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Chicago Passes Expansive Fair Workweek Law

By **Seyfarth Shaw LLP** on July 30, 2019

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Seyfarth Synopsis: Last week the Chicago City Council passed the Chicago Fair Workweek Ordinance, arguably the most expansive law of its kind. When the law takes effect in July 2020, it will require covered employers to publish employee schedules at least ten days in advance and impose premium pay requirements for schedule changes after that time. The law is noteworthy for numerous reasons, including the fact that it covers not just retailers, restaurants, and hotels, but also industries not typically targeted by fair workweek measures, such as health care, manufacturing, building services, and warehouse services. Employers operating in Chicago should act now to begin formulating a plan to ensure compliance and minimize impacts.



A fight that began more than two years ago ended on Wednesday, when Chicago joined the growing number of cities across the country that have enacted predictive scheduling laws. [The Ordinance](#), originally introduced in June 2017, received unanimous approval by the City Council. The new law is incredibly expansive, and it only adds to the complex web of wage and hour laws that multi-state employers must account for in order to ensure compliance.

What Does the Ordinance Require?

Similar to many other predictive scheduling laws, the Chicago Ordinance requires covered employers to publish covered employee schedules at least 10 days in advance (or 14 days starting July 1, 2022) of the first working day of any new schedule, beginning July 1, 2020.

Subject to a handful of exceptions, if the employer changes the schedule after posting, then it must provide the employee with “predictability pay” in the amount of one hour of pay at the employee’s “regular rate,” as defined by Section 7 of the FLSA (29 U.S.C. § 207(e)). If a change is made within 24 hours of the shift, the employee would be entitled to at least 50% of their regular rate for any scheduled hours not worked due to the change.

The Ordinance speaks to more than just schedule changes, however. It also establishes the following requirements, among others:

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1. The Ordinance penalizes employers who fail to provide employees with at least 10 hours off in between shifts. Specifically, similar to spread-of-hour requirements in New York, the Ordinance requires that employees who work a shift that begins less than 10 hours after the end of the prior day's shift must be paid at a rate of 1.25 times their regular rate of pay for the shift.
2. The Ordinance dictates that when a shift becomes available, they must first be offered to covered, qualified employees. If the offered shifts are not accepted, the shifts must then be offered to temporary or seasonal workers who have worked for the employer for two or more weeks. This suggests that there may be cases when an open shift may not be offered to a current employee who is not covered by the Ordinance (e.g., an employee earning \$27/hour) before it is offered to a temporary or seasonal worker.
3. Covered employers must provide new employees covered by the law with a written estimate of the employee's projected days and hours of work for the first 90 days of employment, including average hours per week, expected days and times or shifts that the employee can expect to work (or not work), and whether on-call shifts are expected

Who Is Affected?

The Chicago Ordinance will require attention from employers who are not accustomed to being covered by similar measures in other areas of the country. Those who have grappled with fair workweek laws in other jurisdictions will not be surprised to learn that the Ordinance applies to the hospitality, retail, and restaurant industries. But the law goes much further: it also encompasses health care, manufacturing, warehouse services, and building services.

Restaurants, as a general matter, are covered if they have at least 30 locations and 250 employees globally (though there is a carve-out for certain franchises with no more than three locations in Chicago). Employers operating in the other covered industries are subject to the law if they employ more than 100 employees globally (or 250 in the case of a non-profit).

The Ordinance is also expansive in the types of employees it covers. It covers not only hourly employees—specifically, those earning no more than \$26/hour—but *salaried employees* earning \$50,000/year or less. While the Ordinance includes an exception for employees who “self-schedule,” that term is defined to include only employees who “self-select work shifts without employer pre-approval pursuant to a mutually acceptable agreement.”

Finally, it is important to note that the Ordinance covers any employee of a “day and temporary labor service agency” who has been assigned to a covered employer for 420 hours within an 18-month period. Thus, certain temp agencies that might not otherwise be covered will need to monitor where their employees work and for how long.

How About the Exceptions?

The Ordinance carves out a few scenarios in which predictability pay is not required. A few of the more notable exceptions include: (i) mutually agreed upon shift trades between covered employees; (ii) mutually agreed upon changes between the employee and employer, if confirmed in writing; and (iii) changes that an employee requests and confirms in writing.

Additionally, the Ordinance contains exceptions specific to manufacturing and health care employers. In the former setting, predictability pay is not triggered when a schedule change is the result of events outside the employer's control (e.g., delay of raw materials). For health care employers, employers will not be penalized for changes due to (i) patient care needs that require specialized skills to complete a procedure, or (ii) substantial increases in demand due to weather, violence, or other circumstances beyond the employer's control.

Employers with unionized workforces will also need to take note of the Ordinance. Like many other local wage measures, the Ordinance provides that its requirements may be waived in a collective bargaining agreement. But any such waiver must be explicitly stated in clear and unambiguous terms, and, at this time, the city has not provided guidance on how that requirement will be interpreted, particularly for CBA's that are not up for renegotiation until after the July 1, 2020 effective date.

How Will the Ordinance Be Enforced?

The Ordinance provides employees with the right to file a civil lawsuit within two years of a violation, but only after submitting a complaint to the Department of Business Affairs and Consumer Protection, which will then provide the employer the opportunity to respond. An employee who wins such a lawsuit is entitled to unpaid predictability pay, as well as attorneys' fees and costs.

In addition, employers are subject to a fine of \$300 to \$500 for each offense. Each employee whose rights are violated constitutes a separate offense, and each day of violation constitutes a separate offense. Thus, the penalties for non-compliance can mount quickly.

In furtherance of these provisions, the Ordinance authorizes City officials to access work sites and records to monitor compliance and investigate complaints.

Takeaways and Next Steps

We will continue to monitor and provide updates on what comes next for the Chicago Ordinance, including any regulations or other guidance. In the meantime, here are some steps to consider:

- Review existing scheduling policies in preparation for implementing new policies or revising existing policies to satisfy the Ordinance;
- Review dates for collective bargaining agreements to determine when to address the new Ordinance and seek a waiver during bargaining; and
- Be on the lookout for further information such as regulations, model notices, and other administrative guidance.

With predictive scheduling/fair workweek laws continuing to expand and grow in complexity, companies should reach out to their Seyfarth contact for solutions and recommendations on addressing compliance with this Ordinance and other similar measures across the country.

For more information on this or any related topic please contact the authors, your Seyfarth attorney, or any member of the [Workplace Counseling & Solutions Team](#) or the [Workplace Policies and Handbooks Team](#).

Tags: Chicago, covered employers, employee schedules, fair workweek, Illinois, ordinance, premium pay requirements, schedule changes



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