

LEGAL UPDATES

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# Chicago's Fair Workweek Ordinance to Impact a Broad Range of Industry Sectors

## Key Points

The City of Chicago passed the most comprehensive predictable scheduling law in the country which applies to industries beyond the service sector, including healthcare and manufacturing.

The law's primary provisions require advance notice of work schedules and additional pay for late changes to work schedules, as well as imposing on employers an obligation to offer additional work hours to existing employees before seeking to fill the need with new hires.

The law creates the Office of Labor with rulemaking and enforcement authority.

Remedies under the law include fines, complaint and administrative investigation procedures, and the right to a private cause of action that entitles a prevailing complainant to recover damages, including fees, costs and attorney fees.

The effective date of the law is July 1, 2020 for all covered employers, except safety net hospitals which must comply by January 1, 2021.

On July 24, 2019, the Chicago City Council adopted the Chicago Fair Workweek Ordinance (Ordinance), the most far-reaching predictive scheduling law in the U.S., covering industries beyond the fast food and retail sectors. Notably, healthcare industry employers, defined as healthcare or long-

term care services subject to licensure under specified Illinois licensing acts, are subject to the terms of the Ordinance. The Ordinance mandates that covered industries provide employees with advance notice of their work schedules and additional predictability pay for last minute changes to their schedules, unless the circumstances fall within a specified exception. It also obligates employers to offer existing employees the opportunity to work additional shifts prior to hiring new employees.

The Ordinance was enacted to help a growing number of hourly workers who struggle to meet family and financial obligations without the stability of predictable paychecks and work schedules. Passage of the Ordinance was accomplished after negotiations with industry and labor stakeholders resulted in concessions that enabled industry stakeholders to withdraw their objections. The effective date of the Ordinance is July 1, 2020, except for Safety-net hospitals as defined in Illinois Code 305 ILCS 5/5-5e.1 which must comply by January 1, 2021.

## **Employers covered by the ordinance**

Employers in the following industries that also meet one of the four requirements relating to the number of employees or locations are “covered employers” subject to the terms of the Ordinance:

Building services

Healthcare

Hotels

Manufacturing

Restaurants

Retail

Warehouse Services

Business entities that employ 100 or more employees, globally.

Non-profit entities that employ 250 or more employees.

Restaurants with 30 or more locations and more than 250 employees in the aggregate, globally.

Franchise restaurants with 4 or more locations in the city of Chicago.

## **“Covered Employees” under the ordinance**

The Ordinance applies to individuals who:

Are employees or are workers for a day and temporary labor service agency, as defined in the Day and Temporary Labor Service Act and have been assigned to the employer for 420 hours within an 18-month period. Contractors as defined by the IRS are excluded under the terms of the ordinance;

Work primarily within the city limits of Chicago;

Earn less than \$50,000 per year as a salaried employee or less than or equal to \$26.00/hour as an hourly employee; and

Work primarily in a covered industry for the employer.

The terms of collective bargaining agreements in effect at the time of the effective date of the Ordinance are not affected by the terms of the Ordinance. Bona-fide collective bargaining agreements entered into after the Ordinance's effective date, may waive by "clear and unambiguous terms" obligations contained in the Ordinance.

## **Main provisions of the ordinance**

### *Pre-employment notice*

Employers must provide to prospective employees a written good-faith estimate of the average number of hours per week the employee is expected to work, of whether an employee is expected to be on call, and of the projected days and hours per week the individual would be expected to work. The projected work schedule may be modified at the request of the individual and upon the sole discretion of the employer. The employer is required to provide written notification to the employee of its decision within three days of the request. Although the estimate is not binding, an estimate made that lacks good faith would be construed as a violation of the Ordinance.

### *Deadlines for providing advance notice of a work schedule*

Employers must give advance notice of work schedules, including shifts and on-call status of all current employees, by posting schedules in a conspicuous place as follows:

at least 10 days prior to the first day of the scheduled work beginning on July 1, 2020 through June 30, 2022.

at least 14 days prior to the first day of the scheduled work beginning on July 1, 2022.

### *Requirements related to changes to the work schedule*

Employers are required to notify employees in writing within 24 hours of any work schedule change.

Any change to the work schedule after the 10-day or 14-day advance notice deadline is late and triggers notice and compensation provisions of the Ordinance.

In the event an employer adds hours to the work schedule, changes the date or time of a work shift without the loss of hours, or *with more than 24 hour's* notice, cancels or subtracts hours from a regular or on call shift, the employee is entitled to payment of one hour of predictability pay for each shift subject to the change in schedule, in addition to their regular rate of pay. Predictability pay is defined as wages "calculated on an hourly basis at the employee's regular rate" for late work schedule changes.

If an employer cancels or subtracts hours from a regular or on call shift, including while the employee is working on the shift, with *less than 24 hour's* notice, the employee is entitled to no less than 50% of the employee's regular rate of pay for any scheduled hours not worked as a result of the changes in the schedule.

### *Ten exceptions to the notice and compensation requirements for late schedule changes*

Notice and compensation requirements are not required for scheduling changes that result from:

1. External events beyond the control of the employer such as: threats to employer, employees, or property, or upon recommendation by civil authorities; failure of public utilities to supply electricity, water, gas, or sewer service; acts of nature; war, civil unrest, strikes, threats of public safety, or pandemics.
2. A mutually agreed upon shift trade or coverage arrangement between covered employees not contrary to existing employer policies.
3. A mutual written agreement between the employer and employee.
4. A written request by an employee for a shift change, including time off under sick or vacation leave policies.
5. Disciplinary action resulting in a reduction of hours provided that the employer documents the disciplinary incident in writing.
6. Changes in a catered Banquet Event, as defined in the ordinance, that are outside the hotel's control under the circumstances specified in the Ordinance.
7. Changes outside the control of a manufacturer as specified in the Ordinance which result in a change in personnel needed.

8. For Healthcare employers, events that cause a change in personnel needed due to the activation of the employer's emergency operations plan; patient care issues necessitating specialized skills through the completion of a procedure; or circumstances beyond the employer's control causing a substantial increase in demand for healthcare services.
9. Changes in Ticketed Events beyond an employer's control as described more fully in the Ordinance.
10. Self-scheduling by employees.

### *Other rights of covered employees*

Employers must offer additional shifts of work to existing qualified covered employees beginning with part-time employees. To the extent that the shifts are not accepted by part time employees, the employer must offer the shifts to temporary or seasonal workers employed for at least two weeks with the employer before attempting to hire new workers.

Employees have the right to decline work schedules that are less than 10 hours apart. Employees that agree to work shifts less than 10 hours apart are entitled to compensation at a rate of 1.25 times the employee's regular rate of pay for that shift. Employees also have the right to decline previously unscheduled hours that are added to the employee's schedule without the advance notice required by the Ordinance.

The Ordinance also includes privacy protections for employees who are victims of domestic violence, sexual violence, or for employees who have family or household members who are victims of such violence. Specific procedures must be followed and maintained to prevent posting or transmittal of work schedules to other employees upon the verbal request of the protected employee.

### *Administrative and record keeping obligations*

Employers are obligated to comply with written notice and posting requirements required under the Ordinance and to maintain specified records for a period of at least three years.

### *Enforcement and entitlement to remedies*

The Ordinance establishes the Office of Labor Standards within the Department of Business Affairs and Consumer Protection to promulgate regulations, receive and investigate complaints, mediate disputes relating to complaints, issue notices of violations, conduct hearings, and enforce the provisions of the Ordinance.

Violation of the Ordinance subjects the employer to a fine of between \$300-\$500 for each offense. A separate and distinct offense occurs for each covered employee affected by the violation *and* for each day that the violation occurs.

In addition, the Ordinance provides covered employees with a private right of action after the employee has exhausted the administrative procedures under the Ordinance and the Department of Business Affairs and Consumer Protection has closed the complaint. The Ordinance explicitly provides that the remedies, penalties, and procedures under the provisions of the Ordinance are not the exclusive remedies, and that a complainant is entitled to pursue any other remedy at law. Additionally, the Ordinance provides that a prevailing complainant may recover expert witness fees, litigation costs, and attorney fees in addition to “compensation for damages and predictability pay unlawfully withheld.”

### **What this means to you**

Chicago employers should take the following steps leading up to the effective date of the Ordinance:

Determine if they qualify as a covered employer and employ individuals who qualify as covered employees.

Determine if they are subject to a collective bargaining agreement.

Establish procedures and gather forms to comply with the recordkeeping and notice obligations under the Ordinance.

Establish scheduling procedures to ensure compliance with the advance notice obligations relating to work schedules.

Review employee pay rates to ensure correct calculation of regular and potential predictability pay.

Covered employers have, in most cases, almost one year to implement processes to comply with the Ordinance.

If you have questions about the new Chicago law or about reviewing your employment practices and policies to ensure compliance with the new law while maintaining your workplace policies, contact Terry Potter, Anne Mayette or your Husch Blackwell attorney.

*Tracey Oakes O'Brien was a contributing author of this content.*