

## Publication

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### Chicago Proposes a Pair of Ordinances to Address COVID-19 Related Concerns

The Chicago City Council is currently considering a pair of proposed ordinances that are intended to address concerns prompted by the current COVID-19 crisis. The first proposed ordinance would prohibit employer retaliation against employees who obey public health directives to remain home to help stop the spread of COVID-19. The second proposed ordinance seeks to calm employer concerns regarding the impending July 1, 2020 effective date of the Chicago Fair Workweek Ordinance (the "Fair Workweek Ordinance") by delaying the effective date of a key provision of that Ordinance.

#### Retaliation for Complying with Public Health Directives Would Be Prohibited

Under a proposed ordinance introduced by Mayor Lightfoot on April 22, 2020, the Chicago Minimum Wage and Paid Sick Leave Ordinance (the "Minimum Wage Ordinance") temporarily would be amended to prohibit employers from demoting or terminating a "Covered Employee" who obeys an order issued by the Mayor, the Governor of Illinois, the Chicago Department of Public Health, or, in the case of subsections (2), (3), and (4) below, a treating healthcare provider, requiring the Covered Employee to:

1. Stay at home to minimize the transmission of COVID-19;

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2. Remain at home while experiencing COVID-19 symptoms or sick with COVID-19;
3. Obey a quarantine order issued to the Covered Employee;
4. Obey an isolation order issued to the Covered Employee; and
5. Obey an order issued by the Commissioner of Health regarding the duties of hospitals and other congregate facilities.

The proposed ordinance also would prohibit employers from demoting or terminating a Covered Employee for caring for an individual who is subject to subsections (1) through (3) above.

The ordinance defines a “Covered Employee” as an employee who perform at least two hours of work, during any two-week period, within the City of Chicago.

A violation of the ordinance would constitute retaliation under Chicago Minimum Wage and Paid Sick Leave Ordinance and could result in the Public Health Commissioner instituting an administrative action or lawsuit against the employer. Additionally, Covered Employees could file a civil action seeking reinstatement, damages equal to three times the full wages that would have been owed had the retaliation not taken place, as well as other actual damages, costs, and reasonable attorneys’ fees.

The Commissioner of Public Health would have the authority to issue implementing regulations and to ultimately determine when the public-health threat posed by COVID-19 has diminished and the ordinance safely can be repealed.

#### **Fair Workweek Ordinance Litigation Would Be Delayed**



On May 11, 2020, Mayor Lightfoot introduced a second proposed ordinance that would amend the Fair Workweek Ordinance to address concerns expressed by some employers that, once effective on July 1, the Fair Workweek Ordinance will negatively impact on their ability to operate during the current COVID-19 crisis.

The Fair Workweek Ordinance will require employers in certain covered industries to provide covered employees working in the City of Chicago with 10 days' notice of their work schedules beginning July 1, 2020 (and increasing to 14 days' notice beginning July 1, 2022). The Ordinance also entitles employees to predictability pay for changes to their work schedules made within the 10-day notice period. Many employers have complained that implementing the Fair Workweek Ordinance in the midst of the COVID-19 crisis will only place a further strain businesses that already are struggling to remain open.

The proposed ordinance seeks to lessen the burden on employers, while simultaneously protecting employees' rights, by delaying the effective date of Section 1-24-140 of the Ordinance, pertaining to private causes of action. The remaining provisions of the Fair Workweek Ordinance requiring, among other things, advance scheduling and predictability pay would go into effect on July 1, 2020, as currently planned.

The proposed amendment would have the effect of preventing private litigation for alleged violations of the Fair Workweek Ordinance until 2021. However, as currently drafted, the proposed ordinance would permit enforcement actions by the Department of Business Affairs and Consumer Protection, as well as the accrual of penalties (ranging from \$300-\$500 per violation) for alleged violations, beginning on July 1. Thus, the current proposed ordinance only delays litigation and the



potential penalties that employers may incur for non-compliance.

Both proposed ordinances currently are pending before the City Council's Committee on Workforce Development. It is expected that both ordinances will be considered and voted on by the full City Council at the next City Council meeting on May 20, 2020.

If you have any questions concerning the proposed ordinances or any other labor and employment issues, please contact Alex Dominguez or your Neal Gerber Eisenberg attorney.

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