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Chicago Employers: Get Ready for Predictive Scheduling in 2020

The City of Chicago becomes the latest city to pass predictive scheduling legislation, also known as the “Fair Workweek Ordinance.” **Effective July 1, 2020**, this Ordinance requires certain employers to give most workers early notice of their schedules and to pay employees whose schedules are changed after they receive notice.

What are the notice requirements? Starting on July 1, 2020, covered employers must give employees at least 10 days’ notice of their schedules. This notice period will increase to 14 days in 2022.

Employers must post schedules at the workplace and send schedules electronically upon request. New hires must receive an initial work schedule that runs through the date of the next work schedule for existing employees prior to or on their first day of employment. If an employer adds hours to an employee’s schedule that has already been noticed and provided to employees, the employee has the right to decline to work those hours.

Who is covered? The law affects certain industries and employees within those industries. Specifically, the Ordinance applies to:

- Hotels with 100 or more employees and restaurants with 250 or more employees located within the City of Chicago
- Hourly employees who earn less than \$26/hour and salaried employees who earn \$50,000 or less annually
- Employers that maintain a business facility within the City of Chicago, have 30 locations globally, or are subject to City licensing requirements in the following industries: day and temporary labor service agencies, building services, healthcare facilities or programs, manufacturers, airports, warehouses, retail, and childcare

What are the penalties if an employer has to make a schedule change? Employees are owed additional pay if an employer changes an employee’s schedule. The amount of pay depends on whether the employee will gain or lose scheduled hours as a result of the schedule change.

1. Employees are owed one hour of “Predictability Pay” at the employee’s regular rate of pay if the employer:
 - a. Adds hours of work;
 - b. Changes the date or time of a work shift with no loss of hours; or
 - c. Cancels or constructs hours from a regular or on-call shift with more than 24 hours’ notice.

Questions? Contact Stokes Wagner.

2. Employees must be paid their scheduled hours at the rate of at least one-half times the employee's regular rate of pay if the employer does one of the following with less than 24 hours' notice:
 - a. Subtracts hours from a regular or on-call shift; or
 - b. Cancels a regular or on-call shift.

What are the exceptions? Exceptions are limited and strict. The Ordinance requirements will not apply in the following circumstances:

- Employees mutually agree to change their schedules (e.g., shift trade or coverage arrangement). The employer must send the employees the modified work schedule electronically.
- Employees request a shift change in writing, including but not limited to use of sick leave, vacation leave, or other policies offered by an employer.
- Employer reduces hours from an employee's work schedule for disciplinary reasons, so long as the employer documents the incident leading to the employee's discipline in writing.
- Employees volunteer to work additional hours in response to a written group communication from the employer regarding the availability of additional hours, so long as the communication is used only:
 - o for additional hours result of another employee being unable to work scheduled hours; and
 - o when the employer states that accepting such hours is voluntary and the covered employee has the right to decline such hours.
- Certain banquet events. For example, a hotel banquet event is scheduled due to circumstances that are outside the employer's control, the attendee counts increase by more than 20%, or a "pop-up event" is scheduled after the employer provides the Posted Work Schedule. A "pop-up event" means a new hotel banquet event scheduled within 48 hours of the event occurring.
- In cases of natural disasters, war, strikes, pandemics, or any other causes not within an employer's control.

The Fair Workweek Ordinance is the result of extensive negotiations between the City of Chicago's Committee on Workforce Development and various business groups including the Illinois Hospital Association, Chicagoland Chamber of Commerce, Illinois Hotel Lodging Association, Illinois Retail Merchants Association, and Illinois Restaurant Association.

Affected employers have less than one year to implement new scheduling policies and train managers on these new requirements. Contact Stokes Wagner if you have any questions.