Hedge Up Alert: A Heads-Up on Employment Issues Confronting the Investment Management Industry

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Two New Laws Impose Increased Burden on NYC Firms

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Key Points

- New York City's new Temporary Schedule Change Law requires firms to accommodate employee requests for temporary schedule changes for qualifying reasons up to two times per year.
- An amendment to the New York City Human Rights Law will require firms to engage in a "cooperative dialogue" with employees who are seeking certain reasonable accommodations.

Temporary Schedule Change Law

Effective July 18, 2018, firms in New York City must accommodate employee requests for temporary schedule changes for qualifying "personal events" under its Temporary Schedule Change Law (TSCL).

Under the TSCL, employees who work 80 or more hours per calendar year in New York City are generally eligible for temporary schedule changes after 120 days of employment. Temporary schedule changes are adjustments in the hours, times or locations that an employee is expected to work. Among the potential types of schedule changes are working remotely, swapping shifts, changing work hours, or utilizing paid time off or unpaid leave. An eligible employee can request changes under the law for up to two days per year, either on two separate days or on back-to-back days.

"Personal events" that qualify for temporary schedule changes under the TSCL include:

- caring for a minor child
- caring for a "care recipient" (i.e., a family member or household member with a disability who relies on the employee for medical care or to meet the needs of daily living)
- attending a legal proceeding or hearing for public benefits for the employee or a family member, minor child or care recipient

- any permissible basis for using safe or sick time under the New York City Earned Safe and Sick Time Act (ESSTA).

Employees seeking a temporary schedule change must make a request as soon as practicable, either orally or in writing, that includes (i) the date of the requested change, (ii) the proposed type of schedule change and (iii) a representation that the change is due to a qualifying "personal event." Employees must follow an oral request with a written request as soon as practicable, but no later than the second business day after returning to work. Firms cannot require supporting documentation or proof of the need for a schedule change, nor can they mandate a specified amount of advance notice.

Firms must respond "immediately" (at least orally) to an employee's request. If the employee submits a request for a temporary schedule change in writing, the firm must respond in writing as soon as practicable, but no later than 14 days after receiving such written request. The firm's written response must contain the following information: (i) whether the request was granted or denied; (ii) if the request was granted, how the firm accommodated the request; (iii) if the request was denied, the reason for the denial; and (iv) how many days of temporary schedule changes the employee has left in the calendar year. Firms can deny a request only if an employee has exceeded the number of allowable requests or does not have a qualifying "personal event." Otherwise, a firm must approve the employee's proposed change or provide the employee with unpaid leave for the day at issue. Firms may offer employees the option to use safe or sick time accrued under ESSTA, or other paid time off available under the firm's policies, but cannot require employees to do so.

The TSCL prohibits firms from retaliating against employees, including for requesting schedule changes in excess of their rights under the law. Firms are not required to maintain a written policy regarding the TSCL, but their existing employee handbooks and/or workplace policies must meet or exceed the requirements of the law. Firms must maintain electronic records documenting compliance with the TSCL for at least three years.

The TSCL can be enforced by the Department of Consumer Affairs ("DCA") and/or by individual employees. Among the potential remedies for violations of the law are compensatory damages, penalties assessed on a per-employee basis, fines and/or other relief.

Cooperative Dialogue for Accommodation Requests

Effective October 15, 2018, the New York City Human Rights Law (NYCHRL) will be amended to require all New York City firms with four or more employees to engage in a "cooperative dialogue" with employees who seek reasonable accommodations.

Under the amended NYCHRL, it will be an unlawful discriminatory practice for a firm to refuse, or otherwise fail to engage, in a good-faith cooperative dialogue with an employee who has requested–or whom the firm has noticed may require–a reasonable accommodation relating to the employee's religious needs; disability; pregnancy, childbirth, or a related medical condition; or needs as a victim of domestic violence, sex offenses or stalking.

The cooperative dialogue, which can be oral or written, must take place reasonably promptly after the employee requests an accommodation or the need for an accommodation has otherwise become apparent, and must address (i) the employee's needs, (ii) the nature of the requested accommodation, (iii) the burden to the firm and (iv) potential alternatives to the requested accommodation. Firms will be required to provide any employee who has participated in a cooperative dialogue with a "written final determination identifying any accommodation granted or denied." Firms will be precluded from denying an accommodation, or deciding that one is unavailable, until they have engaged (or attempted to engage) in a cooperative dialogue.

What Firms Should Do Now

The TSCL and the new reasonable accommodation law are but the latest in a long list of recent New York State and City laws impacting firms located in New York City.[1] The purpose of the two new laws (i.e., fostering the accommodation of employees with bona fide medical, family, religious or other needs) is unlikely to be controversial. However, the reticulated requirements regarding how firms must address and document each request all but guarantee "foot faults" for unwary New York City-based firms. To avoid such mistakes, firms should take the following steps:

- They should review and revise their existing employee handbooks and/or other policies and procedures (including time and attendance and discrimination policies) to ensure compliance with the new laws.
- They should develop and implement mechanisms to track and monitor employee requests for temporary schedule changes and reasonable accommodations, as well as communications and actions responding to such requests.

They must post the *DCA's Notice of Rights* ("You Have a Right to Temporary Changes to Your Work Schedule") in a visible location. A copy of the notice is available here.

[1] The last three years alone have seen the passage of the New York City Stop Credit Discrimination in Employment Act (regarding performing credit checks on job applicants); the New York City Fair Chance Act (a "ban the box" law); the New York State Women's Equality Act (comprised of eight separate bills protecting women in the workplace); the New York City Mass Transit Benefits Law; the New York State Paid Family Leave Law; the New York City law prohibiting inquiry into applicants' compensation history; the New York City Earned Safe and Sick Leave Act; the New York City law requiring the implementation of anti- sex harassment training and policies; and the recent New York State law requiring the implementation of anti- sex harassment training and policies, extending harassment protections to certain individual contingent workers, purporting to prohibit the mandatory arbitration of certain sex harassment claims, and prohibiting certain confidentiality provisions in settlement agreements regarding sex harassment claims.