

Chicago Fair Workweek Ordinance

The Chicago Fair Workweek Ordinance (the “Ordinance”) requires large employers to provide covered employees with at least two (2) weeks advance notice of their work schedules and compensate workers for last minute changes. The Ordinance takes effect for most employers on July 1, 2020. Chicago safety-net hospitals (defined as hospitals providing a disproportionate share of care to low-income, uninsured, and Medicaid patients) have an additional six (6) months to comply.

Covered Industry

Employers are covered under the Ordinance if they have more than 100 employees globally (250 for non-profits) and have at least fifty (50) in Chicago. Chicagoland restaurants have additional requirements. A restaurant business is covered under the Ordinance if it has at least thirty (30) locations and two hundred fifty (250) employees globally with four (4) or more Chicago locations. For example, Lettuce Entertain You must comply with the Ordinance, but the Boka Group (which has less than thirty restaurants) does not.

Employees who work at ticketed events, workplaces with collective bargaining agreements (with an express contractual waiver) and City employees are not covered by the Ordinance.

Covered Employees

The Ordinance defines “covered employee” as a permanent employee or a temporary employee who has been on assignment to that employer for 420 hours in an 18-month period. “Covered employees” work in a “covered industry” and spend most of their time physically present in the City of Chicago. They earn less than \$50,000 per year as a salaried employee, or less than \$26 per hour as an hourly employee. The salary qualifications for covered employees increase annually. The first increase is scheduled for June 1, 2021.

Covered industries include: building services, healthcare, hotels, manufacturing, restaurants licensed to serve food that have at least thirty (30) locations globally and two hundred fifty (250) employees with four (4) locations in Chicago, retail, and warehouse services.

Scheduling Requirements

Employers must provide a good faith estimate in writing of the projected days and hours of work for new employees for the first ninety (90) days. The schedule provided must include: the average number of weekly work hours the employee can expect to work each week, whether the employee can expect to work any on-call shifts, and the subset of days, times or shifts the employee will be scheduled to work within the first ninety (90) days.

Employees can request schedule modifications. Employers can accept or reject this request and must notify the employee requesting a change within three (3) days regarding its determination in writing. Employees who are victims of domestic/sexual violence can request their work schedule(s) not be posted or transmitted to other employees. By July 1, 2022, employers must provide a written schedule fourteen (14) days in advance before the first day an employee is scheduled to work.

Roll-Out for Current Employees

Between July 1, 2020 and June 30, 2022, employers must provide a written work schedule ten (10) days before the first day scheduled. Covered employees may refuse to work unscheduled hours if they receive less than ten (10) days' notice. If a covered employee accepts the new schedule after the ten (10) day deadline, he or she receives one (1) hour of "predictability pay" for each shift change (including hours added, date/time changed, and/or hours canceled). Employees also receive fifty (50%) of their regular rate for any scheduled hours not worked if the cancellation is within twenty-four (24) hours of a scheduled workday. Employers must amend the posted work schedule and transmit to the covered employee within twenty-four (24) hours of scheduled change. Employers can subtract hours for disciplinary reasons. Employees may trade shifts or may request a change from the employer

with mutual agreement. The Ordinance does not mandate additional training for supervisors.

There is an exception for the health care industry. When there is a substantial increase in patient care needs caused by external circumstances, an employer may be exempt from strict compliance with the Ordinance. By July 1, 2022, employers must provide employees with a written schedule fourteen (14) days before their first scheduled day of work.

Additional Work Hours

Employers must offer additional shifts to their full-time employees first. Next, employers must offer them to part-time covered employees. If a covered employee does not accept additional hours, then the hours may be offered to a temporary or seasonal worker who has worked at the company for at least two (2) weeks. The Ordinance does not require payment at a premium rate for additional hours other than as required by the Fair Labor Standards Act (defined as premium pay for overtime work exceeding permitted daily or weekly hourly limits and work on holidays or days of rest).

Right to Rest

Covered employees can decline to work scheduled hours beginning less than ten (10) hours after their last shift. If covered employees work a shift that begins less

than ten (10) hours after their last shift, they must be compensated at 1.25 times their normal rate or may request a flexible schedule.

Notice of Employee Rights

A notice of employee rights must be posted in a conspicuous place at each facility where any covered employee works located in the city. Notice of these policies must also be provided with a new employee's first paycheck.

Recordkeeping and Compliance

The Department of Business Affairs and Consumer Protection ("BACP") adopts effectuating rules. Within the BACP, the Office of Labor Standards is tasked with administration and enforcement of the Ordinance. BACP controls access to worksites and relevant employment records to monitor compliance, investigates new complaints, and is authorized to engage in rulemaking.

Employees may sue their employer directly for any violations. Covered employees who prevail in a civil suit can recover damages including predictability pay, litigation costs, expert fees and attorney fees. Employers must maintain records regarding compliance for at least three years or the duration of pending litigation/investigation. Employers must provide records relating to a covered employee at his/her request.

Any agreement with employees in violation of the Ordinance is unenforceable. A \$1,000 fine is imposed for violating the anti-retaliation provision.

Fines for other types of conduct vary between \$300-\$500 per offense. Each day a violation occurs is a separate offense subject to an additional fine.

Proactive Solutions

- Determine if you are a “covered employer.”
- Carefully construct schedules to minimize costly changes.
- Compute “predictability pay,” “cancelation pay,” and “right to rest” pay for each employee.
- Prepare posting and employer notice to distribute before law takes effect.