

**OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
CITY OF NEW YORK**

-----x
DEPARTMENT OF CONSUMER
AND WORKER PROTECTION,

Petitioner,

-against-

STARBUCKS CORPORATION,

Respondent.
-----x

Petitioner, DEPARTMENT OF CONSUMER AND WORKER PROTECTION (the “Department”), by its attorney, Emily Whalen, alleges as follows:

Introduction

1. Starbucks Corporation (“Starbucks”) wrongfully discharged Karmen Rich from her employment on December 27, 2023, without just cause or a bona fide economic reason. This discharge violated the New York City Fair Workweek Law, Title 20, Chapter 12, Subchapter 7 of the New York City Administrative Code (the “Fair Workweek Law”) and its attendant rules, Title 6, Chapter 7, Subchapter F of the Rules of the City of New York (“Fair Workweek Rules”).
2. By this proceeding, the Department seeks the penalties and employee relief provided for in Sections 20-1208(b), 20-1209(a), 20-1222, and 20-1274 of the Fair Workweek Law.

Wrongful Discharge Under the Fair Workweek Law

3. The wrongful discharge provisions of the Fair Workweek Law prohibit New York City fast food employers from discharging fast food employees who have completed a 30 day probation period, except for just cause or for a bona fide economic reason. N.Y.C. Admin. Code § 20-1272(a).
4. A fast food employer is any employer that employs a fast food employee at a fast food establishment. N.Y.C. Admin. Code § 20-1201.
5. A fast food employee is any non-salaried person employed or permitted to work at a fast food establishment where their duties include at least one of the following: customer service, food or drink preparation, delivery, security, stocking supplies or equipment, cleaning or routine maintenance. N.Y.C. Admin. Code § 20-1201.

6. A fast food establishment is defined as a limited-service establishment that is part of a chain with thirty (30) or more establishments nationally, whether on an integrated or franchise basis. N.Y.C. Admin. Code § 20-1201.
7. A discharge is defined as any cessation of employment, including layoff, termination, constructive discharge, reduction in hours and indefinite suspension. N.Y.C. Admin. Code § 20-1201.
8. Just cause is defined as a fast food employee's failure to satisfactorily perform job duties or misconduct that is demonstrably and materially harmful to the fast food employer's legitimate business interests. N.Y.C. Admin. Code § 20-1271.
9. A termination shall not be considered based on just cause unless the fast food employer has utilized progressive discipline, and the fast food employer had a written policy on progressive discipline in effect at the fast food establishment that was provided to the fast food employee. N.Y.C. Admin. Code § 20-1272(c).
10. Progressive discipline is defined as a disciplinary system that provides for a graduated range of reasonable responses to a fast food employee's failure to satisfactorily perform such fast food employee's job duties, with the disciplinary measures ranging from mild to severe, depending on the frequency and degree of the failure. N.Y.C. Admin. Code § 20-1271.
11. A fast food employer must maintain a written policy on progressive discipline. The policy must include either the accrual of disciplinary points, strikes, or some comparable system of graduated discipline for subsequent infractions. 6 R.C.N.Y. § 7-626(a).
12. This requirement to use progressive discipline does not apply where termination is for an egregious failure by the employee to perform their duties, or for egregious misconduct. N.Y.C. Admin. Code § 20-1272(c).
13. An egregious failure by the employee to perform their duties means an employee's willful refusal to perform work for the majority of time on a shift. 6 R.C.N.Y. § 7-627(b).
14. Egregious misconduct means workplace conduct that is so outrageous, dangerous, or illegal that an employer cannot reasonably expect to correct it through progressive discipline. Examples may include violence or threats of violence, theft, sexual harassment, race discrimination, or willful destruction of property. 6 R.C.N.Y. § 7-627(c).
15. In determining whether a fast food employer had just cause for discharge, the fact-finder may not consider any reasons proffered by the fast food employer but not included in a written explanation or notice of discharge provided to the fast food employee. N.Y.C. Admin. Code § 20-1272(d); 6 R.C.N.Y. § 7-628.
16. In determining whether a fast food employee has been discharged for just cause, the fact-finder

shall consider, in addition to any other relevant factors, whether:

- a. The fast food employee knew or should have known of the fast food employer's policy, rule or practice that is the basis for progressive discipline or discharge;
- b. The fast food employer provided relevant and adequate training to the fast food employee;
- c. The fast food employer's policy, rule or practice, including the utilization of progressive discipline, was reasonable and applied consistently;
- d. The fast food employer undertook a fair and objective investigation into job performance or misconduct; and
- e. The fast food employee violated the policy, rule or practice or committed the misconduct that is the basis for progressive discipline or discharge.

N.Y.C. Admin. Code § 20-1272(b).

17. A fast food employer shall bear the burden of proving just cause or a bona fide economic reason by a preponderance of the evidence, subject to the rules of evidence as set forth in the civil practice law and rules or, where applicable, the common law. N.Y.C. Admin. Code § 20-1272(e).

Penalties and Relief Under the Wrongful Discharge Provisions of the Fair Workweek Law

18. The Fair Workweek Law requires employee relief of \$500 for each violation of the wrongful discharge provisions, \$300 for each violation of the premium pay requirement for cancelled shifts, compensatory damages, an order directing compliance with N.Y.C. Administrative Code § 20-1272, rescission of any discipline issued, payment of back pay for any loss of pay or benefits resulting from the wrongful discharge, and any other equitable relief as may be appropriate. N.Y.C. Admin. Code § 20-1208(a)-(b).
19. The Fair Workweek Law also provides for a civil penalty of \$500 for first violations and, for subsequent violations within two years, up to \$750 for the second violation, and up to \$1,000 for each succeeding violation. N.Y.C. Admin. Code § 20-1209(a).
20. A discharged fast food employee who loses a shift on a work schedule as a result of such employee's termination or for any reason is entitled to schedule change premiums for each such lost shift. N.Y.C. Admin. Code §20-1274.
21. The schedule change premium amount is \$20 for each cancelled shift with less than 14 days' notice but at least seven days' notice; \$45 for each cancelled shift with less than seven days' notice but at least 24 hours' notice; and \$75 for each cancelled shift with less than 24 hours'

notice. N.Y.C. Admin. Code §§ 20-1222, 20-1274. Notice is calculated from the first day on the work schedule. 6 R.C.N.Y. § 7-622(a).

22. This tribunal has jurisdiction to order Ms. Rich required monetary relief and penalties. N.Y.C. Charter § 2203(h)(1) (the Department may order restitution, damages, and equitable relief) and 6 R.C.N.Y. § 6-01(a) (delegating the Department's adjudicatory powers to the Office of Administrative Trials and Hearings).

Facts

The Parties

23. Petitioner is the New York City agency designated to enforce New York City's Fair Workweek Law pursuant to Section 2203(e) of the Charter and Section 20-1207(a) of the Fair Workweek Law.
24. Respondent is a foreign business corporation with a principal place of business in Seattle, Washington. Respondent owns and operates fast food establishments across New York City.
25. Starbucks is a fast food employer and employs fast food employees, as those terms are defined in Section 20-1201 of the Fair Workweek Law.

Starbucks' Employment of Karmen Rich

26. Karmen Rich was an employee of Starbucks from October 2, 2020, through December 27, 2023, when Starbucks terminated her without just cause.
27. Most recently, Ms. Rich worked as a Shift Supervisor at the Starbucks located at 625 Atlantic Avenue, Brooklyn, New York 11217 (the "Atlantic Avenue Starbucks"). She worked approximately five days per week, Wednesday through Sunday, between seven and eight hours per shift, preparing beverages for customers, cleaning, stocking and supervising other baristas.
28. Ms. Rich did not receive any discipline during her first three years working for Starbucks.
29. On November 8, 2023, [REDACTED] Store Manager at the Atlantic Avenue Starbucks, provided Ms. Rich with a Corrective Action Notice stating that Ms. Rich did not perform a food count and missed cleaning tasks on October 29, 2023. In the Corrective Action Notice, [REDACTED] warned Ms. Rich to check all food items prior to leaving her shift going forward and recorded the corrective action as "documented coaching."
30. On November 11, 2023, Ms. Rich was scheduled to work at 6:30 AM but ran late and did not arrive at the Atlantic Avenue Starbucks until approximately 7:15 AM.

31. On November 12, 2023, Ms. Rich was scheduled to work at 6:30 AM and open the store with her coworker, [REDACTED] Ms. Rich ran late.
32. Starbucks' "Maintaining a Secure Work Environment" policy prohibits employees from entering stores alone when opening. Store openings require a minimum of two partners. Ms. Rich and [REDACTED] agreed that [REDACTED] would wait at a nearby Starbucks until Ms. Rich arrived at the Atlantic Avenue Starbucks. When Ms. Rich arrived at the Atlantic Avenue Starbucks at 6:45 AM and was unable to reach [REDACTED] by phone, she went to the agreed-upon Starbucks location to retrieve [REDACTED] so that she could open the store in compliance with Starbucks' policies.
33. Ms. Rich did not find [REDACTED] there and returned to the Atlantic Avenue location, where [REDACTED] was waiting. They entered the store at approximately 7:06 AM and Ms. Rich recorded her arrival in the punch communication log, accurately, as 6:45 AM, the time she arrived at the Atlantic Avenue location and began looking for her co-worker.
34. [REDACTED] who was not disciplined, similarly recorded her arrival time that day in the punch communication log, accurately, as 6:30 AM, the time she originally arrived at the Atlantic Avenue location. Starbucks has not represented that this was a violation of any policy, even though it was the same conduct for which Starbucks disciplined Ms. Rich.
35. On December 27, 2023, Starbucks terminated Ms. Rich by providing her with a Notice of Separation. The Notice of Separation stated that Starbucks terminated Ms. Rich for violating its attendance and punctuality policy, time theft, falsification of official Starbucks documents, and failing to be forthcoming during its investigation.
36. Specifically, the Notice of Separation explained that on November 12, 2023, Ms. Rich recorded her arrival time as 6:45 AM, but that video evidence showed that she did not enter the store until 7:06 AM. The Notice of Separation also noted that Ms. Rich was late to work on November 11, 2023, and referenced the November 8, 2023, Corrective Action Notice related to Ms. Rich's failure to perform a food count and cleaning tasks on October 29, 2023.

The Department's Investigation

37. The Department received a complaint from Karmen Rich alleging that Starbucks violated the Fair Workweek Law by discharging her without just cause or a bona fide economic reason.
38. The Department initiated an investigation by serving Starbucks with a Notice of Complaint dated June 20, 2024. The Notice of Complaint outlined Ms. Rich's allegations and provided Starbucks an opportunity to respond.
39. The Notice of Complaint also sought documents including:

- a. Karmen Rich's complete personnel file, all records of progressive discipline, and any other records related to job performance, attendance, alleged misconduct, or disciplinary measures correspondence between Ms. Rich's direct managers, senior managers, Starbucks Partner Resources, and other parties concerning her progressive discipline and discharge.
 - b. Records reflecting any policy, rule, or practice that Starbucks alleges that Ms. Rich violated.
 - c. Any Notice of Discharge provided to Ms. Rich.
 - d. All progressive discipline policies Starbucks had in effect from July 5, 2021, through the present, and records reflecting that Ms. Rich received such policies.
 - e. All records reflecting premium payments made to Ms. Rich for the pay period including December 23, 2023, and documents showing her hours scheduled and actual hours worked for that pay period.
40. In response to the Notice of Complaint, on July 11, 2024, Starbucks provided the Department with, among other things, portions of the Starbucks Partner Guide and the New York City addendum to the Starbucks Partner Guide, the Corrective Action Notice addressed to Ms. Rich dated November 8, 2023, the Notice of Separation addressed to Ms. Rich dated December 27, 2023, payroll records, and scheduling records.
41. Starbucks also provided a written response stating that Ms. Rich's violations of Starbucks safety, security, and timekeeping policies provided just cause for her termination. Specifically, Starbucks contended that Ms. Rich committed time theft on November 12, 2023, by recording in the punch communication log that she arrived at work at 6:45 AM. Starbucks claimed that a video captured her entering the Atlantic Avenue Starbucks at 7:06 AM.
42. Starbucks policies prohibited employees from opening a store alone. Notably, these policies made no mention of the proper recording of arrival times and provided no clarification as to what would be appropriate in these circumstances.
43. On August 15, 2024, the Department requested the video Starbucks referenced in its July 11, 2024, response, the punch communication log from the week Ms. Rich allegedly violated Starbucks' policies, investigation notes related to the violation, and any notes or reports related to Ms. Rich's appeal of her termination.
44. In response to this request, on September 5, 2024, Starbucks provided the Department with the punch communication log, investigation notes related to Ms. Rich's termination, internal Starbucks communications regarding Ms. Rich's termination, and Ms. Rich's appeal. Starbucks did not provide the requested video, contending that it was not preserved.
45. On November 24, 2024, the Department sent Starbucks a letter detailing its finding that Starbucks wrongfully terminated Ms. Rich. The Department found that Starbucks did not have

just cause to terminate Ms. Rich because her actions did not rise to the level of egregious misconduct, and Starbucks terminated her without applying progressive discipline.

The Department's Findings

- 46. There was not just cause for Ms. Rich's termination.
- 47. Starbucks' New York City Addendum to the Starbucks Partner Guide contains a Progressive Discipline Policy that includes corrective action ranging from verbal coaching to documented coaching, written warning, a final written warning, and demotion or separation.
- 48. The Progressive Discipline Policy also contains an attendance policy that provides for the accumulation of "attendance occurrences" as set forth below:

Tardy	One occurrence when a partner is late for their scheduled shift. Partners are expected to be ready to begin working at the exact start time of their scheduled shift and to return from breaks on time. If a partner is five (5) minutes late or more, they will receive one occurrence under this policy. If a partner shows a pattern of being tardy by less than five (5) minutes and the behavior doesn't resolve after coaching, occurrences may also be issued going forward for tardies of less than 5 minutes.
Late Call-In	One occurrence when a partner calls in late. For purposes of this policy, a late call-in is defined as reporting an absence or tardy at or after the start of a scheduled shift.
Absence	Two occurrences each day a partner is absent from a scheduled shift. For purposes of this policy, an absence is defined as missing at least half of a scheduled shift.
Early Departure	Five occurrences for departing before the scheduled end time of the shift without approval in advance from the supervisor or manager running the shift. Note that "walking off" a shift paired with inappropriate or disruptive comments may be just cause for separation from employment.
No Call / No Show	Five occurrences when a partner calls in to report an absence more than two hours after the start of a scheduled shift or fails to call in to report an absence.

- 49. The attendance policy further states that Starbucks will issue corrective action for attendance occurrences as follows:

	Documented Coaching	Written Warning	Final Written Warning	Separation
OCCURRENCES				
Within 30-day Introductory Period*				3
Within a rolling 12- month period	3	4	5	7

50. Additionally, the attendance policy states that if an employee has previous corrective actions for violations other than attendance, the employee will receive the next level of corrective action for any subsequent attendance violations.
51. Terminating Ms. Rich was inconsistent with Starbucks’ attendance and punctuality policies. Ms. Rich could have received – at most – two additional points for being “tardy” on November 11, 2023, and November 12, 2023. Since Ms. Rich had already received documented coaching for a prior infraction, the application of Starbucks’ progressive discipline policy should have resulted in a written warning or a final written warning.
52. Terminating Ms. Rich was not reasonable. Prior to receiving the Corrective Action Notice on November 8, 2023, Ms. Rich had worked for Starbucks for over three years without a disciplinary record. Starbucks could have corrected Ms. Rich’s lateness on November 11, 2023, and November 12, 2023, and her alleged misrecording of her arrival time, through progressive discipline.
53. Ms. Rich did not know or receive adequate training that recording her arrival time at 6:45 AM was not permitted. To the contrary, Ms. Rich reasonably believed that the time between her arrival at Starbucks and attempt to retrieve [REDACTED] was compensable, given Starbucks’ prohibition on opening the store alone.
54. Ms. Rich’s recording of her arrival time as 6:45 AM does not rise to the level of egregious misconduct as defined by the Fair Workweek Law.
55. In discharging Ms. Rich, Starbucks cancelled the following scheduled shifts of Ms. Rich with less than 24 hours’ notice:
- a. Thursday, December 28, 2023
 - b. Friday, December 29, 2023
 - c. Saturday, December 30, 2023
 - d. Sunday, December 31, 2023
56. Starbucks did not pay the required premiums for shift cancellations.

Violations of the Fair Workweek Law

Count 1: Wrongful Discharge of Karmen Rich in Violation of Section 20-1272(a) of the Fair Workweek Law

57. The Department realleges and incorporates by reference each and every allegation set forth in all preceding paragraphs as though fully set forth herein.
58. It is unlawful to discharge a fast food employee who has completed a probation period except for just cause or for a bona fide economic reason. N.Y.C. Admin. Code § 20-1272(a).
59. Respondent violated Section 20-1272(a) of the Fair Workweek Law by discharging Karmen Rich on December 27, 2023, without just cause or a bona fide economic reason.
60. Starbucks must pay relief to Complainant in the amount of \$500 and back pay for any loss of pay or benefits in an amount to be determined at trial. N.Y.C. Admin. Code § 20-1208(b).
61. Respondent must pay a civil penalty to the Department in the amount of \$500. N.Y.C. Admin. Code § 20-1209(a).

Count 2: Failure to Provide Schedule Change Premiums in Violation of Sections 20-1222(a) and 20-1274 of the Fair Workweek Law

62. The Department realleges and incorporates by reference each and every allegation set forth in all preceding paragraphs as though fully set forth herein.
63. Starbucks must provide premium pay to a discharged fast food employee who loses a scheduled shift as a result of such employee's termination for any reason. N.Y.C. Admin. Code §§ 20-1222(a), 20-1274.
64. Starbucks violated Section 20-1274 of the Fair Workweek Law by failing to pay Karmen Rich the required schedule change premiums for 4 shifts that she lost as a result of her termination on December 27, 2023.
65. Accordingly, Starbucks must pay relief to Ms. Rich in the amount of:
 - a. \$300, per lost shift; and
 - b. The amount of unpaid premium pay owed for each lost shift.

N.Y.C. Admin. Code § 20-1208(a)(3)(c).

66. Starbucks must also pay a civil penalty to the Department in the amount of \$500 for each shift for which it failed to provide Ms. Rich premium pay as required by the Fair Workweek Law. N.Y.C. Admin. Code § 20-1209.

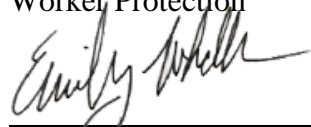
SPECIFIC RELIEF SOUGHT

WHEREFORE, the Department respectfully requests that this tribunal issue a Report and Recommendation pursuant to NYC Charter § 2203(h)(1):

- (a) Declaring that Starbucks violated the Fair Workweek Law as described in Counts 1 and 2 above;
- (b) Directing Starbucks to pay employee relief and premium pay, in an amount to be determined at trial, for the violations detailed herein;
- (c) Directing Starbucks to pay civil penalties for the violations detailed herein;
- (d) Directing Starbucks to rescind the discipline issued to Karmen Rich in its Notice of Separation dated December 27, 2023;
- (e) Directing Starbucks to comply with the Fair Workweek Law and Rules; and
- (f) Directing any such other relief as this tribunal may deem just and proper.

Dated: March 10, 2025

For: VILDA VERA MAYUGA
Commissioner of Consumer and
Worker Protection

By: 

EMILY WHALEN ESQ.
Attorney for Petitioner

████████████████████
████████████████████
████████████████████
████████████████████

**OFFICE OF ADMINISTRATIVE TRIALS AND
HEARINGS CITY OF NEW YORK**

-----x
DEPARTMENT OF CONSUMER AND
WORKER PROTECTION,

**NOTICES TO
RESPONDENT**

Petitioner,

Record No. 2024-03348-ENF

-against-

STARBUCKS CORPORATION,

Respondent.

-----x
To each above-named Respondent, **TAKE NOTICE THAT:**

YOU HAVE A RIGHT TO FILE AN ANSWER with the New York City Office of Administrative Trials and Hearings (“OATH”), 100 Church Street – 12th Floor, New York, New York 10007. Pursuant to Section 1-24 of Title 48 of the Rules of the City of New York, if you choose to file an answer, your answer must be filed within eight days of service if the petition was served via personal delivery or thirteen days of service if the petition was served by mail, unless the administrative law judge assigns a different deadline. Alternatively, an administrative law judge may require you to file an answer. Failure to file an answer when required may result in sanctions against you.

YOU HAVE THE RIGHT TO BE REPRESENTED BY AN ATTORNEY OR OTHER REPRESENTATIVE, if you choose. If you choose to be represented, or your attorney or representative must file a notice of appearance with OATH.

1. **YOUR FAILURE OR YOUR AUTHORIZED REPRESENTATIVE’S FAILURE TO APPEAR AT THE HEARING, CONFERENCE, OR TRIAL** may result in a waiver of the right to a hearing or other disposition against you and a default decision and order being entered against you.

2.

OATH’S RULES OF PRACTICE AND PROCEDURE are published in Title 48 of the Rules of the City of New York. Copies of OATH’s rules are available at OATH’s offices at 100 Church Street – 12th Floor, New York, New York 10007 and on OATH’s website: <http://www.nyc.gov/oath>.

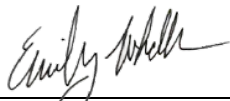
OATH WILL ISSUE A RECOMMENDED DECISION IN THIS MATTER, which the Commissioner of the Department of Consumer and Worker Protection (“DCWP”) may adopt, reverse, modify, or send back to OATH, in whole or in part, for additional proceedings, pursuant to Section 2203(h)(1) of the New York City Charter.

WITHIN THIRTY (30) DAYS OF THE ISSUANCE OF THE RECOMMENDED DECISION, Respondents may submit to the Commissioner of DCWP by regular mail, email, or delivery to DCWP at its main office, a written argument setting forth the reasons why the Commissioner should adopt, reverse, or modify the decision, or send the decision, in whole or in part, back to OATH for additional proceedings.

IF A FINAL ORDER OF THE COMMISSIONER REQUIRES YOU TO PAY A CIVIL PENALTY, failure to pay that penalty in a timely manner could lead to the denial of an application for a license, permit or registration, or to the suspension, termination or revocation of a license, permit or registration issued to you by a city agency.

Dated: March 10, 2025

For: VILDA VERA MAYUGA
Commissioner of Consumer and
Worker Protection

By: 

Emily Whalen Esq.
Senior Staff Counsel
Attorney for Petitioner

████████████████████
████████████████████
████████████████
████████████████████