

New York Attorney General's Office Demands "On Call Shift" Information From Retailers

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As reported in various media outlets, the New York Attorney General's office recently sent a request to several retail employers who do business in New York for information concerning their practices of scheduling employees for "on-call" shifts.

Some retailers utilize on-call shift scheduling in order to ensure flexibility and control labor costs. Indeed, it is an important tool in industries where the demand for labor is unpredictable. For instance, some retailers do not know when a day will be busy enough and whether they will need additional labor to handle increased workload. To deal with this problem, some retailers tell their managers to schedule some employees for "on-call" shifts where they are asked to check in to learn whether their services are needed on a certain day.

In addition to making specific requests for documents and information, the Attorney General's office cited 12 NYCRR § 142-2.3 in its letter, which governs when "call-in" pay is to be paid to New York employees. Interestingly, New York's call-in pay regulation makes no mention of on-call shifts, and the practice is not *per se* unlawful under any other law or regulation. Instead, the regulation states that "[a]n employee who by request or permission of the employer reports for work on any day shall be paid for at least four hours, or the number of hours in the regularly scheduled shift, whichever is less, at the basic minimum wage."

It is unclear what the goal of the Attorney General's office is in requesting documents and information from New York retailers. It is clear, however, that with this request, the Attorney General is keeping an eye on New York employers in the area of New York labor law. Retailers, as well as other New York employers, should take note and work with their counsel to navigate any similar inquiry that comes the office of the New York Attorney General.