Predictive Scheduling is Coming to Chicago

On January 1, 2021, Chicago employers will be subject to some of the most expansive predictive scheduling laws in the country. Predictive scheduling laws require employers to post employee work schedules a fixed number of days in advance of when the work is to be performed. Once published, employers are penalized for making any scheduling changes.

Originally slated to commence July 1, 2020, the Chicago Fair Workweek Ordinance's (the "CFW Ordinance") effective date was pushed to January 1, 2021 due to the ongoing COVID-19 national emergency.

Who is Affected?

Employers subject to the CFW Ordinance must have more than 100 employees globally, of which at least 50 are "covered employees". Covered employees primarily work in the city of Chicago, have a salary less than or equal to $26/hourly or $50,000/yearly, and work in a "covered industry".

Covered industries include healthcare, hospitality, manufacturing, retail, warehouse services, maintenance or care of buildings, and large restaurant chains with at least 30 locations globally.

The Chicago Fair Workweek Ordinance.

Per the CFW Ordinance, covered employers will be required to give covered employees written work schedules at least ten days in advance of the first date of any new work schedule (this will increase to 14 days on July 1, 2022). Employers must also provide

good faith estimates, in writing, of projected days and hours of work to new hires for the first 90 days of employment by the time they start. If a new hire requests modification of these projections, employers have three days to provide them with written acceptance or rejection of the request.

Employers who make changes to work schedules less than ten days before that schedule starts will be required to pay covered employees an additional hour of pay for every impacted shift. Employers who make changes to work schedules less than 24 hours before a shift starts will be required to pay employees 50% of their pay for any hours lost, or an additional hour of pay for every shift otherwise impacted.

Covered employees shall have the option to decline hours that occur less than ten hours after their previous shifts. Alternatively, if the employee consents in writing to a shorter rest period, they must be paid 1.25 times their regular rate of pay for the additional shift. Finally, per the CFW Ordinance, employers must offer additional shifts to their own qualified employees or long-term seasonal employees before offering the work to temporary or seasonal workers.

The CFW Ordinance does not apply where (1) covered employees mutually agree to trade shifts; (2) an employer and employee mutually agree in writing to make a scheduling change; and (3) an employee requests a scheduling change that is confirmed in writing by their employer. The CFW Ordinance also contains specific exceptions for manufacturing employees where schedule changes are the result of events outside of the employer's control, or health care employees when there is increased or prolonged demand for their skills and time.

The other narrow exception to the CFW Ordinance applies where a work schedule has been changed due to COVID-19. Such scheduling changes are only permitted in situations where the pandemic causes employers to materially alter their operating hours, operating plan, or the goods or services typically offered by them, thereby resulting in schedule changes.

Employers who violate the CFW Ordinance outside of these narrow circumstances are subject to civil lawsuits. The CFW Ordinance provides employees with the right to file suit within two years of a violation after submitting a complaint to the Department of Business Affairs and Consumer Protection. In addition to paying prevailing employees unpaid predictability pay and attorneys' fees and costs, employers are subject to a fine of $1000 for retaliation and $300 to $500 for each offense, with each day a violation occurs constituting a separate offense.

Employer Considerations

Employers must maintain records regarding compliance with the CFW Ordinance for at least three years, or for the duration of any claim or investigation under the CFW Ordinance if it should arise. Employers must also provide covered employees with a notice advising them of their rights under the CFW Ordinance and conspicuously post a notice of employee rights under the CFW Ordinance in the workplace.

Employers subject to collective bargaining agreements should be mindful that the terms of the CFW Ordinance may be waived in a collective bargaining agreement, if such waiver is stated in clear and unambiguous terms.

Compliance with the CFW Ordinance may be especially difficult for large employers with locations in multiple jurisdictions who try to maintain uniform scheduling policies. To best manage these difficulties, employers should audit each location of their business and determine what predictive scheduling laws apply in that jurisdiction. Location-specific policy changes may be required, and managers may need new training to comply with new policies.

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