



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
LABOR BUREAU

April 12, 2016

Forever 21
3880 N. Mission Rd.
Los Angeles, CA 90031
Attn: Young Kwon

Re: Request for Information Regarding “on call shifts”

Dear Mr. Kwon,

Our offices together write to you regarding “on call shifts,” which we believe that Forever 21 may be using. Employees assigned to on-call shifts are typically required to contact their employer an hour or two before a scheduled shift to learn whether they must work the shift. If a worker learns that his or her services are not required, the worker is paid no compensation for the day, even though the employee was required to be available to work, to forgo other job and educational opportunities, and to make arrangements for child care or other personal responsibilities.

Such unpredictable work schedules take a toll on employees. Without the security of a definite work schedule, workers who must be “on call” have difficulty making reliable childcare and elder-care arrangements, encounter obstacles in pursuing an education, and in general experience higher incidences of adverse health effects, overall stress, and strain on family life than workers who enjoy the stability of knowing their schedules reasonably in advance. “On-call shifts” also interfere with workers’ ability to obtain supplemental employment to ensure financial security for themselves and their families.

Our letter today is prompted by the concerns outlined above and by our shared interest in the well-being of workers nationwide. Forever 21 has store locations in many of our jurisdictions. In addition, certain of the signatory states have reporting pay or call-in pay laws which are applicable within those jurisdictions.

As you may know, in 2015, the New York State Attorney General’s office sent letters to fourteen major retailers seeking information about their use of “on-call shifts.” These letters

sought to address the public policy concerns described above and to ensure compliance with New York's "call in pay" regulation, which provides, "An 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 hourly wage." 12 NYCRR 142-2.3. Several recipients of the letter responded that they were not using such shifts and the office independently confirmed these representations. The other retailers, after conversations with the New York State Attorney General's office, agreed to stop using "on call shifts," typically nationwide. In order to provide a more predictable and stable work environment for their workforces, these companies also agreed to provide employees with their work schedules at least one week prior to the start of the workweek.

The results of this inquiry to date strongly indicate "on call shifts" are not a business necessity, given that operations can be, and successfully have been, structured to address unexpected absences and unanticipated fluctuations in business volume in other ways.

Because we have reason to believe that Forever 21 may be using this methodology for scheduling, we would like to know about your use of "on call shifts." In connection with our review, we request that Forever 21 provide the following information and documents.

Request for Information

1. What is the process by which Forever 21 schedules employees for work? Does Forever 21 use a computerized system for scheduling? If so, which system does Forever 21 use and how does it function? How centralized is the scheduling process? How much autonomy do store managers have in the scheduling process? Are scheduling procedures the same for all stores or do they vary by location?
2. Does Forever 21 utilize "on call shifts" at any locations in California, Connecticut, the District of Columbia, Illinois, Maryland, Massachusetts, Minnesota, New York, or Rhode Island? If so, specify the location(s) and, for each such location, provide the total number of employees, the number of employees at the location subject to "on call shift" requirements, the date on which "on call shifts" were instituted, and the specific policies and practices employees are required to follow in being available for work and determining the availability of work on a given day, including the categories of employees subject (and not subject) to "on call shift" requirements and the penalties to which employees are subject for failure to follow Forever 21's policies in this area as well as the number of employees who have been disciplined or terminated for failure to follow these policies.
3. Has Forever 21 studied or analyzed the efficiencies or cost savings believed to be associated with the use of "on call shifts" or the potential or actual effect of "on call shifts" on the productivity or well-being of its employees? If so, describe the results of any such study or analysis.
4. Has Forever 21 studied or analyzed alternative methods for addressing unscheduled absences or unanticipated shifts in business volume, other than use of on-call shifts?

Request for Documents

- 1 Please provide any and all policies, handbooks, documents, postings, or other written materials provided to any employee employed by Forever 21 in California, Connecticut, the District of Columbia, Illinois, Maryland, Massachusetts, Minnesota, New York, and/or Rhode Island regarding any and all requirements that such employee (a) must be available for work without having work time guaranteed, and/or (b) must call, send a text message, email, or otherwise contact his or her supervisor or any other agent or representative of Forever 21 prior to physically presenting himself or herself in the workplace for work on a given day.
- 2 For each calendar quarter in 2014 and 2015, please provide three to four samples of schedules which include on-call shifts.
- 3 To the extent that any computerized system used by Forever 21 enables Forever 21 to produce a report showing the number of instances of on-call shifts assigned, please provide such reports for all Forever 21 employees employed within California, Connecticut, the District of Columbia, Illinois, Maryland, Massachusetts, Minnesota, New York, and/or Rhode Island during 2014 and 2015.
- 4 Please provide any and all time and payroll records showing dates on which any employee performed work for Forever 21 within California, Connecticut, the District of Columbia or New York, and was paid for a time period of fewer than four hours on any given day, or within Massachusetts or Rhode Island and was paid for a time period of fewer than three hours on any given day.
- 5 Please provide any and all documents, including IT guides, computer user manuals, manager guides or handbooks, or other materials explaining the process by which Forever 21 schedules shifts in stores located in California, Connecticut, the District of Columbia, Illinois, Maryland, Massachusetts, Minnesota, New York, and/or Rhode Island.
- 6 Please provide any and all documents related to any study or analysis referred to in Requests for Information #3 and #4, above.

Please provide your responses electronically, no later than April 25, 2016, to the attention of Oncall.Inquiry@ag.ny.gov.


If you are unable to provide responses electronically, please provide hard copies of responses to Terri Gerstein at the New York State Attorney General's Office, 120 Broadway, New York, NY 10271 no later than April 25, 2016.

Thank you in advance for your prompt attention,

Sincerely,



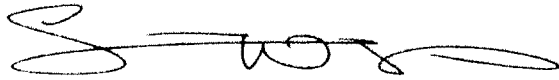
Terri Gerstein
Labor Bureau Chief
New York State Attorney General's Office
120 Broadway
New York, NY 10271
(212) 416-6132



Angela Sierra
Senior Assistant Attorney General
Civil Rights Enforcement Section
California Department of Justice
Office of the Attorney General
300 S. Spring St., Ste. 1702
Los Angeles, CA 90013
(213) 620-6312

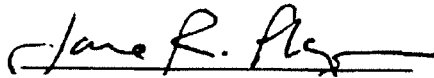


Robert W. Clark
Special Counsel to the Attorney General
Office of the Connecticut Attorney General
55 Elm Street
Hartford, CT 06106
(860) 808-5322

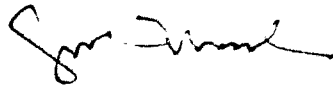


Elizabeth Wilkins
Senior Counsel to the Attorney General*
Office of the Attorney General for the District of Columbia
441 4th Street N.W. Suite 1100S
Washington, D.C. 20001
(202) 724-5568

*Admitted to practice only in Maryland. Practicing in the District of Columbia under the direct supervision of Natalie O. Ludaway, a member of the D.C. Bar pursuant to D.C. Court of Appeals Rule 49(c).



Jane R. Flanagan
Chief, Workplace Rights Bureau
Office of the Illinois Attorney General
100 W. Randolph Street, 11th floor
Chicago, IL 60601
(312) 814-4720



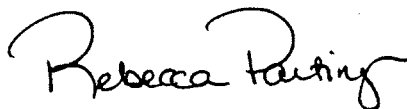
Cynthia Mark
Chief, Fair Labor Division
Office of Massachusetts Attorney General Maura Healey
One Ashburton Place
Boston, MA 02108
(617) 963-2626



Joshua N. Auerbach
Special Assistant & Senior Litigation Counsel
Maryland Office of the Attorney General
200 St. Paul Place
Baltimore, MD 21202
(410) 576-6311



Alethea M. Huyser
Assistant Solicitor General
Manager, Solicitor General Division
Minnesota Attorney General's Office
Bremer Tower, Suite 1100
445 Minnesota Street
St. Paul, MN 55101-2128
(651) 757-1243



Rebecca T. Partington
Assistant Attorney General
Chief, Civil Division
Rhode Island Attorney General's Office
150 South Main Street
Providence, RI 02903
(401)274-4400, ext. 2303