DEBORAH BUYER LAW

FOR THE BETTER

March 29, 2018

NYC Flex Leave Law

Effective July 18, 2018, the NYC Administrative Code is amended to require employers to allow employees to take two temporary schedule changes per year for "personal events". The law does not apply to employees who (a) have been employed by the employer for fewer than 120 days or (b) who work fewer than 80 hours in New York City in a year.

A qualified "personal event" means (a) the need for a caregiver to provide care to a minor child or "care recipient" (defined as a person with a disability who is a family member or lives with the caregiver and relies on the caregiver), (b) an employee's need to attend a legal proceeding or hearing for subsistence benefits to which the employee, a family member or the employee's care recipient is a party, or (c) any circumstance that would be a permitted use of safe/sick time under the NYC Earned Sick and Safe Time Act ("ESSTA").

An employer is required to grant an employee's request for a temporary change to the employee's work schedule for a personal event, which includes (but is not limited to) using paid time off, working remotely, swapping or shifting work hours, or using short-term unpaid leave. An employer must grant the employee's request two times per year for up to one business day per request unless the employer permits the employee to use both business days in one request.

The new law establishes a written process for employees and employers to communicate regarding requests for such changes. The employee must notify the employer (or direct supervisor) as soon as the employee is aware of the need for a schedule change and must inform the employer or supervisor that the change is due to a personal event. The employee must make a proposal for the temporary change to the employee's work schedule unless the employee requests unpaid leave. While the initial request does not need to be in writing, the employee must submit a written request as soon as practicable and no later than the second business day after returning to work. The request must indicate the date for which the change was requested and that it was due to the employee's personal event. The employer may require that the request be submitted electronically if electronic communication is commonly used to manage leave and schedule changes. If the employee fails to submit the written request, then the employer's obligation to respond in writing, as described below, is waived.

An employer who receives an initial request must respond immediately, but not necessarily in writing. However, as soon as practicable after the employee submits a written request, and no later than 14 days, the employer must provide a written response, which may be electronic if such form is easily accessible to the employee. The employer's response must include: (a) whether the employer agrees to the temporary change to the work schedule, or

will provide the temporary change as leave without pay (which does not constitute denial), (b) if the employer denies the request, an explanation for the denial, and (c) how many requests and how many business days the employee has left in the year after the employer's decision. An employer may deny a request relating to a personal event only if the employee has already exhausted the two allotted requests in the year. Employers are prohibited from retaliating against employees who make such requests.

In addition to requesting a temporary schedule change, the law permits an employee to request (and the employer to grant or deny) any other change to his/her work schedule following the same procedure of request/response above.

The new law does not impact an employer's obligation to provide schedule changes as a reasonable accommodation under other laws. An employee does not need to use his/her accrued safe/sick time under ESSTA before requesting schedule changes under this law. An employer may not count unpaid leave taken under this law towards the employer's obligation to grant leave under ESSTA. In addition, leave granted under ESSTA does not count towards the employer's obligations to grant leave under this law. It is unclear how the requirements under this new law will interact with ESSTA or other leave laws.

The new law imposes a $500 penalty for each violation (and an order requiring compliance) on violating employers. Violations of the written response requirements, however, can be cured if the employer provides such written notice within 7 days of being notified of an opportunity to cure. We anticipate that the City will issue guidance and/or regulations prior to the amendment's effectiveness.

This alert is for general information purposes and should not be construed as legal advice. If you would like information about this alert, please contact one of the firm's attorneys:
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