CLIENT ALERTS & INSIGHTS

Chicago Set to Join Ranks of Cities Regulating Employee Scheduling

AUGUST 8, 2019

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On July 24, 2019, the Chicago City Council approved the proposed Chicago Fair Workweek Ordinance, which will require employers to provide advance notice of employee work schedules and premium pay for schedule changes. Once the law takes effect on July 1, 2020, Chicago will join other major cities-including New York City, Philadelphia, and San Francisco-in regulating employers' ability to create and modify work schedules. Unlike the other so-called predictable scheduling ordinances, Chicago's new law does not target a specific industry. Instead, the ordinance will impact employers across seven different industry sectors, including: Building Services; Healthcare; Hotels; Manufacturing; Restaurants; Retail; and Warehouse Services.

The Ordinance will cover employees and individuals working through staffing agencies (provided they have been on assignment with the same employer for 420 hours within the preceding 18 months), who perform most of the work within the City of Chicago within a covered industry and who earn less than $50,000 per year or $26.00 per hour. The Ordinance does not apply to independent contractors.

Employer obligations under the Ordinance apply to all businesses in covered sectors that employ at least 100 employees globally, at least 50 of whom are covered employees for purposes of the Ordinance. The Ordinance will not affect current collective bargaining agreements, or future collective bargaining agreements for which the requirements of the Ordinance are explicitly waived.

Employer obligations under the Ordinance include: providing an initial estimate of work schedules; consideration of employee requests for schedule changes; advance notice of work schedules and schedule changes, and premium payments for certain schedule changes.

Employers must, no later than an employee's start date, provide an initial, good-faith estimate in writing, which contains the following information: (1) the average number of weekly hours the employee can expect to work; (2) either the days and times (or shifts) which the employee can expect to work, or the days and times (or shifts) for which the employee can expect not to be scheduled; and (3) whether the employee can expect to work any on-call shifts. This initial estimate is not a contractual offer binding on the employer, and employers retain the discretion to deviate from these initial offers, consistent with the other requirements of the Ordinance.

The Ordinance gives covered employees the right to request a modification of the initial estimate provided by their employer, and employers are required to consider any such request. However, employers retain the sole discretion to accept or deny such requests, so long as they provide the requesting employee a written notice of the determination within three days of the request.

In addition to the initial estimate of hours, once the Ordinance takes effect, employers will be required to provide advance notice of work schedules to all covered employees. Specifically, employers must provide notice of the work schedule for *all* employees at a given facility at least 10 days prior to the first day in the new schedule. This timeframe automatically increases to 14 days on July 1, 2022. Employers may either post the schedule in the workplace or distribute via its usual methods of communication, including (upon request by an employee) by electronic means. The Ordinance creates an exception for employees who are victims of domestic or sexual violence, allowing such employees to request their schedules not be included in the posted list.

While employers may make changes to the posted schedules prior to the 10-day notice deadline, any changes made by an employer after the deadline will be costly. If an employer: (i) adds work; (ii) changes the date/time of a shift without loss of hours; or (iii) cancels a shift or reduces the number of hours scheduled with more than 24 hours' notice, the employer must pay the affected employee one hour of "predictability pay" at their regular rate, in addition to the employee's regular wages earned for the shift. If an employer cancels a shift or reduces the number of hours scheduled with less than 24 hours' notice (including while an employee is working the shift), the employer must pay the affected employee at least 50% of their regular rate for all affected work hours, in addition to their full wages earned for the time actually worked.

The premium payments required under the Ordinance do not apply to schedule changes resulting from:

1. threats to employers, employees, or property, or when civil authorities recommend that work be halted;
2. public utility failures resulting in loss of service at the work location;
3. acts of nature;
4. war, civil unrest, strikes, threats to public safety, or pandemics;
5. shift trades mutually agreed upon by two or more employees when confirmed in writing;
6. schedule changes mutually agreed upon by the employer and employee when confirmed in writing;
7. shift changes requested by the employee, when confirmed in writing;
8. reductions in work hours for disciplinary reasons, provided the employer documents the indecent leading to the discipline, in writing; and
9. other industry-specific exceptions.

In addition to the premium pay requirement, the Ordinance provides covered employees with a right to decline any additional hours of work offered after the 10-day notice deadline, as well as a right to decline any shift scheduled within 10 hours after the end of the previous day's shift. If an employee chooses to work a shift within 10 hours after the end of the previous day's shift, the employer must pay that employee at a rate of 1.25 times the employee's regular rate of pay for the shift in question.

The Ordinance also requires employers to offer additional hours of work to existing employees prior to seeking to hire new employees. Specifically, the Ordinance requires employers to first offer additional shifts to existing part-time employees who the employer believes are qualified to perform the work for the shifts needing to be filled. Employers are not required to offer additional hours of work that would result in overtime pay. Should available work remain after offering the shifts to qualified part-time employees, the employer may then offer the shifts to full-time employees and temporary or seasonal workers, followed by new applicants.

Finally, employers are required to post a notice of employee rights under the Ordinance in each facility where a covered employee works, and must provide a copy of such notice to each covered employee with the first paycheck subject to the Ordinance's effective date. The City's Commissioner of Business Affairs and Consumer Protection will provide a form notice that satisfies these requirements.

Employers must keep records relating to the Ordinance for a period of three years, and are prohibited from retaliating against any employee for exercising their rights under the Ordinance.

With such major changes set to take effect this year, employers should consider reviewing current scheduling practices, auditing scheduling needs, and preparing the notices required by the Ordinance.

For more information on this topic, please contact a member of the firm's Labor & Employment Practice Group.

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