

Testimony to the New York State Department of Labor
Hearing on Employee Scheduling

Submitted by:
Frank Kerbein, SPHR
Director, Center for Human Resources
The Business Council of New York State, Inc.

As the state's largest statewide employer advocacy organization, we represent more than 2,300 employers – large and small – across the entire state. These businesses employ in excess of one million New Yorkers. The Business Council often addresses issues impacting the state's economic competitiveness, including business costs driven by state policy actions. We are here today to convey our concerns regarding any expansion of Department of Labor rules that would impose new mandates or restrictions on employer's scheduling challenges.

We have discussed this issue with a number of employers, in varying sectors, and all raise significant concerns regarding the Administration's announced intent to regulate scheduling.

Consider the on call nature of some industries like utility repair – whose work often depends on outages as the result of Acts of God; Road construction and repair – often working under varying schedules related to availability of raw material provided by subcontractors, weather related obstacles or just the desire to alleviate special traffic condition; Building trades – a progression of work coordinating the schedules and availability of subcontractors and material suppliers; Emergency medical professionals – summoned when particular specialties are required or during mass casualty events or declared emergencies; Or funeral service – clearly, under the most routine conditions – requiring scheduling out of the employers control...and more.

Consider effects on healthcare providers - either in institutions or in the home - often subject to patient abandonment laws – and who must react quickly to unscheduled employee absences. Any financial penalties on these providers not only tax their ability to operate under already challenging financial conditions but could result in corresponding increases in costs for those who insure that care, i.e. private insurers, Medicaid or Medicare.

Consider the disproportionate impact on small employers as compared to their larger competitors – those small retailers will incur additional management and planning costs. While large chain retailers - in general - are better able to schedule staff to account for unexpected absences, their smaller competitors are not and will bear a disproportionate burden.

Consider the compounding effects of the costs and administrative burdens on employers resulting from New York's new Paid Family Leave law. All New York employers will be faced with up to 40 days of unscheduled intermittent leave in 2018 for each full time employee (and corresponding pro-rated amounts of leave for their part-time staff). All employers can expect an increase in unscheduled or short-notice employee absences going forward as a result of this new law. Imposing restrictions or additional costs on employers as they respond to these unscheduled absences compounds the harmful effects of this new mandated benefit.

Lastly, consider the impact on workers. The world of work is changing. According to a survey by Bentley University, 77% of Millennials, the largest generation in a hundred years - and 30% of today's workforce

- value and desire flexible working hours. This forward thinking approach to work and scheduling is not conducive to posting schedules 14 days in advance – or to applying financial penalties to employers who accommodate these employee-driven changes .

If there needs to be new statewide regulation of scheduling, it should be approached through a negotiated legislative solution - one working within generally accepted and understood current law and regulation and in recognition of the considerations we listed above. Examples of some provisions could include: Preliminary discussions at time of hire regarding employee availability/non-availability; protections from retaliation for employees who refuse to work outside of the employee's state availability; specifically defining hours between closings and openings; providing good-faith estimates to employees of expected hours worked and schedules; etc.

Today's dynamic workplace environment does not lend itself to a "one size fits all" solution. Attempting to apply such a solution would result in putting New York employers at a dramatic disadvantage in recruiting and retaining the talent needed to compete nationally and internationally.