

TYPES NOT MAPPED YET August 16, 2019 | TTR not mapped yet | Michael W. Duffee

What you need to know about the City of Chicago Fair Workweek ordinance

On July 24, 2019, the Chicago City Council joined a growing number of other municipalities and passed a sweeping new ordinance, dubbed the Fair Workweek Ordinance by its sponsors, that will take effect in July 1, 2020, which is designed to limit an employer's ability to set and change work schedules for certain categories of employees in specified industries. Although the Mayor has not yet signed the ordinance, she has indicated that she supports it and thus final enactment is a virtual certainty.

Who is covered?

Industries covered by the Ordinance include building services (janitorial, security and maintenance), healthcare, hotels, manufacturing, restaurants, retail stores, and warehouse services (storage, loading, distribution and delivery) which have more than 100 employees "globally" (250 in the case of non-profit businesses) and at least 50 "covered employees." Restaurants are included if they have at least 30 locations and 250 employees in the aggregate. A person is a "covered employee" if they spend a majority of their work in a covered industry within the City, and make \$50,000 or less per year as a salary, or \$26.00 or less per hour, which income levels are indexed to increases in the CPI.

What does the Ordinance require?

The Ordinance places several specific obligations on employers in terms of employee work schedules and changes to those schedules. These include:

Advance notice of the work schedule

Employers must provide covered employees with at least 10 days' advance notice of their work schedule (including shifts and on-call status), which schedule must be posted and transmitted electronically to employees upon request. Once the deadline for posting has passed, the employer may not change the schedule absent compliance with additional notice and compensation requirements.

"Predictability Pay"

If an employer makes changes to the schedule after that deadline by adding hours, an employee may refuse to work any previously unscheduled hours. In addition, if the employer alters the date or time of shift after a deadline with no loss of hours worked, employees are entitled to one hour of "predictability pay" at their normal hourly rate for each such shift. If the employer should reduce an employee's hours or cancel a regular or on call shift, the employee is entitled to 50% of their regular rate of pay for the hours they lost that are the result of the change.

However, an employer can change a schedule without penalty if there are threats to the employer, the employees or the property; failure of public utilities to supply electricity, water or gas or sewer service; changes that are mutually agreed upon between employees or with the employer; usage of sick or vacation leave time; in circumstances in which employees "self-schedule;" and where a loss of hours due to disciplinary reasons, such as a suspension. There are additional situations in which employers may change schedules such as in manufacturing industries due to outside events or customer requirements, in healthcare operations due to a disaster or emergency, the need to have specialized skills, or a substantial increase in demand for services due to circumstances beyond the employer's control, and unforeseen specified changes in banquets or ticketed events. Likewise, unionized employers may negotiate contract provisions which limit or avoid the Ordinance's requirements altogether.

Other obligations

The Ordinance also obligates the employer to provide new employees with good faith estimates of projected days and hours of work, as well as work shifts and on-call expectations, to which a new employee may ask for modifications that the employer must respond to in writing within three days. Also, employees may not be required to work a schedule that does not provide at least 10 hours between the end of a shift and the start of a new shift, and must receive 1.25 times their regular rate if they do work such shifts. Further, when filling additional shifts of work, an employer must first offer such work to existing covered employees, preferably part time employees if there are any, and then may use temporary or seasonal workers. Lastly, employers must keep records that pertain to employee schedules and hours worked for at least three years, and must post notices advising employees of their rights under the Ordinance and place such notices in an employee's first paycheck.

Penalties and enforcement

The Ordinance is enforced by the City's Department of Business Affairs and Consumer Protection, which is expected to issue rules to further explain the Ordinance's requirements. The City can levy fines on employers of \$300 to \$500 per covered employee per day for violations of the Ordinance or its rules. Further, the Ordinance creates a private right of action for employees to sue after going through an administrative investigation by the City, for which costs and attorney's fees may be incurred.

Prior to July 1, 2020, employers that are covered by the Ordinance would be best advised to take the time to evaluate their scheduling practices and needs, and determine what changes to such practices may be required by the Ordinance's start date in order to avoid costly penalties and litigation. Further, unionized employers should consider negotiating exemptions in their contracts to minimize the impact of the Ordinance. Finally, employers should closely review the new regulations that the City will enact, to the extent that they may create additional obligations that are not evident from the Ordinance itself.

Should you have any questions about the Ordinance and how to comply with its provisions, please contact the Thompson Coburn attorney whom you regularly deal with concerning labor and employment compliance matters.

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