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Publication

06/16/2020

Client Alert: Employers Take Note: COVID-19 Related Amendments Made to Chicago Fair Workweek Ordinance

Chicago employers in certain covered industries soon will need to comply with the numerous advance scheduling and predictability pay requirements set forth in the Chicago Fair Workweek Ordinance (the “Ordinance”). Despite efforts to delay the effective date of the Ordinance, the City of Chicago has indicated that the Ordinance will go into effect as scheduled on July 1, 2020. However, to ease the impact on employers already struggling due to the current COVID-19 crisis, the City of Chicago recently passed two notable amendments to the Ordinance, including clarifying the Ordinance’s pandemic exception rule and delaying the effective date of the Ordinance’s private cause of action provision.

Employers that are subject to the Ordinance should use the remaining time before the Ordinance takes effect on July 1, to implement the necessary procedures to comply with the Ordinance’s advance-scheduling and predictability pay requirements.

Fair Workweek Ordinance Requirements

The Fair Workweek Ordinance applies to employers in certain covered industries with 100 or more employees “globally” (250 or more employees for non-profits), with at least 50 “covered employees” who: (1) spend the majority of their time working in the City of Chicago and

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(2) earn less than or equal to \$50,000 per year as a salaried employee, or less than or equal to \$26 per hour as an hourly employee. "Covered industries" include the building services, healthcare, hotels, manufacturing, restaurants, retail, and warehouse services industries. However, the Ordinance defines "restaurants" as a business licensed to serve food in Chicago, which globally has at least 30 locations and at least 250 employees, and excludes from that definition businesses with three or less locations in Chicago that are owned by a single employer and operating under a sole franchise.

While the Ordinance contains a number of additional provisions, covered employers soon will need to comply with the following key requirements:

1. **Initial Estimate of Work Schedule:** Prior to the start of employment, employers must provide covered employees with a written estimate of the days and hours that the employee is projected to work within the first 90 days of hire. The estimate must indicate (a) the average number of weekly hours the employee can expect to work each week; (b) whether the employee can expect to work any on-call shifts; and (c) a subset of days, times or shifts that the employee can expect to work, or the days, times, or shifts that the employee will not be scheduled to work. The estimate is non-binding but must be made in good faith.

Additionally, prior to the commencement of employment an employee may request to modify the projected work schedule. The employer then must consider and notify the employee, in writing within three days of the request, whether it has decided with to accept or reject the requested schedule change.

2. **Advance Notice of Work Schedule:** For the period between July 1, 2020 through June 30, 2022, employers must post a work schedule for covered employees at least 10 days in advance of any scheduled



work. Beginning July 1, 2022, employers must post the work schedule at least 14 days prior to the start of a new work schedule. The work schedule must be posted in a conspicuous place in the workplace that is accessible by all covered employees or using the usual methods for such communications. The work schedule must include the work schedules and on-call status of all covered employees at the worksite, and employers are required to provide the work schedule to employees by electronic means upon request.

3. **Right to Decline Work Schedule Changes:** Covered employees have the right to decline any previously unscheduled hours that the employer adds to the employee's work schedule inside of the 10-day (or 14-day) work schedule notice period.

4. **Predictability Pay for Work Schedule Alterations:** Unless one of the exceptions set forth within the Ordinance applies, employers that alter an employee's work schedule within the 10-day (or 14-day) work schedule notice period are required to pay the employee one hour of predictability pay for each shift in which the employer: (a) adds hours of work, (b) changes the date or time of a work shift with no loss of hours, or (c) cancels or subtracts hours from a regular or on-call shift, with more than 24-hours' notice.

Where the employer fails to provide the employee with at least 24 hours' notice of a regular or on-call shift cancellation or reduction in hours, the covered employee is entitled to 50% of the employee's regular rate of pay for any scheduled hours that the employee does not work.

Within 24 hours of a work schedule change, the employer must amend the posted work schedule and transmit the updated work schedule to the covered employee.



Importantly, the foregoing right to decline and predictability pay requirements do not apply in certain limited circumstances set forth in the Ordinance. For instance, the predictability pay requirements do not apply where the work schedule change is because of: (a) a public utility failure, (b) an act of nature such as a flood, earthquake, tornado, or blizzard; (c) war, civil unrest, strikes, threats to public safety, or pandemics (such as the current COVID-19 outbreak as explained below). Additionally, employers are exempted from the predictability pay requirements where the work schedule change is the result of a mutually agreed upon shift trade or coverage arrangement between covered employees, or the work schedule change is mutually agreed to, in writing, by the covered employee and employer. A number of the remaining exceptions apply when the work schedule change is due to other reasons outside the employer's control.

5. **Offering Additional Hours to Existing Employees:**

When an employer needs to fill additional shift hours, the employer is required to offer the additional shift hours to existing covered employees first, before offering the additional hours to temporary or seasonal workers.

6. **Right to Rest:** Covered employees have the right to decline work schedule hours that are less than 10 hours after the end of the previous day's shift. If an employee works a shift that begins less than 10 hours after the previous day's shift, the employer must pay the employee at a rate of 1.25 times the covered employee's regular rate of pay for that shift.

7. **Notice Posting:** Employers are required to post in a conspicuous place in the workplace a notice issued by the Department of Business Affairs and Consumer Protection (the "Department") regarding employees' rights under the Ordinance. Employers also must provide the notice to employees with the first paycheck after the effective date of the Ordinance, and thereafter



yearly with the first paycheck following July 1. A copy of the Department's notice is available [here](#).

Recent Amendments to the Fair Workweek Ordinance

As noted in an prior client alert, the City of Chicago has taken certain steps to ease the impact that the Ordinance will have on employers during the current COVID-19 pandemic. Specifically, on May 20, 2020, the Chicago City Council passed the following two amendments:

The City Council first sought to clarify the existing language in Section 1-25-050(d)(1)(D) of the Ordinance, which excepts employers from the right to decline and predictability pay requirements of the Ordinance in the event of a scheduling change "because" of a "pandemic." The amendment makes clear that the current COVID-19 outbreak qualifies as a pandemic under the Ordinance. It further provides that the Department will consider a work schedule change to be "because" of the pandemic when the pandemic causes the employer to materially change its operating plan, or the goods or services it provides, resulting in the work schedule change. However, the amendment also makes clear that the pandemic exception only applies during the work schedule in which the event that changes the work schedule occurs and during the work schedule that immediately follows.

The second COVID-19 related amendment to the Ordinance delays the effective date of Section 1-24-140 of the Ordinance, pertaining to private causes of action, until January 1, 2021. Specifically, the amendment precludes employees from filing lawsuits for alleged violations of the Ordinance until 2021. However, the Department may pursue enforcement actions, and seek related penalties (ranging from \$300-\$500 per violation), following the Ordinance's effective date. Thus, employers still face potential penalties for non-compliance with the Ordinance's advance-scheduling



and predictability-pay requirements beginning on July 1, 2020.

In light of the foregoing, employers should use the remaining time before the effective date of the Ordinance to determine whether they are covered by the Ordinance and, if so, to put in place the necessary measures to ensure compliance with the Ordinance's scheduling, predictability pay, and other requirements.

If you have any questions regarding the Fair Workweek Ordinance or any other labor and employment issues, please contact Alex Dominguez or your Neal Gerber Eisenberg attorney.

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