

Publications

Labor and Employment Alert: Seattle Ensures Employees a ‘Secure Schedule’ and More Hours For Employees

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Effective July 1, 2017, Seattle’s Secure Scheduling Ordinance (available [here](#), along with a helpful [infographic](#)) requires certain large employers to establish predictable work schedules, involve their employees in scheduling practices, and ensure that employees may obtain additional hours of work before new employees are hired. The ordinance also imposes burdensome recordkeeping requirements and significant penalties for noncompliance.

Coverage

The ordinance applies to retail establishments and food service establishments (such as full- and limited-service restaurants, cafeterias and bars) that employ 500 or more employees worldwide regardless of where those employees are employed, including chains, integrated enterprises, or franchises associated with a franchisor or network of franchises that employ more than 500 employees in aggregate. A full service restaurant also must have 40 or more full service restaurant locations worldwide. To capture as many employers as possible, the ordinance further notes that more than one entity may be the “employer” if employment by one employer is not completely disassociated from employment by the other employer.

An “employee” is any individual employed by the employer, including but not limited to full-time employees, part-time employees, and temporary workers.

Scheduling requirements

The scheduling requirements under the ordinance are extensive and complex. In brief, these requirements include:

- Providing new and current employees a written good faith estimate of work schedule. The good faith estimate includes the median number of hours the employee can expect to work each work week, and whether the employee can expect to work on-call shifts. The estimate must be revised annually and when there is a significant

change to the work schedule. The employer must initiate a timely, good faith interactive process with the employee to discuss any significant change from the good faith estimate and state a bona fide business reason (as defined in the ordinance) for any change.

- Giving employees the right to provide input into their work schedules. The employee has the right to request not to be scheduled for work shifts during certain times or at certain locations and the right to identify preferences for the hours or locations of work. The employer must engage in an interactive process regarding the request, and if the request involves an employee's "major life event," the employer must grant the request unless it has a bona fide business reason for denying it.
- The right to rest between work shifts. Unless an employee requests or consents to work such hours, an employer cannot schedule or require an employee to work less than 10 hours after the end of the previous calendar day's shift or less than 10 hours following the end of a shift that spanned two calendar days. An employer must pay the employee working those hours at time-and-a-half for the hours worked that are less than 10 hours apart.
- Advance notice of work schedule. An employer generally must provide employees with a written work schedule at least 14 calendar days before the first day of the work schedule, which must also be conspicuously posted.
- Notice of work schedule changes. If the employer requests the change, it must timely notify the employee and the employee can refuse to work any hours not in his or her work schedule. If the employee requested the change, the employee must generally comply with the employer's notice requirements. The ordinance limits the employer's ability to require the employee to find a replacement.
- Compensation for work schedule changes. If an employer adds hours to the employee's schedule after it is posted, the employer must pay the employee one additional hour of "predictability pay." If an employee is scheduled for a shift and then sent home early, the employer must pay the employee for half of the hours not worked. Employees also receive half-time pay for any shift they are "on-call" and do not get called into work.

The ordinance provides numerous exceptions to the predictability pay requirement, including: (1) when an employee requests changes to a schedule; (2) when an employee finds replacement coverage for hours through an employee-to-employee shift swap; (3) when an employer provides notice of additional hours through mass communication and an employee volunteers to cover hours; (4) when an employer conducts an in-person group conversation with employees currently on shift to cover new hours to address customer needs and an employee consents to take the hours; (5) when hours are subtracted due to disciplinary reasons; and (6) when operations cannot be or continue for reasons outside the employer's control.

Access to Hours

Before hiring new employees, including through the use of temporary services or staffing agencies, an employer must offer additional hours of work to existing employees when those hours become available at their place of work. The employer must post a notice of available hours for at least three consecutive calendar days containing specific information about the position, qualifications, hours, and schedules for the position. The employer must offer additional hours of work to an existing employee who has responded to the offer of work, and who, to a reasonable employer acting in good faith is qualified with the skills and experience to perform the work.

Recordkeeping and notice requirements

Employers are required to conspicuously post a notice (which the city will create) of employee rights under the ordinance.

Employers are required to maintain a wide array of records demonstrating compliance, including records of written good faith estimates of work schedules; written documentation of the employer's bona fide business reason for denying employee's requests for a schedule change; work schedules; payroll records; documentation of employee-requested schedule changes; communications to employees regarding availability of additional hours; confirmation by employees of opting out of additional hours; and records of disciplinary incidents that led to a reduction in hours. The records must be retained for three years. Failing to retain these records creates a presumption (rebutted by clear and convincing evidence) that the employer violated the ordinance for each period and each employee for whom records were not retained.

Penalties

The ordinance prohibits retaliation (very broadly defined) against employees for exercising their rights under ordinance. In addition to adverse employment actions, retaliation includes indicating directly or indirectly the willingness to report on the citizenship, suspected citizenship, or lawful presence in the U.S. of the employee or an employee's family member to a federal, state, or local agency. There is a rebuttable presumption of retaliation if the employer takes an adverse action against a person within 90 calendar days of the person's exercise of protected rights.

The city's Office of Civil Rights may bring an enforcement action against employers, which includes imposing significant civil penalties and fines for violations of the ordinance (which increase dramatically for repeat offenders). The ordinance also provides employees with the right to bring both individual and class actions for noncompliance. Prevailing plaintiffs are entitled to liquidated damages up to double the amount of unpaid wages plus reasonable attorneys' fees and costs.

Conclusion

The ordinance's requirements are complex. Given that employees have the right to sue over violations, employers should carefully review their hiring and scheduling practices to ensure that they comply with the ordinance. Contact your Vorys lawyer if you have questions on the impact the ordinance will have on your business.