

Jersey City Proposes Groundbreaking Minimum Workweek Ordinance

By Jeffrey J. Corradino

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The City of Jersey City, New Jersey, recognizing that building service employees compose “a significant portion” of those who work in the City, is considering an ordinance to establish a minimum 30-hour workweek for them. The measure, launched by City Council President Rolando Lavarro, Jr., and backed by Mayor Steve Fulop, seeks to mandate that employers provide certain building services employees with at least 30 hours of work per workweek.

With a clear aim to transform part-time building service jobs into more substantial 30-hour-per-week jobs, the stated purpose of Jersey City Ordinance 16.081 is “to prevent full-time building service jobs from being unnecessarily broken into part-time jobs.” Carefully read, the ordinance will not transform every part-time job into a full-time job. A 30-hour workweek remains part-time except for purposes of the Affordable Care Act, under which employers are mandated to provide health insurance for each employee employed at least 30 hours per week. Thus, among other things, the ordinance contemplates that building service workers will have greater access to employer-provided health insurance. Another law the ordinance will implicate is Jersey City’s Paid Sick Time Law. Under the City’s Paid Sick Time provisions, employees accrue one hour of compensated sick time for every 30 hours worked. Building service employees will thus accrue one hour of paid sick time weekly if the ordinance is adopted.

Coverage

The ordinance, if adopted, will apply to employers that employ (or contract or subcontract for the services of) building service employees who perform their services at “any office complex, college, university or museum location of one hundred thousand (100,000) square feet or more or a residential building or complex with more than fifty (50) units.” Significantly, the high threshold is somewhat misleading as any individuals — corporate, natural, or otherwise — who lease any *part* of a covered location and employ or contract for *one* building service employee are subject to the mandate.

Coverage is determined by the type of work performed and not necessarily by job title. Covered work is work typically performed by a janitor, building cleaner, concierge, porter, doorperson, building superintendent, armed or unarmed security guard, or handyperson. The ordinance notably excludes any employee performing security guard or concierge services only on Saturdays or Sundays.

Penalty for Violations; Notice Requirement

Violations of the ordinance will subject employers to a penalty ranging from \$100 to \$2,000 per day and possible imprisonment or assignment to community service. The penalties are prescribed under the “General Penalty” section of the City’s code. That section refers to separate offenses in terms of “days.” Therefore, while not clear, it appears that the penalty will depend on the number of days an employer is not in compliance, as opposed to the number of employees assigned for less than 30 hours in a given workweek.

As is typical in workplace legislation, the proposed ordinance prescribes notice and posting requirements describing the employee’s rights that include a minimum 30-hour workweek, freedom from retaliation for asserting any rights under the ordinance, and the ability to file a civil action to enforce the rights. Failure to follow the notice and posting requirements may result in a \$100 fine for *each* employee not given written notice and \$500 for each establishment not bearing the required posting.

It is unclear exactly what the nature of a civil action to enforce rights of employees “displaced or terminated in violation of [the ordinance]” will be. The language and the structure of the ordinance do not express that a private right of action is available to employees for damages incurred as a result of

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being scheduled less than a 30 hours in a workweek. It appears that civil action is limited to suits for being terminated in retaliation for asserting rights under the ordinance. The ordinance, however, provides that fines collected for violations of the ordinance will be “remitted to aggrieved employees to make them whole for losses sustained due to actions violating this ordinance to the extent feasible.”

While professing to protect building service workers, the ordinance likely will reduce the number of available jobs. The measure, designed to roll all part-time jobs into near full-time jobs, probably will result in fewer, albeit more substantial, jobs. If the ordinance is adopted, not every building service employee will emerge with a full-time job. It is likely that many will be laid off and forced to search for similar building service jobs with employers who will have trimmed their workforce to comply with the ordinance.

Service Employees International Union, 32BJ strongly supported the ordinance, which, if passed, may be the first of its kind in the nation. The union supported a similar measure that was introduced in Connecticut last February, but it never passed the House. The City Council of Jersey City voted 6-2-1 to advance the ordinance and will vote on whether to adopt it at its next meeting on May 11, 2016.

Jackson Lewis will continue to monitor the ordinance and provide updates.

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