Consumer Affairs

Lorelei Salas
Commissioner

Liz Vladeck
Deputy Commissioner,
Office of Labor Policy and Standards

42 Broadway
8th Floor
New York, NY 10004

Dial 311
(212-NEW-YORK)

nyc.gov/consumers

Michael Paglialonga
Deputy Counsel, New York State Department of Labor
Harriman State Office Campus
Building 12, Room 509
Albany, NY 12240

January 22, 2018

Re: Comment on New York State Department of Labor Proposed Rule: Employee Scheduling (Call-In Pay) (I.D. No. LAB-47-17-00011-P)

Dear Mr. Paglialonga:

The New York City Department of Consumer Affairs' Office of Labor Policy and Standards submits this letter in support of the above-captioned proposed rule's (the "Proposed Rule") policy and purpose to strengthen call-in pay protections for workers. As the City government's dedicated voice for workers in New York City, we believe that the Proposed Rule's likely effect on local working conditions will be beneficial and that it is compatible with the laws we administer and enforce. Together with the recently effective package of local laws known as the Fair Workweek laws, and related rules, the Proposed Rule would provide protection against problematic practices for a large and important cross-section of city workers. Since the local laws and rules and the Proposed Rule address related employment problems, we write to expand on the complementary nature of their relationship, and to encourage the Department of Labor (the "Department") to expressly recognize that harmony in the final version of the Proposed Rule.

Here, the Proposed Rule and the City's Fair Workweek laws and rules are fully compatible. Indeed, they complement each other. The Fair Workweek laws and rules already provide strong scheduling protections to workers in the retail and fast-food industries, while the Proposed Rule would enhance the Department of Labor's call-in pay provisions for hundreds of thousands of workers in a wide variety of additional industries covered by the Minimum Wage Order for Miscellaneous Industries and Occupations.[1] By the same token, the Fair Workweek laws and rules supplement the Proposed Rule for retail workers. (Fast-food workers are outside the Proposed Rule's scope). Those retail workers whose employers would be subject to both the Proposed Rule and the Fair Workweek laws and rules would receive heightened protections. Not only would these employers be deterred under the Proposed Rule from scheduling shifts less than 14 days in advance, but they are flatly prohibited from requiring a shift at all with less than 72 hours' notice under the local law and rules. The same is true for "on call" scheduling. The Proposed Rule strongly deters all covered employers from the practice, while the Fair Workweek laws and rules ban it outright for retail employers. Such enhanced protections are necessary and appropriate given the well-documented scheduling abuses in the retail industry, and the high concentration of retail employment in New York City.

[1] Title 12 N.Y.C.R.R. § 142-1.1.

We noted the Governor's statement to the press that the Proposed Rule should be read to "work in concert with" with the Fair Workweek laws and rules.[2] We encourage the Department to clearly recognize this complementary relationship in the final Rule.

Respectfully submitted,

Lorelei Salas
Commissioner
New York City Department of Consumer Affairs

[2] *See* Glenn Bain, *Cuomo Backtracks on Proposal to Negate On-call Scheduling Ban after Backlash from Labor Leader*, Daily News, Nov. 10, 2017, *http://www.nydailynews.com/news/politics/cuomo-backtracks-proposal-negate-on-call-scheduling-ban-article-1.3624682*