

New York City Department of Consumer and Worker Protection

**Recommended Software Specifications to Support Fast Food Employers' Compliance with
the New York City Fair Workweek Law**

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About this Document

The Department of Consumer and Worker Protection (“DCWP”) enforces NYC’s Fair Workweek (“FWW”) Law, which provides scheduling and related protections to fast food employees in NYC.

DCWP is publishing this document to provide technical guidance to software developers to assist them in building and maintaining products that support fast food employers’ compliance with the NYC FWW Law. The intended audience includes software developers, as well as fast food employers, advocates, and legal professionals with an interest in the NYC FWW Law.

This document does not address the retail or utility safety provisions of the FWW Law.

The recommendations contained herein are voluntary, and pertain only to the NYC Fast Food configuration, discussed in R2.41. A software developer’s or employer’s failure to adhere to these recommendations is not, in and of itself, a violation of the law.

This document is not and should not be considered legal advice. The FWW Law as published in Chapter 12 of Title 20 of the New York City Administrative Code and the FWW Rules as published in Subchapter F of Chapter 7 of Title 6 of the Rules of the City of New York are the authoritative sources on questions of legal interpretation. Additional information and frequently asked questions can also be found online at DCWP’s webpage for fast food employers available at: <https://www.nyc.gov/site/dca/businesses/fairworkweek-deductions-laws-employers.page>.

This document does not provide a complete set of software specifications. Rather, its aim is to highlight key software features that can promote compliance but that are not always present in products currently on the market.

Recommendations are grouped according to the following categories:

1. Systems Integration
2. Business Rules
3. Authentication
4. Reporting
5. Compliance
6. Recordkeeping Requirements

Recommendations are numbered hierarchically according to their category and order of appearance. For example: The first recommendation in Systems Integration is R1.1, the second recommendation in Systems Integration is R1.2, the first recommendation in Business Rules is R2.1., ... etc.

Unavoidably, this document assigns descriptive labels to the user roles, entities, entity attributes, and other items relevant to these specifications. However, DCWP is agnostic as to what naming conventions developers use in their applications.

Within this document, entities are in **Bold** with uppercase first letter, references to entity instances are in *Italics* with uppercase first letter, entity attributes are in lowercase *italics*, and

attribute values are in quotes. Users are represented as instances of the entity to which they belong. For example: A *Manager* (instance) updated *fww_coverage_status* (entity attribute) to “Covered” (attribute value) for each *Employee* (instance) in the **Employees** entity (entity). Any use of a key term in ordinary type (i.e., without italics, boldface, or quotes) has its natural meaning and does not refer to software architecture.

Questions or comments may be sent to the DCWP Office of Labor Policy & Standards at olps@dcwp.nyc.gov.

Systems Integration

Background

In current practice, fast food employers typically maintain the following information systems relevant to compliance with the FWW Law:

- A scheduling system, used to offer and assign shifts to employees;
- A timekeeping system, used to track time worked by employees;
- A payroll system, used to calculate and distribute pay to employees; and
- A human resources (“HR”) management system, used to record basic information about employees and document their employment history (e.g., name, contact information, dates of employment, evaluations, and disciplinary record, etc.).

Functions relating to leave management are often also integrated into these systems.

Recommendations

R1.1 Integrating Systems Programmatically

The employer’s software should manage all dependencies between scheduling, timekeeping, payroll, and HR management functions programmatically, without the need for manual transcription or reconciliation.

Notes: This is a general recommendation, with many specific applications. Such information exchange could be achieved through a unified platform, or alternatively through use of application programming interfaces, automated reconciliation tools, structured data exports, or other integrations between independent products.

R1.2 Scheduling Vendor Responsibility for Successful Integration

The vendor of the scheduling software should ensure that any integrations with other software function together to meet the specifications recommended in this document.

Notes: This recommendation is for the scheduling software provider to play the principal integrating role in ensuring a fast food employer’s information technology facilitates compliance with the FWW Law. For example, the software provider should test that its integrations with other products function as expected and clearly communicate to client fast food employers what integrations are (or are not) supported.

IMPORTANT NOTE: Except for recommendation R1.2, the recommendations in this document apply to the employer’s software suite as a whole. General references to “the employer’s software” or “software” refer to products that handle all or any subset of the relevant scheduling, timekeeping, payroll, or HR management functions. Throughout, the focus is on ensuring the presence of appropriate compliance safeguards within the employer’s systems as a whole, without regard to the classification of different software products or the distribution of compliance features across multiple products.

Business Rules

Background

The NYC FWW Law prohibits fast food employers from taking certain actions (e.g., scheduling a clopening without an employee’s consent). It also affirmatively requires that, depending on the circumstance, fast food employers take certain actions (e.g., pay a \$100 premium if an employee works a clopening). Software can support fast food employers’ compliance by providing configurable workflows that prevent illegal actions and automate the actions employers are legally required to take.

In this section, Business Rules to promote compliance are recommended in the following categories:

- Managing employee profiles
- Managing regular schedules
- Managing work schedules
- Safeguards applicable to regular schedules and work schedules
- Managing time and attendance
- Managing requests and consents
- Processing payroll
- Discipline and discharge
- Configuration and customization

All recommendations assume that the employer’s software has the following features:

- A *Manager* or similar user role that includes a desktop or tablet experience that a store manager (or other approved staff) can use to view scheduling, time and attendance, and payroll information for a location, assign schedules, and perform other scheduling-related tasks;
- An *Employee* or similar user role that includes a mobile application that an employee can use to view their own scheduling, time and attendance, and pay information, provide consent to schedules, and request schedule changes;
- Automated communication to **Employees** by text message, email, and (for mobile applications) push notification;
- Integration with a tablet or other in-store hardware components that can be used to accept user inputs (such as time punches) and display messages (e.g., “punch accepted”); and
- Appropriate record statuses to distinguish, at a minimum, between “draft” and “published” content within the software.

Recommendations

Managing Employee Profiles

R2.1 Maintaining Unified Employee Profiles

As part of the hiring and onboarding process, the employer's software should populate an **Employees** entity that includes fields to store all employee-level information on which the Business Rules in this document depend. In particular, the software should prevent publication of a *Regular_Schedule* for an *Employee* if the *Employee*'s profile is missing information on which the Business Rules in this document depend (e.g., FWW coverage status), or if the *Employee*'s profile contains information that is inconsistent with the *Regular_Schedule* (e.g., location).

R2.2 Recording Multiple Spells of Employment

If an *Employee* is terminated and re-hired, their information should be updated within the **Employees** entity, and they should retain their same *employee_id*.

Notes: This recommendation facilitates compliance with the requirements regarding reinstatement under FWW Law Subchapter 7 ("Wrongful Discharge of Fast Food Employees"), which involves consistent tracking of individuals through breaks in employment.

R2.3 Identifying FWW Coverage

For each *Employee* in the **Employees** entity, the employer's software should:

- i. Default *fww_coverage_status* to "Covered" if *pay_type* is "Hourly."
- ii. Include mechanisms for the *Manager*, or other assigned staff, to confirm that the *Employee*'s job duties do not include customer service, cooking, food or drink preparation, delivery, security, stocking supplies or equipment, cleaning or routine maintenance if *fww_coverage_status* is "Exempt" and *pay_type* is "Hourly."
- iii. Not permit *fww_coverage_status* to be "Exempt" if *pay_type* is "Hourly" and there has been no confirmation that the *Employee*'s job duties do not include the regulated activities listed in (ii), above.

Notes: This recommendation facilitates compliance with [FWW Law § 20-1201](#), which states the law's coverage requirements. All Business Rules detailed in this document should apply whenever *fww_coverage_status* is "Covered."

Managing Regular Schedules

R2.4 Obtaining Employee Availability

The employer's software should include functionality that enables an *Employee* to set and update the days and times of the week that they are available to work, including audit trails showing when and how an employee updated their availability.

Notes: The FWW Law does not require employers to collect information on employee availability. However, if the employer does collect such information, the employer is subject to certain requirements found in [FWW Rule § 7-620\(f\)](#). This recommendation will facilitate compliance with these requirements. It will also help limit conflict between employees' schedules and their commitments outside of work and improve employee reliability.

R2.5 Offering and Awarding Recurring Shifts to Current and Former Employees

The employer's software should include a multi-step workflow for offering and awarding **Recurring Shifts to Employees**. This workflow should be a pre-requisite for including a *Recurring Shift* on a new hire's initial *Regular Schedule*.

The recommended steps that should be included in this workflow are outlined in R2.5.1– R2.5.6.

This workflow does not need to be a pre-requisite for adding a *Recurring Shift* to a current *Employee's Regular Schedule*.

Notes: This workflow facilitates compliance with FWW Law Subchapters 4 ("Access to Hours") and 7 ("Wrongful Discharge of Fast Food Employees"), and [FWW Rule § 7-624](#) ("Offering Shifts to Fast Food Employee") and [FWW Rule § 7-629](#) ("Bona Fide Economic Discharges").

An "initial regular schedule" is the first regular schedule published for a new hire in their course of employment with the *Employer*. An "updated regular schedule" is any subsequent regular schedule published for the *Employee*. An "updated regular schedule" is required whenever there is a long-term or indefinite change to the times and locations an employee is expected to work. [FWW Law § 20-1221\(a\)](#). Each initial and updated regular schedule that is published for an *Employee* should be retained as a separate object within the employer's software. A "baseline regular schedule" is the highest total hours contained in an employee's regular schedule within the previous 365 days, unless the employee consented to or requested fewer hours in a subsequently reduced regular schedule, or where the subsequently reduced regular schedule was issued for just cause or a bona fide economic reason. [FWW Rule § 7-601](#).

The phrase "adding a recurring shift to a current employee's regular schedule" means publishing an updated regular schedule for an employee that includes a recurring shift that was not present in the regular schedule it succeeded.

As used in this document, a "recurring shift" is a shift that appears on a regular schedule, whereas a "work shift" is a shift that appears on a work schedule. A recurring shift must have a start time and day of the week and an end time and day of the week, whereas a work shift must have a start time and date and an end time and date.

The term “shift,” without qualification, refers to both types of shifts. A fast food employer should use the “recurring shift” object to record the times and locations that it expects an *Employee* to work on a weekly basis, and should use the “work shift” object to record the times and locations it expects the *Employee* to work on a specific week.

R2.5.1 Publishing Notices of Available Shifts

The employer’s software should include functionality for creating and publishing an electronic *Notice_of_Available_Shifts* that includes all *Recurring_Shifts* that it wishes to include in an initial regular schedule described in R2.6.

The *Notice_of_Available_Shifts* should also include all information required by [FWW Rule § 7-624\(e\)](#).

Notes: The employer’s software may include functionality for offering work shifts, in addition to recurring shifts. However, DCWP is not recommending any particular software specifications for the offering of work shifts within this document.

R2.5.2 Transmitting Notices of Available Shifts

Upon publication of the *Notice_of_Available_Shifts*, the employer’s software should automatically transmit it to all eligible **Employees** in accordance with each *Employee*’s electronic communication preferences and make it available to all eligible **Employees** within the software for at least 72 hours after transmittal, or for at least 7 days if the eligible **Employees** include current or former **Employees** eligible for reinstatement or restoration of hours.

An *Employee* is eligible if:

- i. They are a current fast food *Employee*; or
- ii. A former fast food *Employee* terminated for bona fide economic reasons withing 365 days preceding the date the *Notice_of_Available_Shifts* is transmitted.

Notes: This recommendation facilitates compliance with the employer’s requirement to provide the *Notice_of_Available_Shifts* to employees in writing. FWW Law § 20-1241(b). This transmittal should be concurrent with the in-store posting of the notice of available shifts described in R2.5.3.

R2.5.3 Posting Notices of Available Shifts in Stores

The employer’s software should include functionality that allows the employer to automatically display each *Notice_of_Available_Shifts* on a monitor in each of the employer’s NYC locations for at least 72 hours. If the employer does not use a monitor, the employer’s software should prompt a *Manager* or other approved user to print and post each *Notice_of_Available_Shifts* in their store for at least 72 hours.

Notes: This recommendation facilitates compliance with the requirement to post notices of available shifts in stores. [FWW Law § 20-1241\(b\)](#). This posting should be concurrent with the provision of the *Notice_of_Available_Shifts* in writing described in R2.5.2.

R2.5.4 Accepting Recurring Shifts

The electronic *Notice_of_Available_Shifts* should include functionality, when viewed from within the *Employee's* interface, for the recipient to electronically accept any number of the **Recurring_Shifts** that were included in the notice.

R2.5.5 Awarding Recurring Shifts

Upon expiration of a *Notice_of_Available_Shifts*, the employer's software should require a *Manager* to award each accepted *Recurring_Shift* to one and only one of the **Employees** who accepted it, in accordance with the following order of precedence:

- i. **Employees** (including current or former **Employees**) who were discharged for bona fide economic reasons within the 365 days preceding the publication of the notice (provided they have not already had their hours fully restored or have declined prior offers of reinstatement or restoration of hours, as applicable), by order of seniority.
- ii. Current **Employees** at the same location as the *Recurring_Shift*.
- iii. Current **Employees** at NYC locations other than the location of the *Recurring_Shift*.

When the software awards a *Recurring_Shift* to a current *Employee*, it should publish an updated *Regular_Schedule* for the *Employee* as described in recommendation R2.7. If the *Employee* is a former *Employee*, this should also initiate an onboarding workflow to reinstate that *Employee* and publish a *Regular_Schedule* for them that includes the awarded *Recurring_Shift*.

Notes: This recommendation includes a reference to an onboarding workflow. However, other than R2.1, this document does not include specific recommendations for onboarding.

A discharged employee's hours are considered "fully restored" if the employee was reinstated or received a regular schedule where the number of hours was at least 85% of the number of hours in the employee's baseline regular schedule. [FWW Law § 7-629\(d\)\(5\)](#).

R2.5.6 Releasing Unawarded Recurring Shifts

If a *Recurring_Shift* published in a *Notice_of_Available_Shifts* goes unawarded in accordance with R2.5.5, the software should record the *Recurring_Shift* as available for inclusion in any initial or updated *Regular_Schedule*.

Notes: Recommendations R2.5.1 – R2.5.6 address requirements of FWW Law Subchapter 4 ("Access to Hours") and 7 ("Wrongful Discharge of Fast Food Employees") in a single workflow. This is intended to simplify engineering and ease of use by employers.

R2.6 Publishing Initial Regular Schedules

The employer's software should include functionality for creating and publishing an initial *Regular_Schedule* for an *Employee*. Such initial *Regular_Schedule* should only include the *Recurring_Shifts* that have been released in accordance with R2.5.6.

The employer's software should contain no functionality for creating and publishing an initial *Regular_Schedule* that permits inclusion of a *Recurring_Shift* that was not released in accordance with R2.5.6.

Notes: This recommendation ensures that R2.5 is completed before a new hire receives an initial regular schedule. The phrase "creating and publishing" refers to a workflow in which an instance is created in "draft" status and subsequently "published" within the software.

R2.7 Publishing Updated Regular Schedules

The employer's software should include functionality for creating and publishing an updated *Regular_Schedule* for an *Employee* (i.e., adding or removing **Recurring_Shifts** from the *Employee's* existing *Regular_Schedule*). This functionality may be applied upon award of a *Recurring_Shift* in accordance with recommendation R2.5.5. It may also be applied for adding a *Recurring_Shift* to a current *Employee's Regular_Schedule*, which does not require prior completion of R2.5.

Regardless, such functionality should include the features recommended in R2.7.1 – 2.7.4 and R2.21 – 2.24. The employer's software should contain no functionality for creating and publishing an updated *Regular_Schedule* that does not contain these features.

Notes: In natural usage, "adding a shift to an employee's regular schedule" means issuing an updated regular schedule to the employee that includes a recurring shift that was not present in the regular schedule it succeeded; equivalently, "removing a shift from an employee's regular schedule" means issuing an updated regular schedule to the employee that omits a recurring shift that was present in the regular schedule it succeeded; and "updating a regular schedule" means issuing an updated regular schedule to an employee that will succeed the employee's existing regular schedule.

R2.7.1 Automatically Updating Regular Schedules to Include Awarded Recurring Shifts

Upon award of a *Recurring_Shift* to an *Employee* in accordance with R2.5.5, the employer's software should automatically publish an updated *Regular_Schedule* for the *Employee* that includes the awarded *Recurring_Shift* but makes no other modifications to the *Regular_Schedule*.

Notes: This recommendation facilitates compliance with FWW Law Subchapters 4 ("Access to Hours") and 7 ("Wrongful Discharge of Fast Food Employees").

R2.7.2 Ensuring Updates to Regular Schedules Do Not Result in Unauthorized Reductions

Prior to publishing an updated *Regular_Schedule*, the employer's software should check if the number of hours in the updated *Regular_Schedule* is less than 85% of the number of hours contained in the *Employee's* baseline regular schedule. If so, the software should only permit the *Regular_Schedule* to be published if:

- i. The *Employee* is eligible for a reduction in hours discharge for just cause or bona fide economic reasons; or

- ii. The *Employee* has consented to or requested the reduction in the *Regular_Schedule*;
or
- iii. The *Employee* is within their probation period of not more than 30 days.

Notes: This recommendation facilitates compliance with [FWW Law § 20-1221\(a\)](#) and [FWW Law § 20-1272\(a\)](#). “Baseline regular schedule” is defined in R2.5.

R2.7.3 Requiring Reference to Current Regular Schedules

All updates to **Regular_Schedules** should be designed around adding or removing **Recurring_Shifts** to/from **Employees’** current **Regular_Schedules**, and there should be no functionality that would permit the creation and publication of an updated *Regular_Schedule* “from scratch” without reference to the *Employee’s* current *Regular_Schedule*.

R2.7.4 Respecting Employee Availability

The employer’s software should not permit publication of an updated *Regular_Schedule* if it conflicts with the availability indicated by the *Employee*, unless the *Employee* has consented.

If an *Employee* submits a change in availability such that the *Employee* is no longer available to work all or part of a *Recurring_Shift* in their *Regular_Schedule*, the software should treat this as a consent to a reduction in hours on an updated *Regular_Schedule* corresponding to that shift. In this scenario, the employer has discretion to remove the *Recurring_Shift* from the *Regular_Schedule*.

Notes: This recommendation facilitates compliance with [FWW Rule § 7-620\(f\)\(2\)-\(3\)](#). See R2.4 concerning functionality for obtaining employee availability.

R2.8 Retiring Recurring Shifts

The employer’s software should be designed such that if a *Recurring_Shift* is included in a *Notice_of_Available_Shifts* in accordance with R2.5.1, and is not accepted by a current or eligible former *Employee* in accordance with R2.5.4, it must be added to an initial *Regular_Schedule* within 60 days. Otherwise, the *Recurring_Shift* should cease to be available for inclusion in any initial *Regular_Schedule* once 60 days have elapsed since the *Notice_of_Available_Shifts* was published.

Notes: This recommendation provides employers sufficient time to assign a recurring shift that was included in a notice of available shifts to a new hire, and clarifies that if an employer does not assign the recurring shift to a new hire within 60 days, it must repeat R2.5 with a replacement recurring shift if it wishes to assign the recurring shift to a new hire.

R2.9 Ensuring Adequate Notice of Regular Schedule Updates

The software should not permit publication of an updated *Regular_Schedule* for an *Employee* with an effective date less than 14 days in advance of the publication date, unless the *Employee* has requested that the updated *Regular_Schedule* take effect sooner.

Notes: This recommendation facilitates compliance with [FWW Law § 20-1221\(b\)](#), which requires that employers provide updated regular schedules 14 days in advance.

R2.10 Transmitting Regular Schedules

When a *Regular_Schedule* is published within the employer's software, the software should automatically transmit the *Regular_Schedule* to the *Employee* in accordance with the *Employee's* electronic communication preferences and update the *Employee's* view of their *Regular_Schedule* within the *Employee's* user interface.

Notes: This recommendation facilitates compliance with the requirement to provide a written copy of a regular schedule. [FWW Law § 20-1221\(a\)](#).

Managing Work Schedules

R2.11 Creating Draft Work Schedules from Regular Schedules

The employer's software should automatically create a draft *Work_Schedule* for every workweek that the *Employee's Regular_Schedule* is in effect. This draft *Work_Schedule* should match the *Employee's Regular_Schedule*.

Notes: This recommendation helps facilitate compliance with the requirement that work schedules adhere closely to regular schedules. [FWW Law § 20-1221\(b\)](#).

R2.12 Publishing Initial Work Schedules

The employer's software may include functionality for a *Manager* or automated process to publish an initial *Work_Schedule* for an *Employee* more than 14 days in advance of the workweek. However, if no initial *Work_Schedule* has been published 14 days in advance of the workweek, the employer's software should automatically change the initial *Work_Schedule's* status from "draft" to "published." In either case, the employer's software should not permit publication of the initial *Work_Schedule* unless it satisfies all applicable compliance checks described in this document.

If the draft *Work_Schedule* does not satisfy all compliance checks by 14 days in advance of the workweek, the software should automatically publish a *Work_Schedule* for the *Employee* for the workweek that matches the *Regular_Schedule*, incorporating any approved leave.

Notes: This recommendation helps facilitate compliance with the requirements to provide work schedules 14 days in advance of the workweek and ensure that work schedules adhere closely to regular schedules. [FWW Law § 20-1221\(a\)-\(b\)](#).

As used in this document, the phrase "14 days in advance of the workweek" means 336 hours before 12:00am on the first day of the workweek. [FWW Rule § 7-621\(a\)](#).

An "initial work schedule" is the first work schedule published for an employee for a particular workweek. If the employer then published a revised work schedule for that employee for that workweek, it is an "updated work schedule."

R2.13 Publishing Updated Work Schedules

The employer's software should include functionality for a *Manager* or automated process to create updated **Work_Schedules** first in "draft" *status* and then to publish them.

The employer's software should warn against publication of an updated *Work_Schedule* unless it satisfies all applicable compliance checks described in this document and retain a record of such warnings.

Notes: This recommendation helps facilitate compliance with the requirement to update work schedules. [FWW Law § 20-1221\(c\)\(2\)](#).

R2.14 Ensuring the Existence of a Regular Schedule Before Publishing a Work Schedule

The employer's software should not permit publication of an initial or updated *Work_Schedule* for an employee for any workweek for which the *Employee* does not have a *Regular_Schedule* in effect.

Notes: This recommendation helps facilitate compliance with the requirement to maintain regular schedules. [FWW Law § 20-1221\(a\)](#).

R2.15 Limiting Variance Between Work Schedules and Regular Schedules

The employer's software should not permit publication of a *Work_Schedule* that has a variance of more than 15% from the *Employee's Regular_Schedule*, unless the following conditions are met:

- i. The *Employee* is eligible to be discharged for just cause or a bona fide economic reason; or
- ii. All differences between the *Regular_Schedule* and the *Work_Schedule* were consented to or requested by the *Employee*.

To calculate the percent variance between a *Work_Schedule* and a *Regular_Schedule*, the software should adhere to the guidance provided in the "Fair Workweek Schedule Difference Calculator," available here (<https://www.nyc.gov/assets/dca/downloads/xlsx/EmployerTools-FairWorkweek-FastFood-ScheduleDifferenceCalculator.xlsx>).

Notes: This recommendation helps facilitate compliance with the requirement that work schedules adhere closely to regular schedules. [FWW Law § 20-1221\(b\)](#).

R2.16 Ensuring Updated Work Schedules Do Not Have Unauthorized Additions of Hours

The employer's software should not permit publication of an updated *Work_Schedule* less than 14 days in advance of the workweek that includes an addition of hours, unless the *Employee* has consented.

Notes: This recommendation facilitates compliance with [FWW Law § 20-1221\(d\)](#), which requires consent for additions of hours to employee work schedules. An addition of hours occurs if the update results in the addition of any work shift or lengthening of any work shift by more than 15 minutes.

R2.17 Recording Exceptions to Schedule Change Premium Pay

The employer's software should include functionality for a *Manager*, or other authorized user, to record the exceptions to premium pay set forth in [FWW Law § 20-1222\(c\)\(1\)](#) (emergencies). Exceptions under [FWW Law § 20-1222\(c\)\(2\)-\(4\)](#) (employee requests, trades, overtime) should be identified automatically by the software. The employer's software should record which exception applies.

The software should not identify an exception to premium pay for a shift awarded to an employee per R2.5.5 ("Awarding Recurring Shifts"). FWW Rule § 7-622(b).

The software should not record an exception to premium pay for the circumstances in FWW Rule § 7-622(e)-(f), which identifies common scenarios in which premium is required.

Notes: This recommendation facilitates compliance with [FWW Law § 20-1222\(c\)](#), which provides exceptions to the employer's obligation to pay premiums to employees for schedule changes.

R2.18 Ensuring Updated Work Schedules Do Not Have Unintended Schedule Changes

If a draft updated *Work_Schedule* would, if published, create a schedule change requiring premium pay, the employer's software should alert the *Manager* before publishing the updated *Work_Schedule*.

Notes: This recommendation helps prevent managers from unintentionally causing schedule changes, which reduce schedule predictability for employees. Premium pay requirements are specified in [FWW Law § 20-1222](#). A "schedule change" is an update to a work schedule that adds, removes, or modifies a work shift. A published, updated work schedule may include multiple schedule changes (e.g., one for each work shift added, removed, or modified). A schedule change can result from discrepancies between scheduled time and worked time, as indicated in R5.7.

R2.19 Transmitting Work Schedules

Upon a *Work_Schedule*'s publication, the software should automatically transmit the *Work_Schedule* to the *Employee* electronically and update the *Employee's* view of their *Work_Schedule* within the *Employee's* user interface.

If the employer publishes an updated *Work_Schedule* for an *Employee* fewer than 14 days before the first day of the first *Work_Schedule*, the *Employee's* interface should note schedule changes that require premium pay, and note schedule changes that do not require premium pay due to an exception under [FWW Law § 20-1222\(c\)](#).

Notes: This recommendation facilitates compliance with [FWW Law § 20-1221\(c\)](#), which requires transmittal of work schedules, and [FWW Law § 20-1222\(c\)](#), which requires premium pay for schedule changes.

R2.20 Posting Work Schedules in Stores

At each location, the employer's software should display on a monitor *Work_Schedules* at the location for the current workweek and subsequent two workweeks. If the employer does not use a monitor, the employer's software should prompt a *Manager* or other approved user to print and post an initial *Work_Schedule* at least 14 days before the first day of the first work schedule, and to print and post any updated *Work_Schedule*.

Notes: This recommendation facilitates compliance with the requirement to post work schedules in stores. [FWW Law § 20-1221\(c\)](#).

Safeguards Applicable to Regular Schedules and Work Schedules

R2.21 Previewing Compliance Issues on Draft Schedules

If a draft *Work_Schedule* or *Regular_Schedule*, when published, would violate any of the compliance checks recommended in these specifications, or would require consent prior to publication, this should be indicated within the employer's software and visible to the *Manager*.

Notes: This can improve ease of use by managers, allowing them to identify problems prior to attempting to publish a work schedule or regular schedule that fails an automatic compliance check.

R2.22 Preventing Unintended Gaps of Fewer than Two Hours Between Shifts

The employer's software should not permit publication of a *Regular_Schedule* or *Work_Schedule* if it includes any gap of fewer than two hours between shifts.

R2.23 Ensuring Schedules Do Not Have Unauthorized Clopenings

The employer's software should not permit publication of a *Regular_Schedule* that includes a clopening, or a *Work_Schedule* that includes a clopening, unless the *Employee* has consented.

Notes: A "clopening" occurs when an employee works two shifts with fewer than 11 hours between the end of the first shift and the start of the second shift, where the two shifts occur on separate calendar days. This recommendation helps facilitate compliance with the requirement to obtain consent before scheduling an employee to work a clopening. [FWW Law § 20-1231](#).

R2.24 Ensuring Work Schedules Do Not Have Unintended Clopenings

If a draft *Regular_Schedule* or *Work_Schedule* includes a clopening, the employer's software should alert a *Manager* to the presence of the clopening.

Notes: This recommendation helps provide employees with more predictable schedules and reduces the cost and compliance risk to employers associated with clopenings. [FWW Law § 20-1231](#).

Managing Time and Attendance

R2.25 Identifying Schedule and Timekeeping Discrepancies

Under the FWW Law and Rules, a discrepancy of more than 15 minutes between a *Work_Shift* on a *Work_Schedule* and an *Employee* time punch is a schedule change which potentially requires premium pay and/or a record showing that the *Employee* consented to or requested the change. The employer's software should identify all such discrepancies, credit the appropriate premium to the *Employee* if none of the exceptions in [FWW Law § 20-1222\(c\)](#) are recorded, and record the *Employee's* consent or request.

Notes: This recommendation facilitates compliance with [FWW Law § 20-1222](#) and [FWW Rule § 7-622\(c\)](#). See R2.17 for recording of exceptions.

R2.26 Documenting Early Clock-ins and Unscheduled Work Shifts

If an *Employee* attempts to clock in more than 15 minutes before their scheduled *Work_Shift*, or on a day when they are not scheduled to work, the software should prompt the *Employee* to select from a structured list of options indicating whether they were asked to come in early or on that day (as applicable), and if so, whether they consented to work the unscheduled time. The software should warn the *Manager* if the *Employee* clocks in without entering a response. If the *Employee* enters a response that they were asked to come in, this indicates an employer-initiated schedule change, and the software should credit schedule change premium pay to the *Employee's* account. If the *Employee* enters a response that they were not asked to come in, this indicates a premium pay exception under [FWW Law § 20-1222\(c\)\(2\)-\(3\)](#), and the software should not credit schedule change premium pay to the *Employee's* account. If the *Employee* enters a response that they consented, the software should record this as consent for a schedule change (and, if applicable, a clopening).

Notes: This recommendation facilitates compliance with requirements to obtain employee consent for additions of hours and clopenings and for payment of premiums on schedule changes. [FWW Law §§ 20-1221\(d\), 20-1222, 20-1231](#); [FWW Rule § 7-622\(c\)](#).

R2.27 Documenting Reasons for Late Clock-Ins and Absences

If an *Employee* clocks in later than scheduled, the software should prompt them to answer whether they requested or initiated the schedule change, or whether the employer requested or initiated the change. If the *Employee* enters a response that they requested the schedule change or arrived late of their own accord, the software should treat this as a valid exception under [FWW Law § 20-1222\(c\)\(2\)](#) and not credit a schedule change premium to the *Employee*.

If the *Employee* enters a response that the schedule change was prompted by the employer, the software should credit the appropriate schedule change premium to the *Employee*. For a late clock-in, the prompt should occur no later than when the *Employee* attempts to clock-in.

If an *Employee* does not clock in on a day they were scheduled, the prompt should occur at the *Employee*'s next attempt to clock-in. The software should prompt an *Employee* to answer whether they requested or initiated the schedule change, or whether the employer requested or initiated the change. If the *Employee* enters a response that they requested the day off, the software should treat this as a valid exception under [FWW Law § 20-1222\(c\)\(2\)](#) and not credit a schedule change premium to the *Employee*. If the *Employee* enters a response that the employer instructed them not to come to work, the software should credit the appropriate schedule change premium to the *Employee*. The software should require a response for the *Employee* to clock-in successfully.

Absences from work recorded within the software should generate an automatic update to the *Work Schedule*; in these situations the software will not identify a late clock-in or absence.

Notes: This recommendation facilitates compliance with requirement to pay premiums on schedule changes when there is no valid exception. [FWW Law § 20-1222](#); [FWW Rule § 7-622\(c\)](#).

R2.28 Facilitating Compliant Work Past the End of a Work Shift

When clocking in, the employer's software should prompt the *Employee* to state whether they are willing to stay past the scheduled end of their *Work_Shift*, should the employer desire extra coverage or closing assistance. The message should remind the *Employee* that, by law, they are permitted to leave when their *Work_Shift* is scheduled to end. The software should record the time the *Employee* consented to the additional hours (or clopening, if applicable), and provide functionality for the *Manager* (or an automated process) to then select **Employees** to stay late from among those who consented.

If an *Employee* works past the end of their scheduled *Work_Shift*, this constitutes a schedule change for which premium is owed, unless an exception under [FWW Law § 20-1222\(c\)\(1\) or \(4\)](#) applies. This may also result in a clopening if the next *Work_Shift* on the *Employee*'s *Work_Schedule* is fewer than 11 hours after the clock-out, for which premium is also owed. The software should not treat an *Employee*'s response to the software's prompt for consent to stay late as an *Employee* request or swap under [FWW Law § 20-1222\(c\)\(2\)-\(3\)](#).

The software may also be designed to incorporate informational prompts to *Managers*, or other controls, so that employers do not select an *Employee* at risk for working a clopening to stay late when other *Employees* are available.

Notes: This recommendation facilitates compliance with the requirements to obtain consent for additions of hours and to pay premium for schedule changes and clopenings. [FWW Law §§ 20-1221\(d\), 20-1222, 20-1231](#); [FWW Rule § 7-622\(c\)](#).

R2.29 Preventing Unintended or Unauthorized Work Past the End of a Work Shift

Unless the *Employee* has been selected to stay late in accordance with R2.28, towards the end of a *Work_Shift* the software should provide electronic notifications to the *Employee* and the *Manager* reminding them of the scheduled end time and to clock out. If the *Employee* has not clocked-out by the end of the *Work_Shift*, the software should send additional reminders at appropriate intervals following the scheduled end of the *Work_Shift*.

Notes: This recommendation facilitates compliance with the requirement to obtain consent for additions of hours and to pay premium for schedule changes and clopenings. [FWW Law §§ 20-1221\(d\), 20-1222, 20-1231](#); [FWW Rule § 7-622\(c\)](#).

R2.30 Preventing Unintended or Unauthorized Early Clock Outs

If an *Employee* attempts to clock out before the end of a *Work_Shift*, the software should warn them that they are leaving before the end of their *Work_Shift*, and prompt them to confirm before completing the clock out. The software should prompt them to select from a structured list of options indicating whether they requested or initiated the schedule change, or whether the employer requested or initiated the change. If the *Employee* enters a response that they requested the schedule change, the software should treat this as a valid exception under [FWW Law § 20-1222\(c\)\(2\)](#) and not credit a schedule change premium to the *Employee*. If the *Employee* enters a response that the employer prompted the schedule change, the software should credit the appropriate schedule change premium to the *Employee*. The software should require a response for the *Employee* to clock-out successfully.

Notes: This recommendation facilitates compliance with the requirement to pay premium for schedule changes. [FWW Law § 20-1222](#); [FWW Rule § 7-622\(c\)](#).

R2.31 Correcting Time Records

The employer's software should include workflows for *Managers* to review and, if necessary, correct *Employee* time punches prior to payroll processing for the workweek. The workflows should also include review and correction, if necessary, of the additional *Employee* inputs described in R2.25 - R2.30. If the *Manager* enters a correction, the software should prompt the *Employee* to confirm or dispute the correction. If the *Employee* confirms the correction, the record should update in the software for use in payroll processing, including the software's identification of any premiums owed. If the *Employee* disputes the correction, the software should automatically elevate the correction to an appropriate user for review. The software should include functionality for the reviewer to confirm or reject the correction. If any corrections to time records result in new discrepancies between the *Work_Schedule* and the record of time worked, or create a clopening, the software should provide any prompts necessary to confirm if the *Employee* requested or consented to the schedule change or clopening.

Notes: This recommendation facilitates the requirement to obtain consent for additions of hours and clopenings and to pay premium for schedule changes and clopenings. [FWW Law §§ 20-1221\(d\), 20-1222, 20-1231](#); [FWW Rule § 7-622\(c\)](#).

*Managing Requests and Consents*R2.32 Facilitating Employee Requests

The employer's software should include functionality for an *Employee* to request changes to their *Regular_Schedule* and *Work_Schedule*, including any shift within them. The software should also include functionality for a *Manager* or other approved user to review, approve, or deny such requests, and automatically notify the *Employee* of the *Manager's* response. Upon approval of an *Employee's* request, the software should automatically implement the change.

The employer's software should similarly include functionality for *Employees* to request and consent to shift trades. This should include functionality for a *Manager* or other approved user to review, approve, or deny such requests, and automatically notify the *Employees* of the *Manager's* response. Upon approval of an *Employee's* request, the software should automatically implement the change on each *Employee's Work_Schedule*.

The employer's software should include functionality for a *Manager* to submit requests on behalf of an *Employee* who cannot access the software, such as in situations of illness, injury, or technology failure. The software should also include functionality for a *Manager* to upload documentary evidence of the employee's request (e.g. a text message or call notes) and to automatically notify the *Employee* of the entry of the record and of the *Manager's* response. Upon approval of an *Employee's* request, the software should automatically implement the change.

Notes: This recommendation facilitates compliance with [FWW Law § 20-1222\(c\)](#), which provides exceptions to the employer's obligation to pay premiums to employees for schedule changes, and [FWW Law § 20-1221](#), which prohibits certain reductions to regular schedules and variances between regular schedules and work schedules unless an employee consented to or requested such change.

R2.33 Obtaining Employee Consent

The employer's software should include functionality to obtain consent from an *Employee* for any change to a *Regular_Schedule* or *Work_Schedule* that is required under the FWW Law, and for clopenings. The software's communication to the *Employee* seeking the *Employee's* consent should conspicuously alert the *Employee* to what aspects of the proposed schedule require the *Employee's* consent, the *Employee's* right to decline, and what their schedule will be if they do decline. The software should automatically implement the schedule based on the *Employee's* consent or rejection.

An *Employee's* failure to respond should not be treated by the software as consent.

The software should be designed so that workflows to obtain *Employee* consent occur well in advance of any relevant scheduling deadlines. The software should not permit publication of a *Regular_Schedule* or *Work_Schedule* if any required consent is still pending.

Notes: Special considerations for last-minute changes to *Work_Schedules* and discrepancies between scheduled work shifts and time punches are addressed in recommendations R2.26 – R2.30.

R2.34 Facilitating Electronic Communications

The employer's software should provide for electronic communication to *Employees* by email, text message, in-app notification, and push notification.

The software should include functionality for an *Employee* to update their contact information.

Notes: This recommendation facilitates compliance with requirements to transmit regular schedules, work schedules, notices of available shifts, to obtain consent for additions of hours and clopenings, and to transmit notices of discharge. This recommendation also extends to former employees eligible for reinstatement, so that they may receive any notice of available shifts they may be entitled to receive in accordance with R2.5.2.

Processing Payroll

R2.35 Automating Payment of Schedule Change and Clopening Premiums

The software should capture all *Work_Schedule*, time and attendance, request, and exception information necessary to determine if premium is owed. The software should calculate and flag all required premiums for a *Manager* or other staff member to review and approve.

The software should be designed so that a premium for a schedule change is paid to the *Employee* based on the pay cycle in which the updated *Work_Schedule* was published; premium for a discrepancy between scheduled and worked time (see R2.25) is paid to the *Employee* based on the pay cycle in which the discrepancy between the *Work_Schedule* and the time worked occurred; and premium for a clopening is paid to the *Employee* based on the pay cycle in which the second work shift of the clopening was scheduled or occurred.

Notes: This recommendation facilitates compliance with requirements to pay premiums for schedule changes and clopenings. [FWW Law §§ 20-1222, 20-1231](#).

R2.36 Documenting Premium Pay on Pay Statements

The software should ensure that each premium is itemized on the pay statement, including the premium type, the date to which the premium relates, and amount.

Notes: This recommendation facilitates compliance with requirements to pay premiums for schedule changes and clopenings. [FWW Law §§ 20-1222, 20-1231](#).

*Discipline and Discharge***R2.37 Documenting Progressive Discipline or Egregious Misconduct**

The employer's software should include functionality to document progressive discipline or egregious misconduct. This may include document uploads, as well as manual entries and selections by *Managers* or other approved users.

Notes: This recommendation facilitates compliance with FWW Law Subchapter 7 ("Wrongful Discharge of Fast Food Employees").

R2.38 Documenting the Reason for Termination

The employer's software should not permit an *Employee's* employment status to update to "terminated" without the *Manager*, or other approved user, entering whether the termination was for just cause, for a bona fide economic reason, was a voluntary quit by the employee, or a termination during the probationary period (which need not be for just cause or bona fide economic reasons). If the termination was for just cause, the software should also include functionality for recording if the termination was for egregious misconduct.

The software should prompt the manager to confirm that there are at least two records of progressive discipline issued within the previous twelve months before entering that a worker was terminated for just cause without egregious misconduct.

The software should not permit the recording of a probationary termination if more than 30 days separate the hire date and termination date.

The software should not permit the termination of an *Employee* for a bona fide economic reason unless the *Employee* has the least seniority.

Notes: This recommendation facilitates compliance with FWW Law Subchapter 7 ("Wrongful Discharge of Fast Food Employees").

R2.39 Pre-Approving Reductions of Hours Discharges

The employer's software should include functionality for a *Manager*, or other approved user, to record an *Employee* as approved for a reduction of hours discharge for just cause. The software should prompt the manager to confirm that there are at least two records of progressive discipline issued within the previous twelve months before recording that the *Employee* is approved for a reduction in hours discharge for just cause. The approval should expire once an updated *Regular Schedule* that constitutes a reduction of hours is published, or after 30 days have elapsed, whichever occurs first.

For a reduction in hours for a bona fide economic reason, the software should automatically select the *Employees* with the least seniority.

Notes: This recommendation facilitates compliance with FWW Law Subchapter 7 ("Wrongful Discharge of Fast Food Employees").

R2.40 Transmitting Notices of Discharge

The employer's software should automatically transmit a *Notice_of_Discharge* to an *Employee* when a *Regular_Schedule* that constitutes a reduction in hours discharge is published or when their employment status is updated to "terminated for just cause" or "terminated for bona fide economic reasons." The notice should include all information required by [FWW Rule § 7-628](#). The notice should be communicated by email in addition to any other channels permitted by the *Employee's* electronic communication preference settings.

Notes: This recommendation facilitates compliance with FWW Law Subchapter 7 ("Wrongful Discharge of Fast Food Employees").

Configuration and Customization

R2.41 Applying a Comprehensive FWW Configuration

The employer's software should include a single, comprehensive configuration that when applied prevents clients from implementing customizations that violate the software's specifications for fast food employers in NYC.

Notes: For example, a scheduling product may include the ability to assign an employee to work a clopening without consent. However, if the software's NYC Fast Food configuration is applied for a location, this functionality should not be available to the client for that location.

R2.42 Preventing User Error in Applying the NYC Fast Food Configuration

The employer's software should include safeguards to prevent clients from unintentionally or otherwise inappropriately operating the software for NYC locations without applying the NYC Fast Food configuration.

Notes: This recommendation does not require the software to detect the employer's coverage under the FWW Law or force application of the comprehensive FWW configuration. The software may instead provide informational warnings to administrators, restrict privileges regarding which users are permitted to change this setting, or require approval by a second user.

Authentication

Background

The FWW Law requires that fast food employers maintain accurate records for at least 3 years. [FWW Rule § 7-603\(a\)](#). Appropriate information technology can help ensure the authenticity of required records.

Recommendations

R3.1 Authenticating Users

The employer's software should use appropriate security authentication methods, together with appropriate permission and access controls, to verify the user responsible for any input.

R3.2 Preventing Inputs by Proxy

Except as in R2.32, the employer's software should not contain any functionality that permits a *Manager* to enter consents or requests on behalf of an *Employee*.

R3.3 Preventing Automatic Adjustment to Time Entries

The employer's software should not automatically create or change any time entries.

Notes: For example, the software should not perform automatic clock-outs at the end of work shifts.

R3.4 Notifying Employees of Manager Corrections

The employer's software should not allow a *Manager's* edit to an *Employee's* time record to take effect without the *Employee* being clearly and conspicuously notified of the edit and affording the *Employee* an opportunity to confirm its accuracy.

R3.5 Documenting User Activity

The employer's software should capture and retain the date, time, and user responsible for all inputs relevant to any of the recommended specifications that the vendor is adopting.

Reporting

Background

Fast food employers are required to maintain specific records documenting their compliance with the Fair Workweek Law for a period of three years. [FWW Rule § 7-603](#). If DCWP opens an investigation into an employer's compliance with the Fair Workweek Law, it will require that these records be provided in a suitable electronic format within 14 days. Failure to cooperate with an investigation, or provide all information requested, constitutes a violation of the Fair Workweek Law. This subjects an employer to fines in addition to civil penalties and relief for other potential violations of the Law. Further, failure to produce documents may result in a rebuttable presumption against the employer in subsequent litigation. [FWW Law § 20-1206](#).

Software that includes appropriate reporting tools can support fast food employers' compliance with these recordkeeping requirements and enable fast food employers to respond efficiently to investigative requests for documents and data.

Recommendations

R4.1 Data Dictionaries

The employer's software should include exportable data dictionaries with descriptions of the fields in any report generated by the software and the values contained within those fields. The data dictionary should explain all codes and clarify all units and time zones used in the report.

Notes: This will facilitate ease of interpretation for the employer and DCWP in the course of investigation.

R4.2 Record Selection

The employer's software should have functionality that allows the employer to select relevant subsets of records to produce in a report, including selection by location, date range, and whether or not an *Employee* is covered under or exempt from the FWW Law.

The functionality should include the ability to select and export records based on their current state as well as to export record histories going back at least three years.

Notes: This will facilitate employer's compliance with document requests in the course of an investigation.

R4.3 Pre-Programmed Reports

The employer's software should include pre-programmed reports that cover the FWW Law's recordkeeping requirements, as summarized in the Recordkeeping Requirements section of this document.

Compliance

Background

Fast food employers must develop and maintain systems to ensure ongoing compliance with the Fair Workweek Law. Automated auditing tools significantly reduce the risk of violations and help identify and correct potential compliance issues before they become systemic problems. The following recommended audits are designed to help fast food employers, and their software vendors develop, test, and implement compliance monitoring systems.

Recommendations

Advance Scheduling Audits

To facilitate compliance with the Advance Scheduling provisions of [FWW Law § 20-1221](#) and [FWW Rules §§ 7-620](#) and [7-621](#), the employer's software should include automated tools to perform the following audits.

R5.1 Regular Schedules

This audit should compare records of regular schedules, employee details, employee hire dates, and hours worked to check that the following conditions were met:

- i. Each employee received a regular schedule; AND
- ii. The regular schedule contained all required elements, including total regular weekly hours and the days, times, and locations of those hours; AND
- iii. The regular schedule was provided electronically to the employee; AND
- iv. The date and time that the regular schedule was provided to the employee was on or before the employee's first day of work; AND
- v. Either:
 - a. The regular schedule was the first one the employee received; OR
 - b. The date and time of transmission to the employee was at least 14 days (336 hours) before 12:00am on the day the regular schedule took effect.

Any regular schedule provided to an employee where the above conditions were not met, or each instance an employee did not receive a regular schedule, should be flagged by the software as a compliance failure under [FWW Law § 20-1221\(a\)-\(b\)](#). The employer should review these flags and determine underlying causes of the compliance failure(s) to ensure they do not continue.

R5.2 Work Schedules

This audit should compare records of work schedules and employee hire dates to check that the following conditions were met:

- i. The work schedule contained all scheduled work shifts within at least a seven-day workweek (i.e. no partial schedules); AND
- ii. The work schedule was provided electronically; AND
- iii. Either:
 - a. The work schedule was transmitted to the employee at least 14 days (336 hours) before 12:00am on the first day of the first work schedule; OR
 - b. The employee was hired less than 14 days (336 hours) before 12:00am on the first day of the work schedule.

For any work schedule provided to an employee where the above conditions were not met, that record should be flagged by the software as a compliance failure under [FWW Law § 20-1221\(b\) and \(c\)](#). The employer should review these flagged records and determine underlying causes of the compliance failure(s) to ensure they do not continue.

R5.3 Variances

This audit should compare records of work schedules, regular schedules, consents to variances, requests for variances, including use of pre-scheduled leave that would result in an employee's recurring shift not being placed on their work schedule, and store closures to check that the following conditions were met:

- i. The work schedule did not vary from the regular schedule by more than 15%; OR
- ii. The work schedule varied from the regular schedule by more than 15%; AND there is a corresponding record reflecting:
 - a. That the employee requested or consented to the variance, AND that the request or consent was transmitted to the employer before the employer posted or transmitted the initial work schedule; OR
 - b. That the employer gave the employee a Notice of Discharge no later than 5 days after posting or transmitting the initial work schedule; OR
 - c. That the restaurant was closed due to a holiday or one of the exigent circumstances set forth in [FWW Law § 20-1222\(c\)\(1\)](#).

For any work schedule provided to an employee where the above conditions were not met, that record should be flagged by the software as a compliance failure under [FWW Law § 20-1221\(b\)](#). The employer should review these flagged records and determine underlying causes of the compliance failure(s) to ensure they do not continue.

R5.4 Consent to Added Work Shifts

This audit should compare records of initial and updated work schedules, employee consents for additions of hours, and employee requests for trades or more work to check that the following conditions were met:

- i. The updated work schedule was provided at least 14 days (336 hours) before 12:00am on the first day of the work schedule the work shift appeared on; OR
- ii. The updated work schedule contained no modifications that increased a work shift's length by more than 15 minutes; OR
- iii. The update was made less than 14 days (336 hours) before 12:00am on the first day of the work schedule the work shift appeared on and contained at least one modification that increased a work shift's length by more than 15 minutes, AND:
 - a. There is a corresponding record reflecting that the employee requested, consented to, or traded with another employee for the addition of time in writing or electronically; AND
 - b. The employee's request, consent, or trade was transmitted to the employer no later than 15 minutes after the employee began working the additional time.

For any additional scheduled time where the above conditions were not met, that record is flagged by the software as a compliance failure under [FWW Law § 20-1221\(d\)](#). The employer should review these flagged records and determine underlying causes of the compliance failure(s) to ensure they do not continue.

R5.5 Consent to Additional Work Time

This audit should compare records of final work schedules, employee work time, employee consents for additions of hours, and employee requests for trades or more work to check that the following conditions were met:

- i. Each shift worked by the employee did not exceed the length of the final scheduled work shift by more than 15 minutes; OR
- ii. A shift worked by the employee exceeded the length of the final scheduled work shift, AND:
 - a. There is a corresponding record reflecting that the employee requested, consented to, or traded with another employee for each addition of time in writing or electronically; AND
 - b. The employee's request, consent, or trade was transmitted to the employer no later than 15 minutes after the employee began working the additional time.

For any additional worked time where the above conditions were not met, that record should be flagged by the software as a compliance failure under [FWW Law § 20-1221\(d\)](#). The employer should review these flagged records and determine underlying causes of the compliance failure(s) to ensure they do not continue.

Schedule Change Premium Audits

To facilitate fast food employers' compliance with the Schedule Change Premium provisions of [FWW Law § 20-1222](#) and [FWW Rule § 7-622](#), the employer's software should include automated tools to perform the following audits.

R5.6 Premiums for Updates to Work Schedules

This audit should compare records of initial and updated work schedules, employee requests for trades or schedule changes, schedule change premiums, and exceptions to schedule change premiums, to check that the following conditions were met:

- i. The update was made at least 14 days (336 hours) before 12:00am on the first day of the work schedule the work shift appeared on; OR
- ii. The update to the scheduled work shift modified the previously scheduled start and end times by 15 minutes or less; OR
- iii. The update was made less than 14 days (336 hours) before 12:00am on the first day of the work schedule the work shift appeared on and modified the previous version of the scheduled work shift's start and end times by more than 15 minutes, AND:
 - a. At least one of the following exceptions to premium applied:
 - i. The employer's operations could not begin or continue due to one of the exigent circumstances set forth in [FWW Law § 20-1222\(c\)\(1\)](#)
 - ii. The employer was required to pay overtime for the changed work shift
 - iii. The employee was absent, late, called out sick, or used leave
 - iv. The employee requested or traded the schedule change in writing or electronically
 - v. The employee initiated a request to work additional hours or work shifts that were not first posted by the employer; OR
 - b. The update has an associated premium payment showing:
 - i. The employee was paid a schedule change premium of the appropriate amount based on the amount of notice, and whether the update resulted in the employee's work hours increasing, decreasing, or remaining the same; AND
 - ii. The employee was paid the premium in the same pay period in which they are paid the wages they earned for the workweek in which the schedule change took place.

For any updated work shift where the above conditions were not met, that record should be flagged by the software as a compliance failure under [FWW Law § 20-1222\(a\) or \(b\)](#).

The employer should review these flagged records and determine underlying causes of the compliance failure(s) to ensure they do not continue.

R5.7 Premiums for Discrepancies between Scheduled Time and Work Time

This audit should compare records of scheduled work shifts, employee work time, schedule change premiums, exceptions to schedule change premiums, and location closures to check that the following conditions were met:

- i. The start and end times of the shift worked by the employee varied from those of the final scheduled work shift by 15 minutes or less; OR
- ii. The start or end time of the shift worked by the employee varied from those of the final scheduled work shift by more than 15 minutes, AND:
 - a. At least one of the following exceptions to premium applied:
 - i. The employer's operations could not begin or continue due to one of the exigent circumstances set forth in [FWW Law § 20-1222\(c\)\(1\)](#)
 - ii. The employer was required to pay overtime for the changed work shift
 - iii. The employee was absent, late, called out sick, or used leave; OR
 - b. The update has an associated premium payment showing:
 - i. The employee was paid a schedule change premium of the appropriate amount based on less than 24 hours' notice and whether the employee's scheduled hours for the work shift increased, decreased, or remained the same; AND
 - ii. The employee was paid the premium in the same pay period in which they are paid wages they earned for the workweek in which the work shift took place.

For any comparison of the final scheduled work shift and the worked shift where the above conditions were not met, that record should be flagged by the software as a compliance failure under [FWW Law § 20-1221\(a\) or \(b\)](#). The employer should review these flagged records and determine underlying causes of the compliance failure(s) to ensure they do not continue.

Minimum Time Between Work Shifts Audit

To facilitate fast food employers' compliance with the Minimum Time Between Shifts provisions of [FWW Law § 20-1231](#) and [FWW Rule § 7-623](#), the employer's software should include automated tools to perform the following audit.

R5.8 Clopenings

This audit should compare records of employee work time, consents for clopenings, requests for clopenings, and premiums for clopenings, to check that the following conditions were met:

- i. The employee did not work a clopening, as there were at least 11 hours between the end of the first work shift and the start of the second work shift and the start of the two work shifts were on separate calendar days; OR
- ii. The employee did work a clopening, AND:
 - a. The employee requested or consented to work a clopening at least 11 hours before the second work shift of the clopening; AND
 - b. The employee received a \$100 premium for the clopening.

For any two work shifts worked by an employee where the above conditions were not met, that record should be flagged by the software as a compliance failure under [FWW Law § 20-1231](#). The employer should review these flagged records and determine underlying causes of the compliance failure(s) to ensure they do not continue.

Access to Hours Audit

To facilitate fast food employers' compliance with the Access to Hours provisions of [FWW Law § 20-1241](#) and [FWW Rule § 7-624](#), the employer's software should include automated tools to perform the following audit.

R5.9 Recurring Shifts Assigned to New Hires

This audit should compare records of initial regular schedules, employee hire dates, recurring shift offers, recurring shift acceptances, and recurring shift offer exceptions to check that the following conditions were met:

- i. For every current employee, there is a record showing that:
 - a. The offer was provided electronically to that employee; AND
 - b. The offer was available to request or accept by the current employee who received it for at least three consecutive days; OR
 - c. The offer was not required to be sent to the employee because their acceptance of the recurring shift would result in the employee working overtime on a regular basis; AND
- ii. For every employee discharged for bona fide economic reason in the past 12 months:
 - a. The offer was provided electronically to that employee using the contact information on file at the time they were discharged; AND

- b. There was a corresponding offer made that was not accepted by an eligible current or former employee; AND
- c. The recurring shift offer was available to request or accept by the current or former employee who received them for at least seven consecutive days.

For any recurring shift assigned to a new hire where the above conditions were not met, that record should be flagged by the software as a compliance failure under [FWW Law § 20-1241\(a\)](#). The employer should review these flagged records and determine underlying causes of the compliance failure(s) to ensure they do not continue.

Prohibition on Wrongful Discharge Audits

To facilitate fast food employers' compliance with the Wrongful Discharge provisions of [FWW Law § 20-1241](#) and [FWW Rule § 7-624](#), the employer's software should include automated tools to perform the following audits.

R5.10 Reduction in Hours Discharges

This audit should compare records of employee seniority, current and prior regular schedules, consents for reductions in hours, requests for reductions in hours, changes in availability, and notices of discharge to check that the following conditions were met:

- i. The updated regular schedule did not represent a reduction of 15% from that employee's baseline regular schedule; OR
- ii. The updated regular schedule did represent a reduction of 15% from that employee's baseline regular schedule, AND:
 - a. That the employee requested or consented to a reduction of their previous regular schedule, including by reducing their availability for a recurring shift on their previous regular schedule; AND
 - b. That the request, consent, or availability change was transmitted to the employer before the employer reduced their regularly scheduled hours; OR
 - c. That the employer gave the employee a Notice of Discharge no later than 5 days after providing the regular schedule with reduced hours; AND
 - i. If the employee had their hours reduced due to a bona fide economic reason, that at the time the employee was provided with the reduced regular schedule, they had the least seniority of any employee at their location that did not have their hours reduced.

For any updated regular schedule provided to an employee where the above conditions were not met, that record should be flagged by the software as a compliance failure under [FWW Law § 20-1272](#). The employer should review these flagged records and determine underlying causes of the compliance failure(s) to ensure they do not continue.

R5.11 Termination Discharges

This audit should compare employee details and notices of discharge to check that the following conditions were met:

- i. The employee quit of their own volition; OR
- ii. The employee was terminated by their employer within their probation period, which did not exceed 30 days from the employee's hire date; OR
- iii. The employee was terminated by their employer, AND:
 - a. The employer gave the employee a Notice of Discharge no later than 5 days after the termination; AND
 - b. If the employee was terminated for a bona fide economic reason, that at the time the employee was terminated, they had the least seniority of any employee at their location that was not terminated for a bona fide economic reason.

For any terminated employee where the above conditions were not met, that record should be flagged by the software as a compliance failure under [FWW Law § 20-1272](#). The employer should review these flagged records and determine underlying causes of the compliance failure(s) to ensure they do not continue.

Recordkeeping Requirements

[FWW Law § 20-1206](#) and [FWW Rule § 7-603](#) require fast food employers to maintain the following records.

Record	Required elements	Citation(s)
Each employee who worked at a New York City fast food restaurant	<ul style="list-style-type: none"> • First name • Last name • Dates of employment • Last-known phone number • Last-known email address • Last-known mailing address 	FWW Rule § 7-603(a)(1)(i)
Actual hours worked by an employee each week	<ul style="list-style-type: none"> • Dates of work hours • Times of work hours • Locations of work hours 	FWW Rule § 7-603(a)(1)(ii)
Each work schedule provided to an employee	<ul style="list-style-type: none"> • Dates where an employee is required to work • Times where an employee is required to work • Locations where an employee is required to work • Provision date • Provision time • Provision method 	FWW Law § 20-1221; FWW Rule § 7-603(a)(1)(iii)
Each agreement among employees to trade shifts	<ul style="list-style-type: none"> • Shifts being traded • Names of trading employees 	FWW Rule § 7-603(a)(1)(iv)
Each regular schedule provided to a fast food employee	<ul style="list-style-type: none"> • Total hours of work per week • Expected days • Expected times • Expected locations • Provision date • Provision time • Method of provision • Effective dates 	FWW Law § 20-1221(a); FWW Rule § 7-603(a)(2)(i)
Each written request by an employee for a change to their work schedule	<ul style="list-style-type: none"> • Transmission date • Transmission time • Method of transmission 	FWW Rule § 7-603(a)(2)(ii)
Each written request by an employee for a variance between their regular schedule and work schedule	<ul style="list-style-type: none"> • Transmission date • Transmission time • Method of transmission 	FWW Rule § 7-603(a)(2)(ii)
Each written request by an employee for a reduction in hours on their regular schedule	<ul style="list-style-type: none"> • Transmission date • Transmission time • Method of transmission 	FWW Rule § 7-603(a)(2)(ii)
Each written request by an employee to work a clopening shift	<ul style="list-style-type: none"> • Record creation date • Record creation time 	FWW Rule § 7-603(a)(2)(vii)
Each written consent by an employee for an addition of hours to a work schedule	<ul style="list-style-type: none"> • Record creation date • Record creation time 	FWW Rule § 7-603(a)(2)(iii)

Record	Required elements	Citation(s)
Each written consent by an employee for a variance between their regular schedule and work schedule	<ul style="list-style-type: none"> Record creation date Record creation time 	FWW Rule § 7-603(a)(2)(iii)
Each written consent by an employee for a reduction in hours on their regular schedule	<ul style="list-style-type: none"> Record creation date Record creation time 	FWW Rule § 7-603(a)(2)(iii)
Each written consent by an employee to work a clopening shift	<ul style="list-style-type: none"> Record creation date Record creation time 	FWW Rule § 7-603(a)(2)(vii)
Each schedule change premium paid to each fast food employee	<ul style="list-style-type: none"> Shift associated with premium Workweek associated with premium Pay period associated with premium Premium Pay Date Premium Amount 	FWW Rule § 7-603(a)(2)(vi)
Each clopening premium paid to each fast food employee	<ul style="list-style-type: none"> Shift associated with premium Workweek associated with premium Pay period associated with premium Premium Pay Date Premium Amount 	FWW Rule § 7-603(a)(2)(vi)
Each instance a schedule change premium was not owed to a fast food employee due to the employee's lateness or absence	<ul style="list-style-type: none"> Date of shift Reason 	FWW Rule § 7-603(a)(2)(iv)
Each instance a schedule change premium was not owed to a fast food employee because the employer's operations could not begin or continue due to: <ul style="list-style-type: none"> threats to employees or the employer's property failure of a public utility or shutdown of public transportation a fire, flood, or natural disaster a declaration of a state of emergency severe weather 	<ul style="list-style-type: none"> Date of shift 	FWW Rule § 7-603(a)(2)(v)
Each instance a schedule change premium was not owed because the employee received overtime pay due to the change	<ul style="list-style-type: none"> Date of shift 	FWW Rule § 7-603(a)(2)(v)
All shifts offered to current fast food employees	<ul style="list-style-type: none"> Offer contents Offer date Offer time 	FWW Rule § 7-603(a)(2)(viii)
All shifts accepted by current fast food employees	<ul style="list-style-type: none"> Accepted contents Accepted date Accepted time 	FWW Rule § 7-603(a)(2)(viii)
All shifts awarded to current fast food employees	<ul style="list-style-type: none"> Award contents Award date Award time 	FWW Rule § 7-603(a)(2)(viii)
Each instance an employer was not required to offer a shift to a current fast food employee because the employer would have been required to pay the employee overtime for the additional shift	<ul style="list-style-type: none"> Offer Employee 	FWW Rule § 7-603(a)(2)(ix)

Record	Required elements	Citation(s)
All shifts offered to former fast food employees discharged for a bona fide economic reason	<ul style="list-style-type: none"> • Offer contents • Offer date • Offer time 	FWW Rule § 7-603(a)(2)(xiv)
All shifts accepted by former fast food employees discharged for a bona fide economic reason	<ul style="list-style-type: none"> • Accepted contents • Accepted date • Accepted time 	FWW Rule § 7-603(a)(2)(xiv)
All shifts awarded to former fast food employees discharged for a bona fide economic reason	<ul style="list-style-type: none"> • Award contents • Award date • Award time 	FWW Rule § 7-603(a)(2)(xiv)
All records of discipline of fast food employees	<ul style="list-style-type: none"> • disciplined employee name • description of employment actions associated with discipline • dates of employment actions • disciplined employee conduct • disciplined employee conduct date • employee acknowledgement of discipline • employee response 	FWW Rule § 7-603(a)(2)(xi)
Each notice of discharge provided to a fast food employee	<ul style="list-style-type: none"> • date of discharge • whether discharge was for just cause or bona fide economic reason • precise reason employee was discharged • date of provision • method of provision 	FWW Law § 20-1272(d); FWW Rule § 7-603(a)(2)(xii)

Notes: Employers are not currently required by law to collect and maintain records of employee availability, though most employers collect such information. By maintaining records of availability provided by their employees, employers can support their claims that changes to regular schedules and work schedules were initiated by their employees. As such, it is recommended that records of employee availability are also maintained, along with those records required by law.