

Landmark Chicago “Fair Workweek” Ordinance Entitles Employees to Pay for Schedule Changes and Lost Work Hours

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On July 23, 2019, the Chicago City Council passed the controversial Chicago Fair Workweek Ordinance (the Ordinance). Once Chicago Mayor Lori Lightfoot, a vocal proponent of the Ordinance, signs it into law, the Ordinance is scheduled to take effect for the majority of covered employers on July 1, 2020.

The Chicago Ordinance covers:

- Businesses that globally employ more than 100 employees and are primarily engaged in the building services, health care, hotels, manufacturing, restaurants, retail or warehouse services industries
- Not-for-profit corporations in such industries if they employ 250 or more employees
- Restaurants with 30 locations and 250 employees globally
- Franchises with four or more Chicago locations.

The Ordinance requires employers to post work schedules in advance and pay employees who work primarily within the city limits but earn less than \$26 per hour (or \$50,000 in annual salary) for schedule changes that occur after the posting

deadline. Under the Ordinance, wage standards for coverage increase yearly in proportion to increases in the Consumer Price Index for Urban Consumers.

Considered the most progressive “predictive scheduling” law of its kind, Chicago’s Fair Workweek Ordinance differs from comparable laws in other jurisdictions, which generally limit coverage to employers in retail, hospitality or restaurant industries. Chicago’s Ordinance is the first such law to apply to health care employers, such as acute care hospitals, long-term care facilities, freestanding emergency and dialysis centers, and other health care facilities.

The Ordinance will take effect for most covered employers on July 1, 2020, except that Chicago safety-net hospitals (urban hospitals providing a disproportionate share of care to low-income, uninsured and Medicaid patients) have an additional six months (until January 1, 2021) to comply.

KEY PROVISIONS OF THE ORDINANCE

Initial Estimate of Work Schedule

Covered employers are required to provide new employees with a written good faith estimate of projected days and hours of work prior to the start of employment. Such notice must include the average number of weekly work hours the employee can expect to work each week, whether the employee can expect to work any on-call shifts, and the subset of days and time (or shifts) the employee will be scheduled to work within the first 90 days. Under the Ordinance, employees may ask their employer to modify projected days and hours, and employers must consider such requests. An employer ultimately has the discretion to accept or reject an employee’s request, provided the employer notifies the employee of its determination within three days of the employee’s request.

Advance Notice of Work Schedules

Starting on July 1, 2020, employers are required to post employee work schedules at least 10 days in advance of scheduled shifts. Starting on July 1, 2022, employers are required to post employee work schedules at least 14 days in advance of scheduled shifts. The posted written schedule must include the shifts and on-call status of all covered employees at the worksite. Upon written request of a covered employee, the employer must transmit the schedule to employees electronically. Employers also are required to post an amended work schedule and transmit the revised schedule to covered employees within 24 hours of a schedule change.

Employees who self-schedule are excluded from the posting requirement, as are employees working for venues that regularly host ticketed events. A covered employee who is a victim of domestic or sexual violence (or who has a family or household member who is such a victim) may request the employee’s work schedule not be posted or transmitted to other employees.

Predictability Pay for Schedule Changes

If an employer alters a covered employee’s work schedule after the posting deadline,

the employee is entitled to receive one hour of predictability pay (at the employee's regular rate of pay) for each shift in which the employer adds hours of work, changes the date or time of the work (even if such change results in no loss of hours), or cancels or subtracts hours from a regular or on-call work shift with at least 24-hours' advance notice. In situations in which an employer provides less than 24-hours' notice of a schedule change, the employee is entitled to receive 50% of the employee's regular rate of pay for any scheduled hours the employee does not work.

The predictability pay obligations do not apply in certain situations when schedule changes result from workplace threats or civil authority recommendations not to work; when public utilities fail to supply electricity, water, gas or sewer services; or other acts of nature, war, civil unrest, strikes, threats to public safety or pandemics. Employees are not entitled to predictability pay when they mutually agree to trade shifts or mutually agree in writing to accept additional shifts offered by their employer. Employees are not entitled to predictability pay when they voluntarily request shift changes (including vacation, personal leave or sick time) or are penalized hours as a result of just cause disciplinary action.

Certain standards apply to banquet facility employees and covered manufacturers who make schedule changes on account of customer requests, delays in receipt of parts and material, or other events outside the control of the employer.

Health care employers are not required to pay predictability pay for schedule changes resulting from a declared disaster or other catastrophic event, or when the employer is required to implement its disaster plan or activate an emergency operations plan based on an incident that will substantially affect or increase the need for health care services. Health care employees are not entitled to predictability pay when patient care needs require specialized skills through the completion of a procedure, or when there is any unexpected substantial increase in demand for health care due to large public events, severe weather, violence or other circumstances beyond the employer's control.

Offer of Additional Work Hours to Covered Employees

When an employer needs to fill additional shifts of work, the employer must first offer such hours to existing covered employees qualified to do the work. If shifts are not accepted by such covered employees, the hours must be offered to temporary or seasonal workers, then to part-time employees when practicable. An employer then may distribute additional shifts to other employees.

Right to 10 Hours of Rest

A covered employee has the right to decline any scheduled work hours that occur less than 10 hours after the end of the previous day's shift. If the employee chooses to work the shift, he or she is entitled, for the shift, to pay at a rate of 1.25 times his or her regular rate.

Right to Request a Flexible Working Arrangement

A covered employee has the right to request a modified work schedule (including

changes to days, hours and start times), and may ask permission to trade shifts, work part-time, job share, or reduce or change work duties.

Notice and Posting Requirements

Employers are required to post a notice at each facility located within Chicago city boundaries where covered employees work, and provide a notice of rights to employees in their first paycheck after being covered by the Ordinance.

Other Employee Protections

Employers may not discriminate or take adverse action against a covered employee in retaliation for exercising rights under the Ordinance. Nor may an employer engage in conduct to avoid coverage under the Ordinance.

Enforcement of the Ordinance

Employers who violate the Ordinance or its administrative rules are subject to a \$300 to \$500 fine. Employers who engage in retaliation are subject to a \$1,000 fine. Employees can file an administrative complaint within two years of a violation, and may bring a private right of action against an employer that fails either to successfully contest or cure a violation and eliminate the basis for any future similar complaints. Prevailing employees are entitled to an award of any lost compensation, payment of predictability pay, and litigation costs and attorneys' fees for any violation.

The Chicago Department of Business Affairs and Consumer Protection is responsible for administering and enforcing the Ordinance, and is expected to adopt administrative rules prior to the effective date.

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