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What Employers Need to Know About the Upcoming Change to the Chicago Fair Workweek Ordinance



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The Chicago Fair Workweek Ordinance went into effect in 2020. In a [previous article](#), we discussed how the ordinance brought predictability to employee scheduling by requiring employers to provide 10 days' notice of an employee's schedule. As of July 1, 2022, covered Chicago employers will be required to either give employees 14 days advance notice of their calendar workweek schedule, or make a "predictability payment." Below are several FAQs for employers ahead of the July 1 deadline.

WHAT IS A COVERED EMPLOYER?

Employers are subject to the ordinance if they primarily operate in a "covered industry," and globally employ 100 or more employees (250 or more for non-profits), 50 of whom are "covered employees."

WHAT ARE THE COVERED INDUSTRIES?

- Building Services (janitorial, maintenance, security)
- Healthcare
- Hotels
- Manufacturing
- Restaurants (those licensed in Chicago with 30 global locations and 250 or more employees, unless the Employer has 3 or less locations in Chicago under a single franchise)
- Retail
- Warehouse Services

WHAT IS A COVERED EMPLOYEE?

An individual who performs work for an employer:

- As either an employee of the employer, or a temporary worker on assignment for 420 hours within an 18 month period (not a "contractor" under IRS guidelines)
- Does the majority of their work in a covered industry while physically present in Chicago
- Earns an annual salary of \$56,381.85 or less, or \$29.35 or less per hour (annual increases pegged to the Consumer Price Index will be published in a bulletin every June 1)
 - For hotel employees, "set service fees" are included in the hourly rate, *but*

- Employees who staff a catered “banquet event” at the hotel and receive a set gratuity are not covered employees for purposes of that event

WHAT ADVANCE NOTICE MUST EMPLOYERS GIVE TO COVERED EMPLOYEES?

- 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 14 days before any new schedule begins. 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 or more 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 IF SCHEDULE CHANGES ARE MADE AFTER THE ADVANCE NOTICE DEADLINES?

There are a few scenarios here. First, the employer must post amended schedules within 24 hours of making changes to the schedule. The covered employee has the following rights:

- **Right to decline:** if notice of a scheduling change is made less than the 14-day time period, the Covered Employee may *decline* any additional hours that are added.
- **Right to “predictability pay” for alterations:** the covered employer must pay one hour of “predictability pay” (regular hourly rate) per shift for any schedule alteration that:
 - Changes the date or time with no loss of hours; or
 - Cancels or subtracts hours from a regular or on-call shift with more than 24 hours’ notice
- **Right to additional half-time pay:** the employer must pay an additional 50% of the covered employee’s regular rate of pay for *each hour* that the employer, with less than 24 hours’ notice:
 - Subtracts hours from a regular or on-call shift; or
 - Cancels a regular or on-call shift

The ordinance does provide exceptions for things like mutual agreement for changes and outside events beyond the employer’s control.

WHAT IF AN EMPLOYER NEEDS TO FILL ADDITIONAL SHIFTS?

Any additional available shifts that are not accepted 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.

HOW SOON CAN EMPLOYERS HAVE COVERED EMPLOYEES BEGIN ANOTHER SHIFT?

A covered employee is entitled to at least 10 hours between shifts. Otherwise, the employer must pay at a rate of 1.25 times the regular rate for that shift.

WHAT IF THE EMPLOYER IS SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT?

The ordinance can be clearly waived in a collective bargaining agreement and does not affect the validity of any existing agreements.

ARE THERE ANY POSTING REQUIREMENTS?

Yes, the Department of Business Affairs and Consumer Protection will issue a form notice that must be posted in a conspicuous place and provided with the first paycheck of any covered employee.

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 may 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 in compliance.

For more information or questions about the new Chicago Workweek Ordinance, please contact a member of Gould & Ratner's [Human Resources and Employment Practice](#).