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ALERT
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New York State Court Upholds NYC's Fair Workweek Law

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New York City's Fair Workweek Law survived a challenge on Feb. 13 when Justice Arthur Engoron of the Supreme Court of the State of New York, New York County rejected a suit brought by a coalition of industry groups.

While the industry groups are expected to appeal the ruling, until they do so, predictive scheduling and penalty payments are here to stay for fast food and retail employers that operate in New York City, making it even more difficult for small businesses to operate in New York City.

Employers covered under the Fair Workweek Law should continue their compliance efforts and practices.

As we noted in a prior alert, in 2017, New York City enacted the Fair Workweek Law, which requires fast food and retail employers to provide worker schedules in advance, give current employees priority in working shifts that become available or open, and to pay certain premium payments to fast food and retail employees when their schedules are changed or they are provided with at least 11 hours off between shifts. The law became effective in November 2017.
In 2018, three industry groups, the International Franchise Association, the Restaurant Law Center and the New York State Restaurant Association (collectively "Industry Group") challenged the Fair Workweek Law. Specifically, the Industry Group argued that New York's Municipal Home Rule Law prohibits New York municipalities from enacting laws that impact any provision of the New York Labor Law. In other words, the Industry Group argued that the Fair Workweek Law was invalid because the Municipal Home Rule Law preempted the entire field of labor and employment law, preventing municipalities within the state from enacting any regulation concerning employee wages and hours of employment.

In his three-page decision, Justice Engoron rejected the Industry Group's challenge. With little analysis and in conclusory fashion, Justice Engoron held that the Fair Workweek Law was narrowly tailored and did "not infringe on state prerogatives." He determined that since the Fair Workweek Law does not directly conflict with any state law, the Fair Workweek Law was valid. Justice Engoron did not address, much less determine, whether the Municipal Home Rule Law was, an effort by the state to engage in field preemption, in which a higher level of government (in this case the State of New York) enacts a law that preempts any lower government (in this case the City of New York) from regulating an entire area of law irrespective of whether the lower government's regulation conflicts with any law enacted by the higher government.

In light of the decision, at least for now, it appears that the Fair Workweek Law is here to stay. In fact, there are a number of bills currently pending before the New York City

Council that would expand the Fair Workweek Law, further tying the hands of fast food and retail employers. Accordingly, employers who are covered by the Fair Workweek Law should expect that the law will remain in effect and they should continue to comply with its stringent provisions.

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