

Seattle to Impose Work Scheduling Restrictions on Large Retail and Food Services Employers

by Ryan E. Mick and Ieva Aubin

On September 19, 2016, the Seattle City Council voted unanimously to approve a new legislation that would regulate how large retail and food-service businesses schedule their employees. Known as the “secure scheduling” law, the ordinance requires that covered employers schedule shifts at least 14 days in advance, compensate workers for certain scheduling changes, provide at least a 10 hour rest period between opening and closing shifts, and offer hours to existing workers before hiring new staff, among other provisions. The ordinance is expected to take effect in July 2017.

The law is designed to target large retail and food service companies, and smaller franchises that are associated with them. It covers retail and quick or limited food service establishments with more than 500 employees worldwide, including, but not limited to chains, integrated enterprises, or franchises associated with a franchisor or network of franchises that employ more than 500 employees in aggregate. Full service restaurants are specifically defined to include those with more than 500 employees and 40 full-service restaurant locations worldwide, including but not limited to locations that are a part of a chain, integrated enterprise, or franchise where the franchisor owns or operates 40 or more such establishments in aggregate. “Retail establishment” means the fixed point-of-sale location of a store retailer in certain NAICS industry codes.

Employers must provide written good faith estimate (median number of hours the employee can expect to work each work week, and whether the employee can expect to work on-call shifts) at hire. The good faith estimate must be revised annually and when there is a significant change. It applies only to schedules of hourly, non-exempt workers who physically work at least 50% of the time within geographic boundaries of the City of Seattle.

Employers must engage in an “interactive process” with employees who request certain hours or locations of work. Employers must have a “bona fide business reason” for denying requests related to employee’s serious health condition, caregiving, education, or other jobs, and must provide employees with a written response in the event of denial.

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The ordinance also prohibits so-called “clopeings,” where workers are scheduled to work back-to-back closing and opening shifts that are less than 10 hours apart on different days. If a worker requests or consents to work the “clopening” shift, such work must be compensated at one and one-half times the employee’s scheduled rate of pay.

One of the most difficult challenges for many employers will be the advance schedule notice. Employers must provide employees with a written work schedule at least 14 calendar days in advance. For employer-requested schedule changes, employers must provide employees with timely notice by in-person conversation, telephone call, email, text message, or other accessible electronic or written format, and the employee may decline to work any hours not included in the employee’s work schedule.

With certain limited exceptions, for each schedule change the employer makes on less than fourteen days’ notice, the employer must compensate the employee, in addition to wages earned, as follows:

- one hour of pay for adding hours or changing the date or start or end time of a work shift with no loss of hours; and
- half the hourly rate for each hour the employee does not work due to:
 - subtracting hours from a regular shift before or after the employee reports for duty;
 - changing the date or start or end time of shift resulting in a loss of hours;
 - cancelling a shift; or
 - scheduling an employee for an on-call shift for which the employee does not need to report to work.

Subject to certain conditions and limitations, employers must first offer in writing to existing workers any additional hours of work before hiring new staff.

Enforcement and Penalties

Employers that fail to comply with the new legislation may be ordered to pay lost wages to impacted employees, pay penalties, liquidated damages, interests, or face a civil action by the City Attorney.

Takeaway Points for Employers:

- In anticipation of these changes, Seattle businesses meeting the definition of “Covered Employer” should educate themselves about the “secure scheduling” law and review their current hiring, scheduling, and pay practices and procedures to determine what changes, if any, they need to implement to comply with the new ordinance.
- Employers should consider training all managers and supervisors on the requirements of the new legislation.
- Retail and food services employers should also consider reviewing, and, if necessary, revising, their Employee Handbooks to address the requirements imposed by the “secure scheduling” ordinance.

Please contact Dorsey & Whitney employment attorneys if you have any concerns about whether your current scheduling and pay practices and procedures are in compliance with the new ordinance.