

## NYS DEPARTMENT OF LABOR PROPOSES NEW SWEEPING “CALL-IN” PAY REGULATIONS

**Certain New York State employers should be aware of sweeping new proposed administrative rules that significantly expand entitlement to “call-in” pay for workers in several specific situations.** The Department of Labor has filed proposed rulemaking to address what is commonly identified as “just-in-time,” “call-in” or “on-call” scheduling. The proposed rulemaking for call-in pay concerns employee scheduling practices, including just in time scheduling and on-call scheduling, which are common practices that allow employers to cancel or schedule shifts hours before or after the start of a shift.

The proposed new rules will apply to all workers who are subject to the New York State Department of Labor’s (DOL) *Minimum Wage Order for Miscellaneous Industries and Occupations*. That wage order covers all industries and occupations that are not exempt from the minimum wage law, and that are not covered by separate minimum wage orders for hospitality (12 NYCRR Part 146), building service (12 NYCRR Part 141), and agriculture (12 NYCRR Part 190). The wage order includes nonteaching employees of public school districts and BOCES, but generally excludes employees of other state and local government agencies.

- ) The proposed rules also do not apply to employees covered by a collective bargaining agreement that expressly provides for call-in pay.
- ) The new call-in pay provisions will not apply to full-time employees whose weekly pay exceeds 40 times the minimum wage. For example, if the minimum wage is \$10 per hour, workers whose weekly wage exceeds \$400 would not be covered by the new requirements. When the minimum wage reaches \$15, the weekly threshold would increase to \$600 per week.
- ) The new rules will not apply to new workers (employed for less than 2 weeks), “regularly scheduled workers” (those who are scheduled at least 14 days in advance consistent with a written good faith estimate of hours provided at hiring) and where a worker volunteers to cover the shift of another worker or responds to an open request to all employees.
- ) The rules also provide exceptions where a shift is canceled at the employee’s request, or due to an “Act of God” or other cause beyond the employer’s control.

The proposed regulations add minimum pay requirements for on-call workers in several situations.

- ) Employers will now be required to pay a minimum of 4 hours of “call-in” pay, or the number of hours in the regularly scheduled shift, whichever is less, for work on any scheduled shift, or where an employee’s shift is cancelled with less than 72 hours’ notice;
- ) Employers will be required to pay a minimum of 4 hours of “call-in” pay where an employee is required to be “on-call” or to call to confirm a shift;
- ) Employers will also be required to pay an additional 2 hours of call-in pay to employees for shifts that are scheduled less than 14 days in advance.

Calculation of Call-In Pay: Payment for time actually worked shall be at the employee’s regular rate or overtime rate, whichever is applicable, minus any permitted allowances. Payment for other hours of call-in pay shall be at the minimum wage rate with no allowances, and will not be

considered “time worked” for purposes of calculating an employee’s entitlement to overtime pay, and cannot be offset by either required use of leave time or other payments.

The new regulations were published November 22, 2017 in the State Register, and are subject to an extended public comment period, though January 22, 2018. Covered employers should plan for their implementation following the public comment period.

See <https://labor.ny.gov/workerprotection/laborstandards/scheduling-regulations.shtm> for updated information by the NYS Department of Labor regarding the regulations.

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