



April 2021

Appeals Court Upholds New York City's Fair Workweek Law

By Glenn S. Grindlinger

More bad news for New York City's fast food employers. The Supreme Court of the State of New York, Appellate Division, First Department has upheld New York City's Fair Workweek Law in a decision that rejects a challenge from a coalition of industry groups.

As we noted in a prior alert, the Fair Workweek Law was enacted by New York City in 2017 and 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 make certain premium payments to fast food and retail employees when their schedules are changed or they are provided with fewer than 11 hours off between shifts. The law became effective in November 2017.

In light of the April 20, 2021 decision, it appears at least for now 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.

Industry Group Challenge

In 2018, three industry organizations, 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.

Just before the onset of the pandemic, in 2020, Justice Arthur Engoron of the Supreme Court of the State of New York, New York County rejected the Industry Group's suit, finding that the Fair Workweek Law was narrowly tailored and did "not infringe on state prerogatives." As such, Justice Engoron found that New York City lawfully enacted the Fair Workweek Law. The Industry Group appealed to the Appellate Division.

On appeal, the Industry Group argued that the Municipal Home Rule Law preempted the Fair Workweek Law in two ways. First, they argued that the Municipal Home Rule Law preempts the entire field of wage and hour law ("field emption") and therefore any municipal law that touches upon minimum wages, hours worked,

or similar issues is invalid. Second, the Industry Group contended that provisions of the Fair Workweek Law conflict with the New York Labor Law (“conflict preemption”) and thus the Fair Workweek Law is invalid under the Municipal Home Rule Law.

Appellate Decision

The Appellate Division rejected the appeal and upheld the Fair Workweek Law finding that neither field exemption nor conflict preemption applied. With respect to field preemption, the Appellate Division noted that with the exception of minimum wages, the Municipal Home Rule Law does not prevent municipalities from the regulation of wage and hour issues within their jurisdiction. Indeed, the Appellate Division noted that “Absent some clear expression of State intent to occupy the field, the mere fact that the State and local laws touch upon the same area is insufficient to support a determination that the State has preempted the entire field of regulation in a given area.”

Regarding minimum wages and its impact on the Fair Workweek Law, the Appellate Division stated that the Fair Workweek Law does not raise employee wages or otherwise affect the minimum wage. Rather, the purpose of the Fair Workweek Law “is to minimize unfair and harmful scheduling practices in the fast food industry”; any payments required under the Fair Workweek Law are only incidental to that purpose. Accordingly, there was no field preemption.

With respect to conflict preemption, the Appellate Division held that the Fair Workweek Law does not specifically conflict with any provision of the New York Labor Law. As there was no actual conflict, the Fair Workweek Law could not violate the Municipal Home Rule Law.

As is typical for the Appellate Division, no justice dissented. Therefore, the Industry Group

does not have the automatic right to appeal the decision to the Court of Appeals, New York’s highest court. However, the Industry Group can and is expected to seek leave to appeal to the Court of Appeals.

For more information about this Alert, please contact Glenn S. Grindlinger at 212.905.2305 or ggrindlinger@foxrothschild.com, or any member of the firm’s Labor & Employment Department.