Chicago Fair Workweek Law Set to Impose Sweeping Predictable Workweek Requirements

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On July 24, 2019, the Chicago City Council voted to pass the Fair Workweek Ordinance that will require covered employers to, among other things, provide employees with at least 10 days’ advance notice of their work schedules and provide additional compensation to employees for any unscheduled changes to their scheduled work hours. Mayor Lori Lightfoot publically supported and is expected to sign the ordinance, which will go into effect on July 1, 2020.

As for the ordinance’s coverage, it will apply to employers (1) with at least 100 total employees (or 250 total employees for non-profit organizations), (2) including at least 50 employees covered by the ordinance, and (3) primarily engaged in business in a covered industry.

“Covered employees” include those who are (1) physically present in the City of Chicago for the majority of their work time, (2) who perform the majority of their work in a covered industry for a covered employer, and (3) earn $50,000 per year or less for salaried employees or $26 per hour or less for hourly employees.

“Covered industries” include:

- Building services (e.g., janitorial and maintenance workers and security services)
- Healthcare
- Hotels
- Manufacturing
- Restaurants (with some limitations)
- Retail
- Warehouse services
The ordinance expressly exempts any collective bargaining agreements (CBA) in place before the effective date of the ordinance, July 1, 2020, and its requirements may be waived if done so expressly in any subsequent CBA.

While the primary thrust of the ordinance is to require employers to give employees advance notice of their work schedules, the following is a summary of the ordinance’s key requirements that Chicago-based employers need to be aware of as the ordinance takes effect:

- **Advance Notice of Schedules** – Covered employers must provide covered new hires with a good faith written estimate of their projected work days and hours for their first 90 days of employment, including (1) the average number of hours per week the employee can expect to work, (2) whether an employee is expected to be on call, and (3) a subset of days/times an employee can expect to work or be off work. The new hire must be given the opportunity to request modifications to the proposed schedule, which the employer may accept or reject but must provide the new hire its written decision within three days of a modification request. For existing employees, covered employers must provide covered employees with a written work schedule at least 10 days before any new work schedule begins, which will increase to 14 days beginning on July 1, 2022. Like new hires, existing covered employees have the right to request modifications to their schedules and the employer must respond in writing accepting or rejecting the modification within three days of a request.

- **Schedule Changes** – Covered employees may refuse to work any unscheduled hours their employer adds to their work schedule if they do not receive at least 10 days’ notice (which will increase to 14 days on July 1, 2022) before the first day of any new schedule. If a covered employee agrees to work a schedule issued without adequate notice under the ordinance, the employee is entitled to one hour of additional pay (referred to as “predictability pay”) above and beyond their ordinary pay per shift in which hours were added, reduced, or changed without the required notice. Additionally, covered employees are entitled to at least 50 percent of their regular pay for any scheduled hours the employee does not work because a covered employer reduces or cancels an employee’s shift with less than 24 hours’ notice, including if the employee is sent home early during a scheduled shift. Employers may reduce a covered employees’ hours for disciplinary reasons, provided they have just cause that must be documented in writing or in circumstances where the reason for the change is out of the employer’s control. Covered employers and employees may mutually agree on schedule changes lacking adequate notice without violating the ordinance, so long as the agreement is in writing. In addition, the ordinance does not impact employees requesting that their schedules be modified or trading shifts with coworkers, subject to their employers’ policies.

- **Additional Hours and Shifts** – Before offering additional hours or shifts to temporary or seasonal workers, a covered employer must first offer those hours to its existing covered employees who are otherwise qualified to perform the work. Notwithstanding this requirement, an employer is not required to schedule existing employees to work additional hours that must be paid at a premium rate (e.g., beyond 40 hours per week). When practicable, additional hours and shifts must first be offered to part-time covered employees.

- **Rest Period** – Covered employees have the right to decline any scheduled hours that would begin less than 10 hours after the end of their prior shift. If a covered employee agrees to work such a shift, the employer must pay them at least 1.25 times the employee’s regular rate of pay for such a shift.
• **Posting Requirement** – Covered employers must post a notice of employees’ rights under the ordinance, to be promulgated by the Commissioner of the Department of Business Affairs and Consumer Protection (BACP) once the ordinance is signed into law.

• **Enforcement** – The ordinance provides covered employees with a private right of action for violations of the ordinance, including recovery of damages, costs, and fees. Covered employers must provide the BACP Department access to their worksites and relevant employment records for compliance and enforcement purposes. The ordinance also prohibits covered employers from retaliating against covered employees for asserting any rights protected under the ordinance and provides for a $1,000 civil fine for each discrete violation of the ordinance’s anti-retaliation provision. Lesser violations range from $300 to $500 per violation, per day. Covered employers will be required to maintain records of each covered employees’ name, hours worked, pay rate, and records necessary to demonstrate compliance with the ordinance for the longer of three years or the duration of any claim, civil action, or investigation initiated pursuant to the ordinance.

It is anticipated the BACP Department will issue further guidance, as well as the required posting, once the ordinance is signed into law. In the meantime, employers subject to the ordinance’s requirements should evaluate their scheduling practices. Most Chicago employers that are covered by the ordinance likely will need to alter their practices in some way to bring them into compliance. Covered employers outside of Chicago that have employees who work the majority of time in Chicago (potentially including work-at-home arrangements) may also need to comply with the ordinance. Employers that may be covered should use the time prior to the anticipated July 2020 effective date to evaluate, with the assistance of counsel if appropriate, coverage issues.

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