

What Retailers Should Know About California Scheduling Ordinances

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[The City of Los Angeles's Retail Fair Workweek Ordinance](#) which takes effect April 1, 2023, is not the only local ordinance in the Golden State that affects how retailers and other employers handle scheduling.

Other cities that have enacted ordinances on how employees are scheduled and the flexibility of scheduling provided to employees include Berkeley, Emeryville, San Francisco, and San Jose.

Berkeley

In December 2022, [the City of Berkeley passed a Fair Workweek Ordinance](#). It becomes operative on *January 1, 2024*. The ordinance applies to certain industries, including retail entities.

The ordinance applies to any employer in the City of Berkeley with at least 10 employees in the city that is:

- Primarily engaged in the building services, healthcare, hotel, manufacturing, retail, or warehouse services industries and employs at least 56 employees globally; or
- Primarily engaged in the restaurant industry and employs at least 100 employees globally; or
- A franchisee primarily engaged in the retail or restaurant industries and is associated with a network of franchises with franchisees employing in the aggregate at least 100 employees globally; or
- A not-for-profit corporation organized under Section 501 of the U.S. Internal Revenue Code in the industries specified under subsection (a)(1), (2), and (3) and employs at least 100 employees globally.

Under the ordinance, covered employee is defined as a person in a calendar week who performs at least two hours of work within the geographic boundaries of the city for a covered employer and is entitled to payment of minimum wage from any employer under the state requirements and is not exempt from payment of an overtime rate of compensation.

Obligations for employers pertaining to scheduling include the following:

- Provide each employee with a good faith estimate in writing of the employee's work schedule. The employee may submit a written request to modify the estimated work schedule, and the covered employer, in its sole discretion, may accept or reject the request and will notify the employee of the covered employer's determination in writing prior to or on the

commencement of employment.

- Provide employees predictability pay for certain times of scheduling changes.
- Provide employees at least two weeks' notice of their work schedules by doing one of the following:
 1. Posting the work schedule in a conspicuous place at the workplace that is readily accessible and visible to all employees; or
 2. Transmitting the work schedule by electronic means, so long as all employees are given access to the electronic schedule at the workplace.

Emeryville

The city of Emeryville has had its [Fair Workweek ordinance](#) in place since 2017. The ordinance applies to employers in the retail and fast-food industry.

Covered employers are retail employers with at least 56 employees globally and fast-food establishments with at least 56 employees globally and at least 20 employees in the City.

Covered employees include full- and part-time employees employed by covered employers.

Under the ordinance, covered employers must:

- Provide at least two weeks' advance notice of schedules.
- Provide a good faith estimate of work schedules in writing before new employees start their employment.
- Pay time-and-a-half for any hours worked between closing and opening shifts that are separated by fewer than 11 hours.
- Allow employees to decline work if it would be fewer than 11 hours after the end of the previous day's shift.
- Provide notice of any changes to schedules that are employer initiated.
- Pay predictability pay for changes made to schedules without the specified amount of notice.
- Offer additional hours to existing qualified part-time employees before hiring new employees.

Los Angeles

The City of Los Angeles ordinance takes effect on *April 1, 2023*. It applies only to employers who are identified as retail businesses.

Covered employers are defined as businesses identified as retail businesses under the [North American Industry Classification System \(NAICS\)](#) and employ at least 300 employees globally. Individuals employed through staffing agencies

and employees of certain subsidiaries and franchises count toward the 300-person total.

Covered employees are defined as anyone working in the City of Los Angeles at least two hours per week for a covered employer and who is entitled to minimum wage under the state Labor Code and Wage Orders.

Requirements in the handling of scheduling practices and procedures include the following:

- Covered employers must provide each new employee before hiring a written good faith estimate of the employee's work schedule.
- Covered employers must provide a written good faith estimate of the employee's schedule within 10 days of an employee's request.
- Employees have a right to request a preference for certain hours, times, or locations of work. Covered employers may accept or decline requests, provided the employer notifies the employee in writing of the reason for any denial.
- Covered employers must provide an employee with written notice of the employee's schedule at least 14 calendar days before the start of the work period.
- Before hiring a new employee, covered employers must first offer the work to current employees.
- An employer may not schedule an employee to work a shift that starts fewer than 10 hours from the employee's last shift without written consent. Covered employers must pay an employee a premium of time-and-a-half for each shift not separated by at least 10 hours.
- Covered employers must post a notice informing employees of their rights under the ordinance.

The County of Los Angeles is also considering a fair workweek ordinance. It is only in its initial stages. If passed, it would apply only to unincorporated areas of the County.

San Francisco

San Francisco's [Formula Retail Employee Rights Ordinance](#) has been in effect since 2015 and applies to "formula retail establishments," also known as chain stores.

It applies to formula retail establishments with at least 40 stores worldwide and at least 20 employees in San Francisco, as well as their janitorial and security contractors.

Under the ordinance, covered employers must:

- Offer extra work hours to current qualified part-time employees in writing before hiring new employees or using contractors.

- Provide new employees with a good faith written estimate of the employee's expected minimum number of scheduled shifts per month and the days and hours of those shifts.
- Provide employees with their schedules two weeks in advance.
- Provide predictability pay in certain circumstances when scheduling changes are made without required notice.

San Jose

The City of San Jose's [Opportunity to Work Ordinance](#) applies to all employers and requires offering additional hours to current employees before hiring new employees or contractors.

The ordinance covers employees who, in a calendar week, perform at least two hours of work for a covered employer and qualifies as an employee entitled to payment of a minimum wage under California minimum wage law.

If you have questions about California's scheduling ordinances or related issues, contact a Jackson Lewis attorney to discuss.

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