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New Litigation May Affect the Chicago Fair Workweek Ordinance



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The Chicago Fair Workweek Ordinance, which seeks to bring predictability to employee scheduling, is effective as of July 1, 2020. Under the ordinance, covered employers will be required to provide 10 days' notice of an employee's schedule (increasing to 14 days on July 2, 2022).

The Building Owners & Managers Association of Chicago (BOMA) filed a federal lawsuit in November 2019 alleging the ordinance is unconstitutionally narrow regarding industry, and places "new and dramatic requirements" on its members. BOMA also claims that the ordinance violates the National Labor Relations Act.

Below is an overview of the new ordinance and FAQs for employers.

What is a Covered Employer?

The law applies to employers operating in one of the covered industries listed below, with at least 100 employees (250 for nonprofits) and a minimum of 50 Covered Employees:

- Building services
- Healthcare (Chicago's ordinance is the first in the nation to include hospitals)
- Hotels
- Manufacturing
- Restaurants
- Retail
- Warehouse services

What is a Covered Employee under the Ordinance?

A "Covered Employee" is an individual who performs work for an employer:

- In the capacity of an employee (not a contractor)
- Spends the majority of their time at work for that employer while physically present within the City of Chicago
- Performs the majority of their work in a covered industry for that employer
- Earns less than or equal to \$50,000 per year as a salaried employee or less than \$26 per hour for an hourly employee.

Does the employer need to be headquartered in Chicago?

No. The ordinance is based on the location of workers, not the employer. Within the covered industries, employers who have 50 or more Covered Employees spending the majority of their time working in Chicago are covered.

Are unionized employees covered?

It depends. Collective Bargaining Agreements with more generous terms apply and surpass this ordinance, and those waiving protections afforded by the ordinance are valid if in writing, with waivers set forth in clear, unambiguous terms.

Are there any exceptions within the covered industries?

Yes. For restaurants, the ordinance only applies to chain restaurants. Restaurants with fewer than 30 locations or 250 employees are not covered. Additionally, franchisees who operate three or fewer restaurants in the city under a sole franchise are not covered.

How do Covered Employers give proper notice of schedules?

On or before employment begins, Employers must provide a “good faith” written estimate, for the first 90 days, of the average weekly days and hours of work, including any on-call shifts. The Covered Employee may request a change, which the Employer may reject in writing.

Thereafter, the Employer must post, in a conspicuous place (and send electronically upon request), the “Work Schedule” at least 10 days before any new schedule begins (14 days as of July 1, 2022). The Work Schedule includes the shifts and on-call status of all current Covered Employees, however:

- Covered Employees who “self-schedule” by agreement with their Employer, or who regularly work “Ticketed Events” (venues with 5,000 plus capacity) are exempt; and
- Covered Employees who are a victim of Domestic Violence or Sexual Violence (or a victim’s family or household members) may request that their Work Schedule not be posted or transmitted to other employees.

What happens if a Covered Employer must change a scheduled shift?

If a Covered Employer changes a shift with less than 10 days’ notice, the employee shall receive 1 hour of “predictability pay” for each shift in which a change occurred. This includes adding time to a shift, removing time from a shift, or modifying the start and stop time of a shift. Note that employers who remove time from a shift with less than 24 hours’ notice shall owe that employee no less than 50% of the employee’s regular rate of pay for the hours planned to, but did not, work.

What if an employer needs to fill additional shifts?

Any additional, available shifts declined by regular Covered Employees should be offered to part time Covered Employees first, and then to temporary or seasonal workers who have worked for more than two weeks.

Other than predictability pay, do Covered Employees have any other rights?

Yes, employees have the right to decline work schedules that were not previously scheduled 10 days in advance. Employees also have a “right to rest” by declining shifts that are less than 10 hours apart. If an employee does accept a shift within 10 hours of the last, that employee has a right to compensation at a rate of 1.25 times the employee’s regular rate of pay. Employees have a right to request a modified work schedule, including additional shifts or hours and changes to days and times of shifts. Employees are permitted to change or swap shifts with one another if mutually agreed upon by the two employees or between the employer and employee in writing. Finally, Covered Employees have a right to sue their employer for violation of the ordinance.

Can a Covered Employer contract out of the ordinance?

Yes. The Ordinance’s terms can be waived in a bona fide collective bargaining agreement executed prior to July 1, 2020, and can be waived by a collective bargaining agreement after July 1, 2020, as long as the terms are clear and ambiguous.

What are the penalties for non-compliance?

Employers are subject to a fine of \$300-\$500 for each offense, per Covered Employee, per day, and Covered Employees can bring a civil action following certain administrative steps. Covered Employees who prevail are entitled to compensation plus litigation costs, including expert and attorney fees. In other words, Employers face very serious liability for non-compliance, so now is the time to ensure that you are compliant!

What should Covered Employers do to comply with the ordinance?

Covered Employers must provide predictive scheduling at the outset of a Covered Employee's hire. Notice to Covered Employees must go out with the first paycheck, and the ordinance displayed. As with all new ordinances, it's important to seek legal counsel to determine how to approach and execute employee scheduling in full compliance with the law.