



June 2019

Chicago's Fair Workweek Law Mandates Predictive Scheduling

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Chicago's Fair Workweek Ordinance imposes a sweeping, predictive scheduling obligation on employers to provide employees with advance notice of work schedules and pay employees "predictability pay" for late changes to an employee's work schedule. Passed by the City Council on July 24, the law is expected to be signed by Chicago Mayor Lori Lightfoot and to go into effect on July 1, 2020.

Covered Employers

The Ordinance applies to employers in the following industries:

- **Building Services** – including janitorial services, building maintenance services and security services;
- **Health Care** – including health care services or long-term care services that require licensure under certain licensing statutes and regulations;
- **Hotels** – including inns, hotels, motels and other locations where sleeping or rooming accommodations are furnished for hire and for rent, with seven (7) or more sleeping rooms;
- **Manufacturing** – this industry covers businesses involved in the production of tangible goods for use from raw or prepared materials;
- **Restaurants** – this industry includes businesses licensed to serve food in the City of Chicago that also have 30 locations and at least 250 employees in the aggregate, but does *not* include businesses with three (3) or fewer locations in Chicago that are owned by one employer and are operating under a franchise agreement;
- **Retail** – this industry covers businesses that sell to end users tangible products that are primarily for personal, household or family purposes, such as appliances, clothes, electronics, groceries and household items; and
- **Warehouse Services** – this industry includes businesses that store goods, ware or commodities for hire or compensation, which may include the loading, packing, sorting, stacking, wrapping, distribution and delivery of those goods.

An **employer** in one of these industries is covered under the Ordinance if it (1) is primarily engaged in one of the covered industries, and (2) employs 100 or more employees globally (250 employees if the employer is a not-for-profit corporation; 250 employees *and* has 30 or more locations globally if the employer is in the restaurant industry) at least 50 of whom are "covered employees" (as defined below).

The Ordinance applies to **employees** working for a covered employer in a covered industry

who earn \$26 or less per hour as an hourly employee or \$50,000 or less per year as a salaried employee, and who perform the majority of their work for a covered employer while physically present within the City of Chicago. For employees who work in the hotel industry, set service fees that an employee earns are included in the calculation of the hourly wage threshold. However, such employees who work at a banquet event at a hotel and receive a set gratuity for that work are not considered a covered employee under the Ordinance for that banquet event.

General Requirements

Beginning July 1, 2020, the Ordinance imposes on covered employers numerous requirements with respect to employee scheduling and notice of employee scheduling:

- **Work Schedule Estimates for Newly Hired Employees**
Prior to or on commencement of employment, employers must provide new employees with a written, good faith estimate of the employee's work schedule for the first 90 days of employment, including estimates of average weekly hours, days, and shifts (including on-call shifts). Employees may ask the employer to modify the projected days and hours, and employers must consider such requests. Employers have the discretion to accept or reject the employee's request, but the employer must respond in writing with its determination within three (3) days of the request.
- **Work Schedule Posting and Changes**
Employers must publish in writing (either in a conspicuous location or using usual methods of communication, or both) the work schedules for covered employees at least 10 days in advance (and at least 14 days in advance beginning July 1, 2022),

with the posted written schedule identifying the shift and on-call status of all covered employees at the worksite. Upon written request, the employer must transmit the schedule to an employee electronically. An employer may change a work schedule after it is posted or transmitted but before the 10 (or 14) day deadline without incurring a penalty.

- **Compensation for Shift Changes**
Employers must compensate employees (as discussed below) for alterations to work schedules within the 10 (or 14) day posting deadline.
- **Assigning Additional Shifts**
Employers must offer additional hours to existing, qualified employees, and if such additional shifts are not accepted, to temporary or seasonal workers who have worked for the employer for two (2) or more weeks, before filling additional shifts with new hires (but employers are not required to offer existing employees additional shifts if such additional shifts would result in employees receiving overtime pay).
- Various notice and record-keeping requirements (as discussed below).

Employee Rights

Covered employees enjoy a number of rights under the Ordinance pertaining to their work schedules:

- Employees have a right to decline previously unscheduled hours added to their schedule within 10 days of the first day of a new schedule (and within 14 days beginning July 1, 2022) (employees do not have the right to decline such changes if the change is due to certain events outside the control of the employer, such as utility

outages, acts of nature, threats to public safety or strikes);

- “Predictability pay” (as defined below) for certain changes made to an employee’s schedule;
- Employees have a “right to rest,” meaning they can decline additional hours that are less than 10 hours after the end of the previous day’s shift; and
- Employees have the right to request a modified work schedule, such as changes in days or times of work, total work hours, job-sharing or status as full- or part-time. While the Ordinance is silent on whether employers must accept these requests, employers may not retaliate against employees for making such requests.

Predictability Pay for Schedule Changes

If an employer changes a covered employee’s work schedule after the Ordinance’s posting deadline, but more than 24 hours before the commencement of the changed shift, the employer must pay the employee one (1) hour of “predictability pay” at the employee’s customary rate of pay for each shift that is modified (*i.e.*, adding hours, reducing hours or changing the date or time of the shift, even if there is no loss of hours). If an employer cancels or reduces the number of hours for a covered employee’s shift within 24 hours of the modified schedule, the employer must pay the employee 50 percent of the employee’s customary rate of pay for the canceled or reduced hours. Additionally, if an employee works a shift that begins less than 10 hours after the end of the previous days shift (*i.e.*, the employee does not invoke the “right to rest”) the employer must pay the employee 1.25 times the employee’s customary rate of pay for that shift.

Employers do not need to pay predictability pay in certain situations, including:

- When the schedule change is due to certain events outside the control of the employer, such as utility outages, acts of nature, threats to public safety or strikes;
- When covered employees mutually agree to trade or cover shifts;
- When the employee mutually agrees in writing with the employer to accept additional shifts offered by the employer;
- When an employee requests a shift change, which is confirmed in writing, including for the use of sick leave, vacation leave or other policies offered by the employer; or
- When the employer subtracts hours for disciplinary reasons for just cause, provided the employer documents in writing the incident leading to the discipline.

The Effect on Employees with Collective Bargaining Agreements

The Ordinance does not interfere with, impede or diminish the rights of employees with collective bargaining agreements (CBAs) to bargain with employers to establish wages or other work conditions in excess of the standards in the Ordinance. Further, the Ordinance’s requirements may be waived in a CBA, but only if the waiver is explicit and set forth in clear and unambiguous terms.

Notice, Posting and Record-Keeping Requirements

Employers must post in a conspicuous location at each worksite in the City of Chicago a notice, which will be prepared by the Commissioner of Business Affairs and Consumer Protection,

advising employees of their rights under the Ordinance. Additionally, employers must provide employees a copy of the notice with the employee's first paycheck.

The Ordinance mandates that employers keep for at least three (3) years, or for the duration of any claim, civil action or investigation, a record of each covered employee's name, hours worked, pay rate and records necessary to demonstrate compliance with the Ordinance. This includes good faith estimates of work schedules, initial posted schedules, all changes to initial schedules, consent by employees to work hours and documentation of offers to existing employees to work additional hours and responses to such offers.

Enforcement and Remedies

Employers who violate the Ordinance are subject to fines of \$300 to \$500 for each violation, and each day that a violation occurs is deemed a separate violation. Employers that retaliate against covered employees for exercising their rights under the Ordinance will be subject to a \$1,000 civil fine plus any compensatory damages suffered by the employee if the employee prevails after bringing a private right of action.

The Department of Business Affairs and Consumer Protection (Department) is responsible for enforcing and administering the Ordinance. Additionally, employees may file complaints with the Department within two (2) years of the alleged violation. Thereafter, if the employer fails to either successfully contest or cure a violation, the complaining employee may file a private right of action. If successful, the employee may recover an award of lost compensation, payment of predictability pay and costs and attorneys' fees.

How Employers Should Prepare

Although the Ordinance does not go into effect until July 1, 2020, employers in the covered industries with locations in Chicago should determine whether they are considered a covered employer. If an employer is covered by the Ordinance, it should take steps now to evaluate current scheduling practices and make necessary changes to ensure compliance with the Ordinance before it goes into effect. Employers should also identify covered employees so they are aware of which employees will need advance notice of work schedules. Finally, employers should consult with counsel to update handbooks and scheduling policies to ensure such policies are not inconsistent with the Ordinance.

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