

Chicago City Council Passes Comprehensive Fair Workweek Law that Includes Predictable Scheduling

By Kathryn Montgomery Moran & Sarah J. Gasperini

July 24, 2019

Meet the Authors



Kathryn Montgomery Moran

(She/Her)

Principal

312-803-2511

Kathryn.Moran@jacksonlewis.com



Sarah J. Gasperini

Principal

312-787-4949

Sarah.Gasperini@jacksonlewis.com

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The Chicago City Council has passed the Chicago Fair Workweek Ordinance, which requires large employers to provide workers with at least two weeks' advance notice of their work schedules and compensate workers for last-minute changes.

Mayor Lori Lightfoot is expected to sign the Ordinance, which will become effective for most covered employers on July 1, 2020. Safety-net hospitals have until July 1, 2021, to become compliant.

Highlights

The Ordinance:

1. Requires employers to give advance notice of work schedules;
2. 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;
3. Creates a "right to rest" and allows employees to decline to work scheduled hours that begin less than 10 hours after their last shift ended;
4. Requires payment of "Predictability Pay" if employees accept shifts that begin less than 10 hours after their last shift ended; and
5. Sets a procedure for employees to request a flexible schedule and requires employers to respond in writing.

Covered Employers and Employees

Employers are covered under the Ordinance if they:

1. Employ more than 100 employees globally (or 250 employees globally, in the case of not-for-profit corporations);
2. Have at least 50 covered employees; and
3. Are primarily engaged in a covered industry.

Covered employees include employees and temporary employees who have been on assignment to the employer for 420 hours, and who:

1. Spend the majority of their time at work while physically present in the City of Chicago;
2. Perform the majority of their work in a covered industry for that employer; and
3. Earn less than or equal to \$50,000 per year as a salaried employee or less than or equal to \$26 per hour as an hourly employee from that employer.

Covered industry means:

1. Building services, meaning the care and maintenance of property, including, but not limited to, janitorial services, building maintenance services, and security services;
2. Healthcare;
3. Hotels;
4. Manufacturing;
5. Restaurants licensed to serve food in the City of Chicago that also have at least 30 locations globally and at least 250 employees in the aggregate (restaurants with up to three locations in the City that are owned by one employer and operating under a sole franchise are not covered);
6. Retail, meaning sale to end users of tangible products that are primarily for personal, household, or family purposes; and
7. Warehouse services.

The Ordinance does not affect collective bargaining arrangements in place on the effective date, July 1, 2020. The Ordinance's requirements may be expressly waived in a collective bargaining agreement.

Scheduling Requirements

For a new employee, prior to or on commencement of employment, employers must provide a good faith estimate in writing of the projected days and hours of work for the first 90 days of employment. The employee may request that the employer modify the projected Work Schedule; the employer may accept or reject the request. The employer must notify the covered employee of the decision in writing within three days of the request.

For existing employees, from July 1, 2020, to June 30, 2022, employers must provide the written Work Schedule at least 10 days before the first date of any new Work Schedule. The employer also must transmit the Work Schedule electronically upon written request. Beginning July 1, 2022, employers must give at least 14 days' notice of any new Work Schedule.

These scheduling requirements do not apply to covered employees who self-schedule or work in a venue with a capacity of at least 5,000 people that hosts ticketed events.

Schedule Changes

With limited exceptions, from July 1, 2020, to June 30, 2022, covered employees may refuse to work any unscheduled hours that the employer adds to their schedule if they have notice of less than 10 days (14 days, beginning July 1, 2022) before any new Work Schedule.

If a covered employee accepts the new schedule after the deadline, the employee will receive one hour of Predictability Pay for each shift where hours of work were added, the date or time of a shift was changed, or hours were cancelled or subtracted from a shift.

Employees also will receive at least 50 percent of their regular rate of pay for any scheduled hours not worked because the employer, with less than 24 hours' notice, cancels or subtracts hours from a shift, including while the employee is working a shift.

The Ordinance does not prevent workers from trading shifts or requesting changes to their schedule. In addition, employers may change an employee's hours when it is mutually agreed upon in writing.

Employers also may subtract hours for disciplinary reasons for just cause and may make other changes for events outside of the employer's control. The employer must amend the posted Work Schedule and transmit it to the covered employee within 24 hours of any schedule change.

Certain patient care needs and any unexpected substantial increases in demand for healthcare caused by circumstances beyond the employer's control may exempt healthcare employers from the Ordinance's requirements.

Offer of Additional Work Hours

The employer must first offer any additional shifts to existing covered employees who are qualified to do the additional work. If no covered employee accepts the additional shifts, then they may be offered to the employer's temporary or seasonal workers who have worked for the employer for at least two weeks. In distributing hours, the employer cannot discriminate, and, whenever practicable, it must first offer hours to part-time covered employees.

The Ordinance, however, does not require an employer to schedule employees to work hours that must be paid at a premium rate.

Right to Rest

A covered employee has the right to decline Work Schedule hours that start less than 10 hours after the end of the previous day's shift. If a covered employee works a shift that begins less than 10 hours after the end of the previous day's shift, the employer must pay the employee 1.25 times the employee's regular rate of pay for that shift.

Right to Request Flexible Working Arrangement

A covered employee has the right to request a modified Work Schedule, and the employer must respond to the request in writing.

Posting, Notice Requirements

Employers must post a notice of employee rights under the Ordinance. The posting must be in a conspicuous place at each facility where any covered employee works that is located within the geographic boundaries of the City.

Employers must provide covered employees with a notice advising them of their rights under the Ordinance along with the first paycheck subject to the Ordinance.

Employee Protections, Enforcement

The Ordinance prohibits retaliation and establishes a \$1,000 fine for violating the anti-retaliation provision. Other violations are subject to fines of \$300 to \$500 for each offense, and each day that a violation occurs constitutes a separate offense subject to a separate fine.

Agreements between employers and employees that violate the Ordinance are not enforceable.

Covered employees who are a victim of domestic violence or sexual violence, or who have a family or household member who is a victim, have a right to request that their Work Schedules not be posted or transmitted to other employees.

The Ordinance also provides a private right of action for violations. A covered employee

who prevails in a civil action may recover for any damages sustained, including the payment of Predictability Pay, litigation costs, expert witness fees, and reasonable attorneys' fees.

Employers must maintain records regarding compliance with the Ordinance for at least three years or for the duration of any claim, civil action, or investigation under the Ordinance, whichever is longer.

Employers must provide records relating to the covered employee upon the employee's request. Employers also must permit authorized representatives from the Department of Business Affairs and Consumer Protection (BACP), which is responsible for enforcing the Ordinance, access to their worksites and relevant employment records for purposes of monitoring compliance and investigating employee complaints.

The Ordinance authorizes the BACP to engage in rulemaking and it may do so in the future.

Employers should review their policies and practices regularly with employment counsel to ensure they effectively address specific organizational needs and comply with all applicable laws. Please contact a Jackson Lewis attorney with any questions about the Ordinance.

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