

Seattle Mayor's Office Proposes Predictable Scheduling Law

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The Seattle Mayor's Office has proposed a Secure Scheduling Proposal that would require certain large employers operating within Seattle city limits to give their hourly workers advance notice of their schedules and to pay workers extra for being required to work on call.

The Proposal, introduced on August 9, 2016, has a stated goal of providing employees predictability and flexibility in scheduling work hours. It is being considered by the Civil Rights, Utilities, Economic Development and Arts Committee of the Seattle City Council. It will then go before the full Council for a vote in September.

Affected Employers

The Proposal would apply to:

1. Retail establishments with at least 500 employees worldwide,
2. Quick and limited food service establishments with at least 500 employees worldwide, and
3. Full-service restaurants with at least 500 employees and at least 40 establishments worldwide.

Affected Employees

The Proposal applies to the wages, hours, and scheduling of non-exempt employees who work at least 50 percent of their work hours inside the Seattle city limits.

Similar to Seattle's Paid Sick and Safe Leave Ordinance, the Proposal's requirements would not apply to unionized workforces that ratify an "alternative structure" that meets the stated public policy goals.

Employer Requirements

The Proposal would require the following:

Good Faith Estimate of Work Hours – Employers, at the time of hire, on an annual basis, and upon a significant change, must provide qualifying employees with a written good faith estimate of (1) the median number of hours the employee will be expected to work each week and (2) whether the employer will expect the employee to work on-call shifts.

Notice of Schedules – Employers must provide qualifying employees their schedules at least 14 calendar days before the schedule is implemented.

The Interactive Process in Scheduling – Affected employees may state a preference for scheduling options and employers would have to engage employees in a timely manner in a good faith interaction related to scheduling. If an affected employee requests a schedule change because of caregiving obligations, a second job, or educational purposes, the employer must grant the request, unless a bona fide reason exists to deny the request (e.g., it interferes with business operations). Employers must be prepared to prove the business justification.

Minimum Breaks Between Shifts and Additional Overtime Pay – Excluding split shifts, employers must provide each affected employee with at least 10 hours off between the employee closing one shift and opening a subsequent shift. This would not apply if the employee volunteers to waive the 10-hour rest period and work the shifts. However, the employer would be required to pay the employee overtime rates (time-and-a-half) for the hours worked that is part of the rest period (e.g., if an employee had worked the 8:00 a.m. to 2:00 p.m. shift and the employer asks this employee to work that same night's 7:00 p.m. to 2:00 a.m. shift, a total of 7 more hours, the employer would have to pay the employee time-and-a-half for 7:00 p.m. to 12:00 a.m., the 5-hour period that cuts into the 10-hour rest period).

On-Call Shifts – Employers must pay affected employees one-half of their regular hourly rate for each hour during which the employees are on call, even if they are not called into work.

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Predictability Pay – Except where employees swap shifts or when employers ask for coverage of shifts using mass communication to affected employees (*e.g.*, in emergencies or to cover for another employee who is sick), employers must give employees one hour of additional pay at the regular rate for changes to a schedule after its original posting. If an employer cuts an employee's hours after posting a schedule, the employee would be entitled to one-half of the regular hourly rate for each hour cut from the schedule.

Offering Hours to Current Employees Before Hiring Externally – With certain exceptions, before making any external hires to fill available hours, employers must offer the additional available hours to existing employees. If an existing employee accepts the additional hours, the employer must give the hours to that employee. This provision has a three-day posting requirement and employees would have two days to accept the offer. Employers need not offer overtime hours to existing employees before making external hires.

Anti-Retaliation Provisions

As with most laws, the Secure Scheduling Proposal has an anti-retaliation provision that would prohibit employers from:

1. forcing employees to accept additional hours not on their schedule; and
2. punishing employees who refuse additional hours not on their schedule or who otherwise exercise their rights under the Proposal.

Jackson Lewis will continue to monitor the Proposal and provide updates as warranted.

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