

Seattle Passes Predictable Scheduling Ordinance

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The City of Seattle has passed a bill requiring 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. Mayor Ed Murray announced he plans to sign the [Secure Scheduling Ordinance](#). The bill will go into effect on July 1, 2017.

Affected Employers

The Ordinance applies to:

1. Retail establishments with at least 500 employees worldwide;
2. Food service establishments that employ at least 500 employees worldwide; and
3. "Full-service restaurants" with 500 or more employees and at least 40 establishments worldwide.

Affected Employees

The Ordinance 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 at a fixed point of sale location.

Unionized workforces with a bona fide collective bargaining agreement are excepted from the Ordinance, so long as the requirements of the law are "expressly waived in the collective bargaining agreement, or in an addendum to an existing agreement," and the employees "ratif[y] an alternative structure for secure scheduling that meets the public policy goals" of the law.

Employer Requirements

The Ordinance requires the following:

Good Faith Estimate of Work Hours – Employers, at the time of hire, on an annual basis, and upon a significant change in hours, 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. If the "good faith estimate" significantly changes, employers must engage the employee to discuss such changes and offer a bona fide business reason for the change.

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 – Employees may state a preference for scheduling options. So long as the preference does not relate to a "major life event," employers must engage employees in a timely manner in a good faith interaction related to scheduling. Employers can deny the request if the reason for denial is not otherwise unlawful. If the preference relates to a "major life event," the employer (1) must engage in an interactive process, (2) may request verifying information with adequate notice, but (3) must grant the request unless a bona fide business reason exists for the denial. The employer's response to the interactive process relating to a "major life event" must be in writing. A "major life event" is defined by the law as "changes in the employee's transportation or housing; the employee's own serious health condition; the employee's responsibilities as a caregiver; the employee's enrollment in a career-related educational or training program; or the employee's other job or jobs."

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 works the shifts. However, the employer would be required to pay the employee overtime

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rates (time-and-a-half) for the hours that shorten the minimum break between shifts.

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 when not called into work.

Predictability Pay – Employers must give employees one hour of additional pay at the regular rate for adding hours to a work schedule after it was posted or changing the date or start or end time of a work shift with no loss of hours. If an employer cuts an employee's hours after posting a schedule, the employee is entitled to one-half of the regular hourly rate for each hour cut from the schedule. This applies to any hours the employee does not work because the employer (1) subtracted hours from a regular work shift (before or after the employee reports for duty), (2) changed the date or start or end time of a work shift with a loss of hours, or (3) cancelled a work shift.

Predictability Pay Not Required Under Certain Circumstances – Predictability pay will not be required under nine circumstances:

- employees mutually agree to swap shifts or cover for one another;
- employees voluntarily accept additional hours in response to a written mass communication about available hours, provided that the communication (a) clearly sets forth the voluntary nature of acceptance and (b) is used to fill hours of another employee who was unable to work scheduled hours;
- the employer experiences an unanticipated customer need while employees are currently working, the employer has an “in-person group communication” with the working employees about additional available hours, the employees voluntarily consent to work the additional hours, and the additional hours are consecutive to the hours the employees are currently working;
- additional hours arising from an offer of additional hours for existing employees described below;
- employee-requested changes, in writing, that an employee voluntarily makes and the employer grants;
- reduced hours resulting from discipline, so long as the employer documents the incident leading to the discipline; and
- operations cannot begin or continue due to (1) threats to employees or property, or because of a recommendation of a public official that work cannot begin or continue, (2) a failure in public utilities (e.g., electricity, water, gas, or the sewer system), and (3) a natural disaster.

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. The employer must conspicuously post a written notice of available hours with (1) a description and title of the position, (2) required qualifications for the position, (3) total hours of work being offered, (4) schedule of available work shifts, (5) whether the available work shifts will occur at the same time each week, and (6) the length of time the employer anticipates requiring coverage of the additional hours. The posting must remain up for three consecutive days. If an employee responds to the posting and is qualified for the position, the employer must offer the employee the hours. The employee then has two calendar days to accept the offer. Employers need not offer overtime hours to existing employees before making external hires.

Maintaining Records of Compliance – Employers must maintain records of compliance with the Secure Scheduling Ordinance for a period of at least three years. Failure to maintain records will result in a presumption that the employer violated the Ordinance, unless the employer proves by clear and convincing evidence otherwise.

Anti-Retaliation Provisions

As with most laws, the Ordinance 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 Ordinance.

This provision has a rebuttable presumption of retaliation if the employer takes an adverse employment action against an employee within 90 calendar days of the employee's exercise of rights under the Ordinance.

Enforcement

The Ordinance has two primary enforcement mechanisms: (1) the Seattle Office of Civil Rights has authority to investigate, make conclusions of fact and law, and levy penalties and fines against employers, as well as damages in favor of employees; and (2) employees have a private right of action against employers who violate the law.

Fines are \$500 for a first offense, \$1,000 for a second offence, and up to \$5,000 for additional offenses.

Employees can recover unpaid wages, liquidated damages (twice the amount of economic damages), attorney's fees, costs, and penalties of up to \$5,000 for retaliation.

The Seattle Office of Civil Rights also will be creating and distributing a poster outlining employee rights under the Ordinance that must be conspicuously posted at the employer's workplace.

For more details about the Ordinance and how to compliance, please contact Jackson Lewis.

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