

If Passed, the Chicago Fair Workweek Ordinance Will Significantly Impact How Chicago Employers Schedule Their Employees

Joseph Yastrow

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Attorneys

Joseph H. Yastrow

The Chicago City Council has been considering a new Ordinance, the Chicago Fair Workweek Ordinance (“CFWO”) that could significantly impact how Chicago employers schedule employees. If passed, the CFWO would require employers to give employees at least two (2) weeks’ advance notice of changes in their work schedules. Failure to give the required notice would result in a penalty (“predictability pay”) equal to one hour of pay at the employee’s regular rate.

In addition, if an employer reduces or cancels an employee’s scheduled hours with less than twenty-four (24) hours’ notice, the employer must pay the employee the lesser of four (4) hours of pay at the employee’s regular rate or the number of hours the employee was scheduled to work.

In addition to the foregoing, the CFWO also affords employees the right to refuse to work a shift that begins eleven (11) hours or less following the last shift the employee worked. (The “right to rest”). If employees agree to work such shifts, they must be compensated at time-and-a-half their regular hourly rate for such hours. The CFWO further requires that the employee’s consent to work shifts covered by this restriction must be confirmed in writing.

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The CFWO also mandates that before hiring new or contract employees, including through the use of temporary services or staffing agencies, an employer must first offer the additional hours to existing employees who are qualified to do the work in question.

If the duration of the additional work is more than two (2) weeks, employees must receive seventy-two (72) hours advance notice to accept the additional hours. Where the expected duration is two (2) weeks or less, employees must receive twenty-four (24) hours advance notice to accept the work. Employees have no obligation to accept the additional hours, and if they do not, the employer may then hire new employees to work the hours in question.

The section also provides that it shall not be construed to require an employer to offer additional hours at a premium rate “as required by law” which presumably means that the offer of additional hours applies only up to the point where the employee(s) in question are scheduled up to forty (40) hours. Thereafter, such assignments are subject to the employer’s discretion.

The CFWO also mandates that there can be no retaliation against employees who request changes in their normal schedules or work duties. Moreover, the CFWO requires that an employer must respond to all such requests in writing notwithstanding the fact that the employee’s request need not be in writing.

On top of a number of posting and written notification obligations imposed by the CFWO, employers are also subject to record keeping requirements concerning schedules, hours worked, rates of pay, schedule changes, consent forms, etc. Such records must be maintained for a minimum of five (5) years.

Violations of the CFWO result in fines of between \$500 and \$1,000. The CFWO also provides that employees may file complaints alleging violations of the CFWO with the City or in court. If successful, an employee can recover \$500 in civil penalties in addition to pay lost as a result of the employer’s failure to comply with the CFWO.

It does not appear that employees covered by collective bargaining agreements will be able to waive their rights under the CFWO, as is the case with the Chicago Minimum Wage and Paid Sick Leave Ordinances. Employees who are paid on a salaried basis and make at least \$962 per week, or \$50,000 per year, are not covered by the CFWO.

The original planned effective date for the CFWO was July 1, 2018, but it is still pending approval at the present time. Nevertheless, employers should anticipate that the CFWO has a reasonably good chance of passing and, therefore, should begin contingency planning as soon as possible. We will continue to monitor

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any action related to this Ordinance and provide updates as they become available.