

Philadelphia Predictability Pay Requirement to be Enforced Beginning June 1

By Stephanie J. Peet, Timothy M. McCarthy & Morgan D. Hollander

February 16, 2021

Meet the Authors



Stephanie J. Peet

(She/Her)

Office Managing Principal

267-319-7818

Stephanie.Peet@jacksonlewis.com



Timothy M. McCarthy

Principal

267-319-7810

Timothy.McCarthy@jacksonlewis.com



Morgan D. Hollander

Starting June 1, 2021, the Philadelphia Office of Worker Protections will begin enforcement of predictability pay as part of the Philadelphia Fair Week Work Ordinance.

The Ordinance, which became law in December 2018 and went into effect on April 1, 2020, imposes significant scheduling and pay requirements on certain retailers, hotels, and food service establishments. It also provides protections for employees whose employers fail or refuse to comply with the regulations. The enforcement of predictability pay was paused as of the April 1, 2020, effective date in response to the COVID-19 health emergency.

For more on the Ordinance, please see our articles, [Philadelphia City Council Enacts Broad Scheduling Regulations](#) and [Philadelphia Fair Workweek Ordinance Set to Go into Effect April 1](#).

Predictability Pay

Predictability pay is compensation employers must provide to employees if employers initiate changes to employees' posted work schedules.

Covered employers include retailers, hotels, and food service establishments, plus chain establishments or franchises, with at least 30 locations and 250 employees worldwide. Covered employers must post employees' work schedules 10 days in advance of the workweek. Covered employees include all non-exempt employees under either federal or state law.

If an employer requests to change an employee's posted work schedule, it is considered an employer-initiated change in which predictability pay must be provided. Employer-initiated changes include when an employer:

1. Reduces an employee's hours;
2. Changes an employee's scheduled work location;
3. Adds extra hours after receiving the employee's consent to their posted work schedule; and
4. Makes changes to an employee's on-call shift, including not calling an employee in to work.

Required Amount of Predictability Pay

Covered employers must pay the following amount of predictability pay for each change to the advance notice requirement:

- If the employer adds time to an employee's work shift, with no loss of hours, the predictability pay is *one hour at the employee's rate of pay*.
- If the employer changes the date, time, or location of an employee's work shift,

Related Services

COVID-19
Wage and Hour

the predictability pay is *one hour at the employee's rate of pay*.

- If an employer subtracts hours from an employee's regular or on-call shift, the predictability pay is *no less than one-half times the employee's rate of pay per hour, for any scheduled hours the employee does not work*.
- If an employer cancels an employee's regular or on-call shift, including not calling the employee in to work, the predictability pay is *no less than one-half times the employee's rate of pay per hour, for any scheduled hours the employee does not work*.

Exceptions to Predictability Pay

Covered employers are not required to pay predictability pay under certain circumstances. These include when:

- Power outages, severe weather, or transit or utility shutdowns occur;
- Threats to the employer's property or personnel occur;
- An employee's schedule is altered due to changes involving a ticketed event or hotel banquet that are beyond the employer's control; or
- An employee's hours are reduced due to termination of employment.

In addition, the Ordinance includes a 20-minute grace period for changes to shift times before an employee would be entitled to predictability pay.

Implications for Philadelphia Employers

Despite the ongoing economic effects of the COVID-19 pandemic on employers and employees nationwide, Philadelphia employers must ensure they continue to comply with applicable federal, state, and local employment laws, such as the predictability pay requirement that will be enforced as part of the Ordinance beginning June 1, 2021. Employers must document exemptions to predictability pay for two years, as with all provisions of the Ordinance.

Jackson Lewis attorneys are available to answer inquiries regarding the Ordinance and predictability pay practices and assist employers in their compliance efforts.

©2021 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on labor and employment law since 1958, Jackson Lewis P.C.'s 1000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit <https://www.jacksonlewis.com>.