

Labor & Employment Law Alert: NYSDOL Issues Revised Proposed Scheduling Regulations

On Monday, December 10th, the New York State Department of Labor (“NYSDOL”) issued **revised proposed regulations** involving call-in and on-call pay which could significantly affect some employers’ scheduling practices. The proposed regulations revise Minimum Wage Orders Covering Miscellaneous Industries and Occupations, but do not apply to employers in the hospitality industry or nonprofit entities that have elected for exemption from wage order coverage. The regulations also do not apply to employees of federal, state, or municipal governments.

In addition to continuing the current practice of providing at least four hours of call-in pay when the employee reports to work and no work is available, the proposed regulations require employers to provide four hours of call-in pay if:

- The employer cancels an employee’s shift within seventy-two hours of the start time;
- The employer requires the employee to work on-call; and
- The employer requires an employee to be in contact with the employer within seventy-two hours of the start of the employee’s shift to confirm whether he/she should report to work.

Further, the NYSDOL’s proposed regulations state that an employer is required to provide two hours of call-in pay if:

- At the employer’s request, the employee reports for an unscheduled shift with fewer than fourteen days’ notice; or
- The employer cancels an employee’s shift without fourteen days’ notice.

However, the new regulations do not apply to:

- Employees subject to a valid collective bargaining agreement that addresses the issue;
- Employees during work weeks in which they earn at least “40 times the applicable basic hourly minimum wage rate,” which would total \$444.00 per week in Upstate New York effective December 31, 2018 when minimum wage increases to \$11.10 per hour;
- Employees whose duties are directly dependent on weather conditions, necessary to protect the health or safety of the public, or subject to work orders, provided the employee receives a weekly compensation that exceeds minimum wage for all hours worked, excluding any allowances.

The regulations also state that where an employee volunteers to cover a shift and the employer provided the employee with a “written good faith estimate of hours” either at hiring or after the regulations become effective, a rebuttable presumption exists that the employee is not entitled to call-in pay. There are also limited exclusions for schedule changes due to severe weather conditions resulting in travel advisories, an employee’s decision to alter his/her schedule due to weather, or acts

of God beyond the employer's control such as a state of emergency declared by federal, state or local government.

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