance a schedule change premium was not owed to a fast food employee because the employer's operations could not begin or continue as set forth in section 20-1222(c)(1) of the Fair Workweek Law or because the employee received overtime pay for a changed shift, as set forth in section 20-1222(c)(4) of the Fair Workweek Law.

vi. Each schedule change premium and each clopening premium paid to each fast food employee and the dates and amounts of the payments;

vii. Each written request or consent by an employee to work a clopening shift, including the date, time, and method by which the employee transmitted the request or consent to the employer;

viii. Each regular or on-call shift offered to, accepted by, or awarded to current fast food employees, including the contents of each offer, and the dates, times, and methods by which such shifts were offered, accepted, and awarded.

ix. Each instance an employer was not required to offer a shift to a current fast food employee before hiring new fast food employees because the employer would have been required to pay the current fast food employee overtime pay for the additional shift.

x. All written policies on progressive discipline maintained in accordance with section 20-1272(c) of the Fair Workweek Law and the date and manner in which they were provided to fast food employees, and proof that such policies were received by each fast food employee;

xi. Records of discipline of fast food employees, including to whom the discipline relates, a description of any employment actions associated with the discipline and the dates these actions were taken (for example, application of a disciplinary point, training, increased supervision), the conduct for which the fast food employee was disciplined and any date associated with the conduct, either the fast food employee's

acknowledgement of having been informed of the discipline or a supervisor's affirmation that the fast food employee was informed of the discipline and refused to acknowledge it, and the employee's response, if any.

xii. Each Notice of Discharge provided to a fast food employee in accordance with section 20-1272(d) of the Fair Workweek law and the date and method by which the notice was provided and proof that the Notice of Discharge was received by the fast food employee.

xiii. For each discharge based on a bona fide economic reason, records sufficient to show that the discharge was in response to a reduction in volume of production, sales or profits at the fast food establishment, such as documents showing:

(1) The fast food establishment's financial condition, including tax returns, income statements, profit and loss statements, monthly gross revenue schedules, and balance sheets;

(2) The fast food establishment's compliance with government-issued capacity reduction orders or health and safety guidelines or a full or partial closure by order of a government official;

(3) The fast food employer's inability to operate due to:

(A) Threats to the fast food employees or the fast food employer's property;

(B) The failure of a public utility or the shutdown of public transportation;

(C). A fire, flood or other natural disaster;

(D). A state of emergency declared by the President of the United States, Governor of the state of New York, or Mayor of the City; or

(E) Severe weather conditions that posed a threat to employee safety.

xiv. For each fast food employee discharged based on a bona fide economic reason, their seniority relative to any other such discharged employees, and each offer of reinstatement or restoration of hours pursuant to sections 20-1241(a)(1) and 20-1272(h) of the Fair Workweek Law, including the date and the method of contact or attempted contact, the days, times and location of the shift(s) offered, and whether the offer was accepted.

3. Required records for retail and utility safety employers. For retail and utility safety employers only, such records also must include documents that show:

i. Each written request by an employee for time off including the date, time, and method by which the employee transmitted the request or consent to the employer;

ii. Each written consent by a retail or utility safety employee to work with fewer than 72 hours' notice; and

iii. Each change to a retail employee's work schedule with less than 72 hours' notice that occurred because the employer's operations could not begin or continue as set forth in section 20-1251(b)(3) of the Fair Workweek Law.

iv. Each change to a utility safety employee's work schedule with less than 72 hours' notice that occurred because the utility safety employer was responding to or could not begin or continue operations due to one of the circumstances set forth in section 20-1251(b)(4) of the Fair Workweek Law.

(b) Upon request, a fast food, [or] retail, or utility safety employer must provide a fast food, [or] retail, or utility safety employee with such employee's work schedule for any previous week worked for the past three years within 14 days of the employee's request.

(c) Upon request, a fast food, [or] retail, or utility safety employer must provide a fast food, [or] retail, or utility safety with the most current version of the complete work schedule for all employees who work at the same location within one week of the employee's request, provided that an employer may not post or otherwise disclose to other fast food employees the work schedule of [any] a fast food employee who has requested and been granted an accommodation based on the employee's status as a survivor of domestic violence, stalking, or sexual assault, where such disclosure would conflict with such accommodation.

(d) A fast food, retail, or utility safety employer may create or maintain any of the records required by this section in a scheduling application or other electronic recordkeeping system. Such employer must ensure:

1. That such records are maintained and preserved in their original format for at least three years;

2. That such records can be readily exported in non-proprietary, machine-readable data formats, as may be needed to meet the obligation to produce such records to the department;

3. That the scheduling application or other electronic recordkeeping system is not subject, in whole or in part, to any agreement or restriction that would, directly or indirectly, compromise or limit the employer's ability to comply with any obligation to produce such records to the department; and

4. That the scheduling application or other electronic recordkeeping system is not configured to overwrite or destroy any of the information required by this section, or that it is supplemented by an alternative system for retaining true and accurate copies of information and records that might otherwise be destroyed or overwritten.

(e) To electronically provide a regular schedule or an updated copy of a regular schedule under section 20-1221(a), or to electronically transmit a work schedule or a revised work schedule under sections 20-1221(c)(1) or 20-1221(c)(2) of the Fair Workweek Law, the electronic communication delivered by the employer must include the days, times, and locations of all shifts in such schedule.

(f) To provide a notice of available shifts electronically under section 20-1241(b) of the Fair Workweek Law, the electronic communication delivered by the employer to the employee must include: (i) the contents of the offer, or (ii) an alert that an offer is available and a link to where the employee can readily view the contents of the offer.

§ [7-610] 7-604 Private Right of Action.

(a) A person who filed a complaint with the [office] department, pursuant to the Fair Workweek Law and who intends to withdraw the complaint to pursue a civil action shall withdraw the complaint in writing to the [office] department prior to commencing a civil action that includes claims based on the Fair Workweek Law in accordance with paragraph (2) of subdivision (d) of section 20-1211 of the Fair Workweek Law.

(b) A person who filed a civil action that includes any claims based on the Fair Workweek Law may file a complaint with the [office] department upon a showing that the Fair Workweek Law claims in the civil action have been withdrawn or dismissed without prejudice to further action.

(c) The withdrawal of a complaint filed with the [office] department or the commencement of a civil action by a person does not preclude the [office] department from investigating the fast food, [or] retail, or utility safety employer, or commencing, prosecuting, or settling a case against the employer based on some or all of the same violations.

§ [7-611] 7-605 Waiver of Rights.

Any agreement by an employee with the intent to prospectively waive or limit in any way the employee's rights[,] pursuant to the Fair Workweek Law shall be invalid as a matter of law, except as provided in the Fair Workweek Law section 20-1253.

§ 7-606 Consent.

(a) When an employer must seek an employee's written consent as set forth in the Fair Workweek Law sections 20-1221(a) (consent for reduction of hours in regular schedule), 20-1221(d) (consent to work or be available to work for additional hours), 20-1231 (consent to work a clopening), and 20-1251(a)(3)(retail or utility safety employee's consent to work with fewer than 72 hours' notice), the employee must have a meaningful opportunity to decline, free from any interference, coercion, or risk of adverse action from the employer. The record of such employee's written consent must show that the employer obtained it in advance and must reference a specific schedule change or shift; general or ongoing consent is insufficient to meet this requirement. When the schedule change involves an unscheduled addition of time, the employee's consent must be obtained no later than 15 minutes after the employee begins to work additional time.

(b) An employer is not required to obtain or maintain a written record of an employee's refusal to give consent as set forth in sections 20-1221(a), 20-1221(d), 20-1231, and 20-1251(a)(3) of the Fair Workweek Law.

§ 7-607 De minimis schedule changes

A schedule change of 15 minutes or less is *de minimis* if the start time, end time, and total shift length do not change by more than 15 minutes. An employer making only a *de minimis* schedule change is not required to comply with the consent requirements of sections 20-1221 or 20-1231, the schedule change premium requirements of section 20-1222, or the schedule change provisions of section 20-1251(a).

PART 2: FAST FOOD

§ 7-620 Regular scheduling.

(a) The requirement for a regular schedule is intended to provide a fast food employee with long-term scheduling predictability. The requirement to provide a "regular schedule" is separate and distinct from the requirement to post and transmit "work schedules" setting forth specific work shifts on specific dates. A regular schedule should set forth a fast food employer's actual expectation of a fast food employee's long-term

schedule. An employer must update the regular schedule in writing to document any long-term or indefinite change to any recurring shift on it, and must provide a copy to the employee.

(b) A fast food employer must at all times have a regular schedule in effect for each fast food employee employed or hired on or after July 4, 2021. Each regular schedule provided by a fast food employer must include the date such regular schedule takes effect.

(c) A regular schedule provided to a fast food employee is considered to be in effect unless and until a new regular schedule is provided to the employee.

(e) A fast food employer's failure to provide a regular schedule to a fast food employee is a violation of section 20-1221(b) of the Fair Workweek Law for each week the employee works until a regular schedule is provided.

(f) If an employer's practice is to allow employees to provide the hours they are available and unavailable to work, then an employer may not add or change a recurring shift on an employee's regular schedule if it conflicts with times that the employee has previously informed the employer that they are unavailable to work, unless the employee consents in writing. If an employee changes their availability to work in writing such that they are no longer available to work all or part of a shift on their regular schedule, and an employer reduces the employee's regular schedule to accommodate the employee's new availability, that constitutes such employee's written consent to a reduction in hours on the regular schedule corresponding to that shift. In this scenario, the employer has discretion to remove the entire recurring shift, or just the conflicting portion of it, from the regular schedule. An employer may require employees to provide reasonable advance notice of a change in an employee's hours of availability.

Example 1: A fast food employer's employee handbook provides that fast food employees must provide at least 30 days' notice of a change in availability. The fast food employer gives fast food employee Martha a regular schedule that includes 27 hours per week. After two months, Martha informs her employer in writing that starting in six weeks, she will no longer be able to work one 5-hour recurring shift on Tuesday evenings due to a conflict with a college class. Martha also requests that her employer assign her a new recurring shift to keep her total hours at 27. Her employer gives her an updated regular work schedule reflecting the removal of the recurring Tuesday evening shift, with 22 total work hours, but does not add another shift to keep her total work hours at 27. Martha's baseline regular schedule is 22 hours because she requested the reduction. The employer is not required to accommodate Martha's request for a new morning recurring shift.

Example 2: In the above scenario, after one month, Martha sees a six-hour recurring shift on Saturdays on her employer's notice of available shifts. She accepts it and her employer awards it to her by placing it on her regular schedule. Martha's baseline regular schedule is now 28 hours.

Example 3: In the above scenarios, after a month, Martha's employer removes the Saturday recurring shift from Martha's regular schedule and places a new recurring shift on her regular schedule for Tuesday evenings. Martha's employer has violated the Fair Workweek Law, because Martha previously told her employer that she was unavailable to work on Tuesday evenings.

Example 4: Martha informs her employer that she will not be available to work for the next 28 days, effective immediately. Assuming Martha is not taking leave that is protected under any provision of federal, state, or local law, Martha's employer has a variety of lawful responses. For example, the employer may issue progressive discipline to Martha for changing her hours of availability with less than 30 days' notice, and/or for not working shifts on her work schedule, as long as issuing such discipline is consistent with the employer's progressive discipline policy. Or, the employer may assign her shifts on a temporary basis to other employees. Unless she is terminated in a manner consistent with the provisions of Sections 20-1271 and 20-1272 of the Fair Workweek Law, or unless her leave is protected by another category of law, Martha retains her status as a "current fast food employee" until she quits, or she has failed to work at least 8 hours in a 30 day period.

Example 5: Martha's co-worker, Fran, who currently works Mondays, Tuesdays, and Fridays, informs her employer that in five weeks she will only be available to work on Saturdays. Her employer removes all recurring shifts from Fran's regular schedule effective as of the date of her unavailability. Fran's baseline regular schedule is now zero hours. Over the next month, Fran does not accept any recurring shifts on her employer's notice of available shifts. After 30 days, Fran is considered to have quit her job, as discussed in Section 7-630. She is no longer a "current fast food employee" because she has not worked at least 8 hours in the previous 30 days.

(g) A fast food employer can change a fast food employee's regular schedule for any reason without their consent, so long as a fast food employer does not reduce the total hours in a fast food employee's regular schedule by more than 15% from the baseline regular schedule, and provided the employer provides the employee with an updated copy of the regular schedule at least 14 days before the first day on the first work schedule following the change.

Example 1: A fast food employer gives fast food employee Rebecca a regular schedule totaling 25 hours per week. After a month, Rebecca's employer gives her a new regular schedule totaling 23 hours per

week, a reduction of 8%. Rebecca did not request this reduction, and she does not want it because it reduces her income. However, Rebecca's employer was not required to obtain her consent because the reduction was less than 15%. Rebecca's baseline regular schedule remains at 25 hours because she did not request or consent to the change.

Example 2: In the above scenario, after two months, Rebecca's employer gives her a new regular schedule totaling 21 hours per week. Rebecca did not request this reduction, and she is unhappy about it. There is a violation of the Fair Workweek Law because the employer has reduced Rebecca's regular schedule by 16% (25 hours to 21 hours) without her consent. Rebecca's baseline regular schedule remains at 25 hours because she did not request or consent to the change.

Note that in either of the above examples, the outcome is the same if Rebecca's employer instructed her that she had to sign a form consenting to the reductions, and Rebecca did so. Rebecca's signature would not reflect her consent because she did not want the reductions and was not free to decline them.

Example 3: A fast food employer gives fast food employee Carlos a regular schedule totaling 24 hours a week, containing the following recurring shifts weekday mornings: Mondays and Tuesdays from 6:00 a.m. to 12:00 p.m., Wednesdays from 7:00 a.m. to 12:00 p.m., and Fridays from 5:00 a.m. to 12:00 p.m. After three months, Carlos' employer gives him a new regular schedule totaling 35 hours per week, containing the following recurring shifts in afternoons and evenings: Tuesdays and Wednesdays from 12:00 p.m. to 10:00 p.m., Fridays from 4:00 p.m. to 12:00 a.m., and Saturdays from 5:00 p.m. to 12:00 a.m. Carlos received the new regular schedule by email on Sunday, November 7. Carlos also received a work schedule by email on Sunday, November 7 for the workweek beginning Monday, November 22 that contained shifts consistent with the new regular schedule. Carlos did not request these changes, and he is unhappy about them because he preferred to work in the morning. There is no violation of the Fair Workweek Law because the employer is not required to obtain Carlos' request or consent to changes to the regular schedule that do not reduce his total work time by more than 15%, and the employer gave Carlos the updated regular schedule and the first work schedule reflecting the change 14 days before the first day on the work schedule. Carlos' baseline regular schedule is now 35 hours.

§ 7-621 Work schedules.

(a) Each shift in each written work schedule provided to a fast food employee must include a date, location, and the start time and end time.

(b) For purposes of section 20-1221(b) of the Fair Workweek Law, variation in shifts between the regular schedule and a work schedule refers to changes to the location of a shift, the day of the shift, the start or end times of a shift, the removal of a shift, or the addition of any shift not included on the regular schedule. A variation of more than 15% refers to the entire regular schedule and not to changes of more than 15% to individual shifts on the regular schedule.

(c) It shall not be considered a variation from the regular schedule for purposes of section 20-1221(b) when: (1) a fast food employer obtained an employee's written request for or written consent to a change before issuing a work schedule or revised work schedule reflecting the change, or (2) a fast food employer's operations are closed at the location of a shift on the fast food employee's regular schedule due to a scheduled holiday or one of the exigent circumstances set forth in section 20-1222(c) of the Fair Workweek Law .

(d) A fast food employer is not required to provide a work schedule to a fast food employee for any workweek that an employee is on leave for the entirety of the period covered by the work schedule.

§ 7-622 Schedule changes.

(a) For purposes of section 20-1222(a) of the Fair Workweek Law, the amount of each schedule change premium owed is based on hours elapsed between the first day on the work schedule, which begins at 12:00 a.m., and the date and time the fast food employer transmits the revised written schedule to the affected employees or re-posts the schedule, as required by section 20-1221(c)(2), whichever is later. The amount of notice to the employee is computed on an hourly basis. "7 days' notice" means at least 168 hours before the first day on the work schedule. "14 days' notice" means at least 336 hours before the first day on the work schedule. Any schedule change the fast food employer makes on or after the day before the first day on the work schedule is a change with less than 24 hours' notice. Any schedule change that is not documented on a revised written schedule provided to the affected employees or re-posted as required by section 20-1221(c)(2) is presumed to be a change made with less than 24 hours' notice.

Example 1: The first day on a work schedule is Monday, July 27. The employer posts and emails the work schedule 14 days in advance, on Sunday, July 12 at 10:00 p.m. On Sunday, July 26 at 9:00 a.m., the employer posts and emails the employee a revised schedule cancelling a shift originally scheduled for Thursday, July 30. This is a schedule change made with less than 24 hours' notice from the first day on the work schedule. The employer owes the employee a schedule change premium of $75.

Example 2: The first day on a work schedule is Monday, July 27. The employer posts and emails the work schedule 14 days in advance, on Sunday, July 12 at 10:00 p.m. The schedule states that an employee is

scheduled to work a shift on Thursday, July 30. On Monday, July 20 at 5:00 p.m., the employer posts and emails the employee a revised schedule canceling the Thursday, July 30 shift. This is a schedule change made with less than 7 days' notice from the first day on the work schedule. The employer owes the employee a schedule change premium of $45.

Example 3: The first day on a work schedule is Monday, July 27. An employee is scheduled to work a shift on Thursday, July 30. The employer posts and emails the work schedule 14 days in advance, on Sunday, July 12 at 10:00 p.m. On Monday, July 13 at 12:00 p.m., the employer posts and emails the employee a revised schedule moving the Thursday, July 30 shift to Friday, July 31, a change to which the employee has given written consent. This is a date change with no loss of hours made with less than 14 days' notice but at least 7 days' notice. The employer owes the employee a schedule change premium of $10.

Example 4: The first day on a work schedule is Monday, July 27. The employer provides the work schedule 14 days in advance, on Sunday, July 12 at 10:00 p.m. On Thursday, July 30, the employee works 30 minutes late, and gives written consent to do so. The employer does not post and or email the employee a revised schedule. This is a schedule change made with less than 24 hours' notice. The employer owes the employee a schedule change premium of $15.

Example 5: The first day on a work schedule is Monday, July 27. The employer provides the work schedule 16 days in advance, on Friday, July 10 at 5:00 p.m. On Sunday, July 12 at 10:00 p.m., the employer posts and emails employees a revised schedule on which several employees' start times and end times throughout the week are different. These are schedule changes made with at least 14 days' notice from the first day on the work schedule. The employer does not owe the employees schedule change premium for these schedule changes.

(b) A fast food employee who consents to a schedule change, including the addition of a shift awarded to an employee pursuant to Section 20-1241(d), does not waive the right to a schedule change premium owed under section 20-1222 of the Fair Workweek Law. An employee's consent to a schedule change does not give rise to any exception to the requirement to pay a schedule change premium.

(c) Where there is a discrepancy of more than 15 minutes between times a fast food employee worked and the corresponding shift on the last-updated work schedule, and there is no document showing that the employee requested the change or that another exception to schedule change premiums set forth in section 20-1222(c) of the Fair Workweek Law applied, then the fast food employer has made a change to the work schedule with less than 24 hours' notice and owes the corresponding schedule change premium.

(d) Notwithstanding subdivision c of this section, no schedule change premium is owed under section 20-1222 of the Fair Workweek Law to a fast food employee who is absent from work, including but not limited to arriving late to work, not reporting to work, leaving early without approval, calling out sick or using other leave. In this circumstance, the employee's supervisor may provide documentation of the exception to the requirements of the Fair Workweek Law; documentation created by the employee is not required.

(e) Unless an exception to schedule change premiums set forth in section 20-1222(c) of the Fair Workweek Law applies, a fast food employer must pay a schedule change premium to a fast food employee for a schedule change made with less than 14 days' advance notice when:

1. An employee continues to perform work for more than 15 minutes past the end of the scheduled shift;

2. An employer makes a change to the work schedule that the employee did not request;

3. An employer asks an employee to come to work more than 15 minutes early for a scheduled shift or to work an additional unscheduled shift;

4. An employer asks an employee to leave work more than 15 minutes early;

5. An employer asks an employee to fill in for, or trade a shift with, another employee;

6. An employer seeks volunteers to work more or less time and an employee then volunteers to work more or less time;

7. An employee picks up an open shift in a scheduling application; or

8. An employer terminates an employee's employment, for any reason.

(f) Documentation of an employee's written request for a schedule change or a shift trade must reference a specific schedule change or shift and the date the request was made. When the schedule change involves an addition of time, a schedule change premium is owed unless the documentation shows that the employee requested the additional time in writing before the employee began to work the additional time. An employee's acceptance of an offer of available shifts pursuant to Section 20-1241(c) of the Fair Workweek Law is not an employee request for a schedule change, as provided in Section 20-1241(e).

(g) When a fast food employer does not provide an employee a work schedule at least 14 days before the first day of a work week, as required by Section 20-1221(b) of the Fair Workweek Law, the employee's work schedule for that work week shall be the employee's regular schedule.

1. The employer is not required to pay a schedule premium as long as there is no variation between the shifts on the work schedule and the shifts on the employee's regular schedule.

2. If the employer subsequently posts or transmits a revised work schedule, the employer must pay the employee a schedule change premium for each schedule change, consistent with the requirements set forth in Sections 20-1222 of the Fair Workweek Law and subdivision § 7-622(a).

3. If the employer has not provided the employee a regular schedule, in violation of Section 20-1221(a) of the Fair Workweek Law, and also has not provided the employee a work schedule at least 14 days before the first day of a work week, in violation of Section 20-1221(b) of the Fair Workweek Law, then the employer must pay the employee a schedule change premium for each regular shift or on-call shift that it subsequently adds to the work schedule for that work week.

Example 1: Brandon's regular schedule provides that he works on Mondays, Tuesdays, Wednesdays, and Saturdays from 6:00 a.m. to 2:00 p.m. His employer's workweek begins on Monday, November 22. The deadline to post the work schedule is 12:00 a.m. on Monday, November 8 (14 days before November 22). The employer posts and electronically transmits the work schedule for the work week beginning November 22 on Tuesday, November 9 at 5:00 p.m. The work schedule matches the regular schedule, except Brandon is scheduled to start work at 9:00 a.m. on Tuesday. The fast food employer owes Brandon a $20 schedule change premium for the subtraction of hours.

Example 2: A fast food employer has never given Jimmy a regular schedule. The fast food employer usually posts the work schedule each week six days before the first day on the schedule, on which Jimmy is unpredictably scheduled to work anywhere from two to six shifts per week. The fast food employer owes Jimmy a schedule change premium of $15 for each shift on each of Jimmy's work schedules, in addition to other relief as set forth in the Fair Workweek Law.

(h) For any pay period in which an employee was paid schedule change premiums, the number of schedule change premiums paid and each premium amount must be included on the wage stub or other written documentation provided to the employee.

§ 7-623 Clopenings.

(a) A fast food employer's failure to pay a fast food employee the required $100 premium for working a clopening and a fast food employer's failure to obtain a fast food employee's written consent to work a clopening shall each constitute a separate violation of section 20-1231 of the Fair Workweek Law.

(b) For any pay period in which an employee earned clopening premiums, the number of premiums paid and their amounts must be separately noted on the wage stub or other written form of documentation provided to the employee for that pay period.

(c) If an employee consents to work an unscheduled clopening, the fast food employer must obtain the employee's written consent at least 11 hours before the start of the second shift of the clopening.

§ 7-624 Offering shifts to fast food employees.

(a) The provisions of section 20-1241 of the Fair Work Week Law only apply when a fast food employer is contemplating the hiring of a new employee. A fast food employer is not required to follow any of the requirements of section 20-1241 to fill any available shift unless it hires, or anticipates hiring, a new fast food employee to fill the shift.

(b) When a shift is available, the employer may award it to any current employee in any non-discriminatory way the employer chooses, without publicizing the availability of the shift to current employees and without offering it to employees who have been discharged for bona fide economic reasons, as long as the employer does not hire, or anticipate hiring, a new fast food employee to fill the shift.

(c) When a shift is available, the fast food employer may not hire a new employee to fill it, unless: (i) the employer has first made reasonable efforts to offer reinstatement or restoration of hours to any employees who have been discharged for bona fide economic reasons within the past 365 days, in accordance with section 7-629 of this chapter, and (ii) if the position has not been awarded to such a discharged employee, the employer has offered the shift to current employees in accordance with sections 1241(a)(2) and 1241(b) of the Fair Workweek Law by posting a notice of available shifts in the workplace and providing it to each current fast food employee electronically. If the fast food employer has followed these steps and no current employee has accepted the offer, then the fast food employer may hire a new employee to fill the shift.

(d) For purposes of section 20-1241(b) of the Fair Workweek Law and sections 7-603, 7-624, and 7-629 of this subchapter, a shift becomes available any time a fast food employer decides to schedule a fast food employee to work the shift. It does not matter whether the shift is a newly-created shift or one that another fast food employee was previously scheduled to work.

(e) When a fast food employer is required to give notice of an available shift, the employer must include in the notice of available shifts the following information for each shift offered:

1. Location

2. Start time

3. End time

4. Whether the shift is a temporary or recurring shift. If the shift is temporary, the notice must state the specific dates for which coverage is needed.

5. The number of employees needed to cover the shift.

6. How the employee should tell the employer that they want to pick up the shift and the deadline for doing so.

7. The criteria the employer will apply to distribute the shift, if multiple employees express interest.

8. A statement that priority will be given to employees who already work at the location where the shift is available.

(f) The fast food employer must post the notice of available shifts for at least three consecutive calendar days when it contains recurring shifts. Pursuant to section 20-1241(f) of the Fair Workweek Law, the fast food employer may post a notice of available shifts for a shift that is less than three days away for fewer than three days.

(g) Pursuant to section 20-1241(a) and (d) of the Fair Workweek Law, if the fast food employer is not required to award an available shift to a discharged employee who has accepted the shift, the fast food employer must award an available shift to a current fast food employee who has accepted the shift and already works at the location where the shift will be worked. If multiple current fast food employees from that location have accepted the shifts, the fast food employer must follow its own distribution criteria as described in the notice of available shifts to make the award. If no current fast food employee from that location has accepted the shifts, then pursuant to section 20-1241(f) of the Fair Workweek Law the employer may award the shift to any current fast food employee from another location who accepted the shift.

1. An employer must award a recurring shift by placing the recurring shift on the fast food employee's updated regular schedule and timely transmitting it to the fast food employee.

2. An employer must award a temporary shift by updating the relevant work schedule and complying with the posting and transmission requirements for updated work schedules.

3. If no current fast food employee has accepted the shifts, then the employer may hire a new fast food employee to work the shift.

(h) A fast food employer may only hire a new fast food employee or place a recurring shift on a new fast food employee's regular schedule if, after the employer's offering the same shift as a recurring shift to discharged employees in accordance with section 7-629 and to current fast food employees for at least three days in accordance with section 20-1241(b) of the Fair Workweek Law, no discharged employee or current fast food employee has accepted it.

In the following examples, no employees have been discharged for bona fide economic reasons within the past year. The employer anticipates hiring a new employee, but is required to first offer the available shifts to current employees.

Example 1:. On its notice of available shifts, a fast food employer posts and emails recurring shifts for hours from 4:00 p.m. to 12:00 a.m. on Friday, Saturday, and Sunday nights. No current fast food employee accepts any of the recurring shifts. The fast food employer hires a new fast food employee and places on his regular schedule recurring shifts from 4:00 p.m. to 12:00 a.m. on Friday, Saturday and Sunday nights. On occasion, the employer also schedules the new fast food employee to fill shifts during the day or on other evenings, to meet increased demand or fill in for absent employees, obtaining his advance written consent where required. The fast food employer has complied with the Fair Workweek Law by hiring a new employee to perform the work described in the notice.

Example 2: On its notice of available shifts, a fast food employer posts recurring shifts for hours from 4:00 p.m. to 12:00 a.m. on Friday, Saturday, and Sunday nights. No current fast food employee accepts any of the recurring shifts. The fast food employer hires a new fast food employee and places on his regular schedule recurring shifts from 9:00 a.m. to 2:00 p.m. on Fridays, Saturdays, and Sundays instead of the hours described in the notice. The employer has not complied with the Fair Workweek Law because the hours in the notice do not match the hours actually assigned to the new fast food employee and the new fast food employee is assigned hours that were not previously offered to current fast food employees. The employer has also failed to email the notice of available shifts to all current fast food employees.

Example 3: On its notice of available shifts, a fast food employer posts and emails recurring shifts for hours from 4:00 p.m. to 12:00 a.m. on Friday, Saturday, and Sunday nights. No current fast food employee accepts any of the recurring shifts. The Employer hires three new fast food employees: Amalia, Brandon, and Christina. The employer places on Amalia's regular schedule recurring shifts from 4:00 p.m. to 12:00 a.m. on Friday, Saturday and Sunday. The Employer places on Brandon's and Christina's regular schedules recurring shifts from 9:00 a.m. to 2:00 p.m. on Fridays, Saturdays, and Sundays instead of the hours described in the notice. The assignment of shifts to Brandon and Christina violates the Fair Workweek Law because they are not

performing the work described in the notice and their regular schedules contain recurring shifts that were not previously offered to current fast food employees.

Example 4: On its notice of available shifts, a fast food employer posts and emails current employees about temporary shifts available on specific dates that current fast food employees have left vacant on the schedule due to call-outs or terminations from employment. The fast food employer hires three new employees and on their first day of work provides them regular schedules containing recurring shifts that were identified as temporary in the notice of available shifts. The hiring of each new employee violates the Fair Workweek Law because their regular schedules contain recurring shifts that were not previously offered to current fast food employees.

(i) It is a distinct violation of section 20-1241 of the Fair Workweek Law as to each current fast food employee entitled to receive an offer or award of available shifts each time an employer: (i) hires a new fast food employee who then works any shift that was not offered or awarded to such current fast food employee as required by section 20-1241, (ii) gives a new employee a regular schedule containing a shift that was not first offered to such current fast food employee; or (iii) makes a temporary, non-recurring offer of a shift to such current fast food employee and then, when the temporarily offered shift is not accepted, assigns that shift on a new fast food employee's regular schedule.

(j) Employees are entitled to compensatory damages for violations of section 20-1241 of the Fair Workweek Law pursuant to section 20-1208(a)(1) (administrative remedies) and section 20-1211(a)(5) (private cause of action). A court may award compensatory damages in addition to or in lieu of the $300 per-violation damages available under section 20-1208(a)(3)(e) of the Fair Workweek Law. Compensatory damages include the wages current fast food employees did not have an opportunity to earn due to the fast food employer's failure to comply with section 20-1241 of the Fair Workweek Law.

(k) A fast food employer is not required to offer or award available shifts to a current fast food employee who is on a leave of absence, unless the current fast food employee is scheduled to return to work within 14 days of date of the offer.

(l) A fast food employer that owns 50 or more fast food establishments in New York City may choose to make offers of shifts required by subdivisions (a), (b), (f) and (g) of section 20-1241 and in compliance with subdivisions (d) and (e) of this section only to fast food employees at its fast food establishments in the same borough as the location of the available shifts.

(m) When a fast food employer is required to provide current employees notice of an available shift, the employer must first award shifts to current fast food employees of the location where the shifts will be worked.

§ 7-625 Probation Period.

The number of days in a fast food employee's probation period shall be determined based on the number of calendar days that have elapsed since the employee's first day of employment.

§ 7-626 Progressive discipline.

(a) A fast food employer must maintain a written policy on progressive discipline that meets or exceeds the requirements of the Fair Workweek Law and this subchapter and must follow such written policy, except in cases of egregious failure by the fast food employee to perform their job duties or in cases of egregious misconduct. A fast food employer's progressive discipline policy must include either the accrual of disciplinary points, strikes, or some comparable system of graduated discipline for subsequent infractions.

(b) A fast food employer must inform a fast food employee to whom progressive discipline is being applied in writing of the conduct for which the fast food employee is being disciplined and the consequence, if any, and must give the fast food employee an opportunity to respond.

(c) A fast food employer must distribute its written policy on progressive discipline to fast food employees by a method that reasonably ensures personal receipt upon commencement of employment, within 14 calendar days of the effective date of any changes to the policy, and upon request by the fast food employee.

(d) Upon request by a fast food employee, a fast food employer must provide the fast food employee with a copy of any discipline issued to the employee within the previous 365 days.

(e) If an employer issues a regular schedule or work schedule that violates a provision of the Fair Workweek Law, the fast food employer may not discipline or discharge the employee based on the employee's noncompliance with that regular schedule or work schedule.

§ 7-627 Egregious Conduct.

(a) A fast food employer may discharge a fast food employee for an egregious failure to perform their duties or for egregious misconduct without utilizing progressive discipline.

(b) An egregious failure by the employee to perform their duties means an employee's willful refusal to perform work for the majority of time on a shift.

(c) Egregious misconduct means workplace conduct that is so outrageous, dangerous, or illegal that an employer cannot reasonably expect to correct it through progressive discipline. Depending on the circumstances, examples may include violence or threats of violence, theft, sexual harassment, race discrimination, or willful destruction of property.

(d) An employee's lateness or failure to appear for a scheduled work shift is not an egregious failure to perform job duties or egregious misconduct.

§ 7-628 Notice of Discharge.

(a) The Notice of Discharge provided to a fast food employee must contain the following information:

1. The date of discharge;

2. Whether the discharge was for just cause or a bona fide economic reason;

3. The precise reason(s) the fast food employee was discharged. If the discharge was for just cause, the fast food employer must also itemize each disciplinary step taken and the dates of such discipline, unless the discharge was for egregious conduct as set forth in section 7-627;

4. If the discharge was for a bona fide economic reason, a statement informing the employee of the right to reinstatement or restoration of hours if shifts become available, the procedure the employer will follow for offering shifts to the employee, including whether the employee will be contacted by phone, text, or email; the last-known phone number and email address on file; and how the employee may inform the employer of updates; and

5. The date the Notice of Discharge is issued.

(b) The Notice of Discharge must be provided to the discharged fast food employee by email. If the discharged fast food employee does not have an operational email address, the Notice of Discharge must be mailed to the fast food employee's most up to date mailing address known to the employer using trackable mail.

(c) If a discharge is based on a bona fide economic reason, the fast food employer must request updated contact information from the fast food employee at the same time that it issues the Notice of Discharge.

§ 7-629 Bona Fide Economic Discharges.

(a) A fast food employer that has discharged a fast food employee based on a bona fide economic reason within the previous 365 days must make reasonable efforts to offer such employee reinstatement or restoration of hours before the fast food employer may offer recurring shifts to current fast food employees or hire any new fast food employees in accordance with section 7-624 of this subchapter. A fast food employer is not required to offer temporary, non-recurring shifts to discharged fast food employees, unless no current employee has accepted the shifts and the employer would otherwise hire a new employee to fill them.

(b) A fast food employer must contact eligible employees by email, text, or phone and using the most updated contact information provided by the employee, and must disclose to employees the procedures and contact information it will use in the Notice of Discharge, as discussed in Section § 7-628(a)(4). Regardless of the method used, or the number of employees contacted, employees with the most seniority have priority for reinstatement or restoration of hours. Eligible employees shall have seven days to accept an offer of reinstatement or restoration of hours made in accordance with this section.

Example: A fast food employer with four locations in New York City, Location A, Location B, Location C, and Location D, closes Location D because sales have been declining. The fast food employer discharges all ten employees at Location D. In the Notice of Discharge, the employer informs each of the ten employees that they will all be informed by email of available shifts at Locations A, B, and C for the next 12 months, and that the employee with the most seniority will have priority to receive any shift awards. Two months later, the fast food employer has several recurring shifts to fill at Location A. The fast food employer emails all employees discharged from Location D. After 7 days, two discharged employees respond requesting all of the available recurring shifts. The employer must award the shifts to the discharged employee with the most seniority.

(c) When a fast food employer is required to notify eligible discharged employees of the recurring shifts being offered, the notice must include the days, times and locations that the shifts will occur; how the fast food employee may notify the fast food employer of their acceptance of the shifts; that the fast food employee has seven days to accept any of the shifts, and, if the same shift is being offered to more than one eligible employee, that the shift will be awarded to the most senior former employee who accepts any of the shifts.

(d) A fast food employer is not required to offer reinstatement or restoration of hours to an employee discharged based on a bona fide economic reason when the employee: (1) was discharged more than 365 days prior, (2) has notified the fast food employer in writing that the employee does not want to receive offers of reinstatement or restoration of hours or, to the extent applicable, that there are specific days, times or locations that the fast food employee is not available to work, (3) has not provided updated contact information

and whose telephone number and email address on file are no longer operational, (4) has been reinstated to or had hours restored to at least the same amount of regularly-scheduled hours as they worked immediately prior to the discharge, or (5) has turned down an offer of reinstatement or restoration of hours of the same amount of regularly-scheduled hours at the same location that they worked immediately prior to the discharge.

(e) A fast food employer may not condition reinstatement or restoration of hours on a fast food employee's ability to return to work or work the additional hours less than 14 days from the date of the offer. If the fast food employer has a need to fill such shifts temporarily before the discharged fast food employee can begin work, the fast food employer may schedule a current fast food employee to work the shift.

§ 7-630 Circumstances that Are Not a Discharge

(a) When an employee quits under circumstances that do not constitute a constructive discharge, there has not been a discharge for purposes of section 20-1272 of the Fair Workweek law.

(b) When a fast food employee requests or consents to a reduction in hours in advance, it is not a discharge for purposes of section 20-1272 of the Fair Workweek Law.

PART 3: RETAIL AND UTILITY SAFETY

§ 7-650 Work Schedules

(a) A work schedule provided pursuant to section 20-1252 of the Fair Workweek Law must span a period of no less than seven days.

(b) Where a retail or utility safety employer is required to electronically transmit a work schedule to a retail or utility safety employee pursuant to subdivision (a) or (b) of section 20-1252 of the Fair Workweek Law, such work schedule must be transmitted electronically no later than 72 hours before the employee's first shift on the work schedule. Updates to the work schedule must also be transmitted electronically to the affected employees.

(c) Where a retail or utility safety employer is not required to electronically transmit a work schedule to a retail or utility safety employee pursuant to subdivision (a) or (b) of section 20-1252 of the Fair Workweek Law, a paper copy of the work schedule must be personally provided to the employee no later than 72 hours before the employee's first shift on the work schedule. Updates must also be personally provided to the affected employees.

§ 7-651 Schedule changes

(a) Where a retail or utility safety employer subtracts more than 15 minutes from a retail or utility safety employee's scheduled shift without at least 72 hours of advance notice before the start time of the scheduled shift, such change is a cancellation under section 20-1251(a)(2) of the Fair Workweek Law.

(b) For a cancellation under section 20-1251(a)(2) of the Fair Workweek Law, "relief required to make the employee or former employee whole" as provided in section 20-1208 and "relief required to make the employee whole" as provided in section 20-1211 must include the difference between the employee's scheduled work time and the employee's actual work time.

(c) Where a retail or utility safety employer adds more than 15 minutes to a retail or utility safety employee's scheduled shift without at least 72 hours of advance notice before the start time of the scheduled shift, such change constitutes "requir[ing] a retail or utility safety employee to work" under section 20-1251(a)(3) of the Fair Workweek Law.

§ 2. Subchapter G of Chapter 7 of Title 6 of the Rules of the City of New York, relating to fast food employees' voluntary contributions to not-for-profit organizations through payroll deductions, is REPEALED.

NEW YORK CITY LAW DEPARTMENT
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NEW YORK, NY 10007
212-356-4028

CERTIFICATION PURSUANT TO

CHARTER §1043(d)

RULE TITLE: Amendment to rules implementing the Fair Workweek Law

REFERENCE NUMBER: 2021 RG 057

RULEMAKING AGENCY: Consumer and Worker Protection

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

(i) is drafted so as to accomplish the purpose of the authorizing provisions of law;

(ii) is not in conflict with other applicable rules;

(iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and

(iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ MARTHA MANN ALFARO
Acting Corporation Counsel

Date: December 23, 2021

NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400

CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)

RULE TITLE: Amendment to rules implementing the Fair Workweek Law

REFERENCE NUMBER: DCWP-5

RULEMAKING AGENCY: Department of Consumer and Worker Protection

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

(i) Is understandable and written in plain language for the discrete regulated community or communities;

(ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and

(iii) No cure period/mechanism is provided because the authorizing statute for the rule does not provide a cure period. However, respondents are afforded notice and an opportunity to be heard with respect to all notices of violation.

/s/ Francisco X. Navarro — *December 24, 2021*
Mayor's Office of Operations — Date