

TURFGRASS ADVOCACY 2018

NEW YORK STATE TURFGRASS ASSOCIATION



CALL-IN PAY: REGULATORY BURDEN

BACKGROUND

On November 22, 2017 the New York State Department of Labor published proposed regulations that would revise call-in pay requirements of the Minimum Wage Order for Miscellaneous Industries and Occupations.

Current law requires:

Employer Scheduling:	Pay to Employee:
Reporting to work – shift cancelled or reduced	Min. 4 hours call-in pay or # of scheduled hours (if <4)

The proposed regulations would require:

Employer Scheduling:	Pay to Employee:
Unscheduled Shift – report to work for shift that was not scheduled at least 14 days ahead	Additional 2 hours call-in pay at minimum wage
Cancelled Shift – within 72 hours of start of scheduled shift	Min. 4 hours call-in pay or # of scheduled hours (if <4) at minimum wage
On-call – required to be available to report to work for any shift	Min. 4 hours call-in pay at minimum wage
Call for schedule – required to be in contact with the employer within 72 hours of start of shift to confirm if they need to report for shift	Min. 4 hours call-in pay at minimum wage

NYSTA PERSPECTIVE

These regulations would have a significant negative impact on businesses especially those that are weather-dependent such as landscape, lawncare, snow removal, golf courses (both course management and hospitality), grounds maintenance, and arborists. Given the unpredictability of weather including rain, snow, heat or wind, work plans will be delayed or cancelled with little warning. Having to schedule 14 days in advance, provide 72 hours' or even 24 hours' notice for scheduling or cancellation of shifts in these weather-dependent industries, is simply not feasible.

Jim Hornung, Jr., president of Elbers Landscape Service, Inc. estimated a recent "popup" blizzard would have impacted his business by over \$4,500 when considering employer wages, insurance and taxes. The safety of pedestrian and vehicle traffic could be impacted as businesses consider service thresholds.

Lawncare business owner Gerry Rubenstein, Lawn-A-Mat of Syracuse, Inc. cited the pesticide label which prohibits spraying during heat, wind or rain. This is a federal law.

Other repercussions:

- Reduce employment
- Reduce business growth
- Increase costs to clients
- Increase administrative costs
- Businesses leaving New York

continued on next page

continued from previous page

The regulatory impact statement issued with this draft rule states there will be no economic impact on business because employers would be able to comply with the regulations. Unfortunately work place realities will force employers to pay the additional wages or face civil penalties for violating labor regulations. Neither option is fair nor reflective of the many factors dictating the ability of employers to schedule workers with the lead time outlined in the draft regulations.

Couple this with other recently enacted laws increasing minimum wage and Paid Family Leave, call-in pay adds another financial burden on small business. We oppose costly compliance requirements concerning any interpretation of the "act of God" clause.

Senator Jacobs with 19 Senators, recently sent a letter to the Department of Labor noting that if these regulations are adopted in their current form, New York will have the most restrictive scheduling regulations in the nation.

RECOMMENDATION

NYSTA recommends the Department of Labor withdraw this burdensome and costly proposed regulation. However, if the regulation does move forward that legislation be introduced in the Senate and Assembly to rescind it.

OPPOSED