

Evanston, Illinois, Fair Workweek Law Imposes Predictive Scheduling Obligation on Employers

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Evanston, Illinois, has adopted an [ordinance](#) requiring certain employers in designated industries to give workers a 14-day notice of schedule changes and compensate them with “predictability pay” if any changes occur less than 14 days before the first scheduled shift.

Evanston’s Fair Workweek Ordinance will go into effect on January 1, 2024.

Highlights

The Ordinance:

1. Requires employers to give advance notice of work schedules;
2. Requires payment of predictability pay if an employer changes a work schedule less than 14 calendar days before the first shift of a workweek starts;
3. Creates a “right to rest” and allows employees to decline to work scheduled hours that begin less than 11 hours after their last shift ended;
4. Requires employers to provide new employees with a good faith estimate of the employee’s work schedule for the first 90 days of employment; and
5. Requires employers to offer additional shifts of work to its own employees or long-term, temporary employees, if they are qualified to do the work, before offering the work to temporary or seasonal workers.

Covered Employers, Employees, Industries

Employers are covered if they:

1. Directly or indirectly (including through the services of a temporary services or staffing agency) employ or exercise control over 100 or more employees; and
2. Are primarily engaged in a covered industry.

Franchisees with fewer than 100 employees but are associated with a franchisor or a network of franchises with more than 30 locations globally also are covered.

“Covered employees” is defined as a person who performs at least two hours of work during a period of seven consecutive days within the geographic boundaries of the City of Evanston and qualifies for minimum wage under the Illinois minimum wage law.

“Covered industry” means:

1. Hospitality;
2. Retail;

3. Warehouse Service;
4. Manufacturing;
5. Building Services; and
6. Food Service and Restaurants (food service businesses with at least 30 locations and 200 employees globally and licensed to serve food in Evanston; not covered are food service businesses with fewer than four locations in Evanston that are owned by one employer and are operating under a sole franchise).

Employer Requirements

New Employees: For a new employee, prior to or on commencement of employment, employers must provide a good faith estimate in writing of the employee's work schedule for the first 90 days of employment that includes the average weekly work hours, whether the employee can expect to work on-call shifts, and a subset of days and times or shifts the employee can expect to work and not. The employee may request modifications to the projected work schedule that the employer may accept or reject. The employer must notify the employee of its decision in writing within three days of the request.

Existing Employees: For existing employees, employers must publish in writing (in a conspicuous location at the workplace or using the usual methods of communication, or both) the work schedules for employees at least 14 calendar days before the first shift starts. The posted written schedule must identify the shift and on-call status of all covered employees at the worksite. An employer may change a work schedule after it is posted or transmitted but before the 14-day posting deadline without incurring a penalty. Any changes to the posted work schedule must be transmitted to the affected employee in writing within 24 hours. Upon written request of an employee, the employer must transmit the schedule to the employee electronically.

Schedule Changes: If an employer modifies an employee's work schedule with less than 14 days' notice before the start of a workweek in which the shift is modified, but more than 24 hours before the modified shift, the employer must pay the employee one hour of predictability pay at the employee's regular rate of pay for each shift that is modified. If an employer modifies an employee's schedule with less than 24 hours' notice, the employee is entitled to: (i) four hours of pay or the number of hours in the employee's scheduled shift, whichever is less, when hours are cancelled or reduced; or (ii) one hour of predictability pay for all other changes. Predictability pay is not required if changes are due to events outside of the employer's control, among other reasons detailed in the Ordinance.

Additional Hours: Employers must offer additional hours of work to existing, qualified, part-time employees before hiring new employees (including temporary employees or contractors). Employers are not required to offer existing part-time employees additional shifts if such additional work would result in employees working more than 35 hours in a week. If the expected duration of the available work is more than two weeks, employees will have 72 hours to accept the additional hours, after which time the employer can hire new employees. If the expected duration is less than two weeks, employees will have 24 hours to accept the additional hours.

Recordkeeping: Employers must keep for at least three 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 subsequent changes to initial schedules, consent to work hours by employees, documentation of offers to existing employees to work additional hours, and responses to such offers. Upon an employee's reasonable request, an employer must provide the employee a copy of such records relating to employee.

Employee's Right to Rest

A covered employee has the right to decline work schedule hours that start less than 11 hours after the end of their previous day's shift. Employees who give their written consent to work a shift that begins less than 11 hours after their previous shift ended are entitled to 1.5 times the employee's regular rate of pay for that shift.

Employee Protections, Enforcement

Any covered employee may initiate a civil action in court within two years of the alleged conduct resulting in a violation. If the employee prevails, the employee may recover an award for any damages sustained, including predictability pay, costs, and attorneys' fees.

Employers that violate the Ordinance are subject to a fine of \$300 to \$500 for each violation. Each day a violation occurs is deemed a separate and distinct violation to which a separate fine will apply. The fine increases by \$50 for each subsequent violation.

Employers that discriminate in any manner or retaliate against employees for exercising their rights under the Ordinance are subject to a \$1,000 fine for each occurrence.

Covered employers should prepare by reviewing scheduling practices with employment counsel for compliance with the new law.

Please contact a Jackson Lewis attorney with any questions or need guidance handling workplace issues.

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