

Evanston, Illinois, Extends Schedule Protection Rights to Hourly Workers

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Thomas E. Deer

Chicago
Indianapolis

Author



Hilarie M. Carhill

Chicago

Author

The city of Evanston, Illinois, recently enacted the [Fair Workweek Ordinance](#) (24-O-23), expanding hourly workers' rights to predictable scheduling across multiple industries, including hospitality, food service and restaurants, retail, warehouse services, manufacturing, and building services. Effective on September 1, 2023, the ordinance generally places new obligations on employers with at least fifteen employees. For food service and restaurant employers, it applies to businesses that globally have at least thirty locations and two hundred employees; it does not apply to restaurants limited to three or fewer locations in the city that are owned by one employer and operating under a sole franchise. The ordinance authorizes any collective bargaining agreements (CBAs) to impose different terms that exceed the minimum standards specified by the ordinance.

Quick Hits

- ▶ The Evanston Fair Workweek Ordinance requires covered employers to provide new employees with good-faith, written estimates of projected work schedules for the first ninety days of employment, and at least fourteen days' advance notice of work schedules for existing employees.
- ▶ The ordinance applies to employers in the building services, hospitality, manufacturing, restaurant and food service, retail, and warehouse industries.
- ▶ The ordinance took effect on September 1, 2023.

The [Fair Workweek Ordinance](#) requires employers to provide new employees a good-faith, written estimate of projected work schedules over the first ninety days of employment. The estimate will include the average number of weekly hours an employee will be expected to work, whether any shifts will be on-call, and specific days/times/shifts the employee will be on or off duty.

For existing employees, employers must provide written, publicly posted, advance notice of accurate work schedules at least fourteen days prior to the beginning of employee shifts. Employers may physically post the schedules in a conspicuous place at the workplace, and employees may additionally request electronic transmission of the schedules. Victims or family members of victims of domestic violence or sexual assault may request that their personal schedules not be posted to or transmitted to other employees.

If the employer changes a posted work schedule, the employer must amend the public posting and transmit the new schedule to the employee in writing within twenty-four hours of rendering the change. The consequences of an employer's changing an hourly worker's schedule fewer than fourteen days in advance of a shift include both having

the inability to compel employees to work any previously unscheduled hours, and the employer's paying additional money beyond the employee's regular pay—termed “[p]redictability [p]ay”—to employees. Predictability pay is calculated on an hourly basis at the employee's regular rate, and it is in addition to any wages earned for work performed by that employee.

The specific cost of predictability pay depends on when the employer noticed the employee of a changed schedule. With less than fourteen days' notice, but more than twenty-four hours' notice, employers will owe one hour of predictability pay. If the employer cancels or reduces the employee's shift with less than twenty-four hours' notice to the employee, then the employer will owe four hours of predictability pay or the number of hours in the employee's scheduled shift, whichever is less. For all other changes made with less than twenty-four hours' notice, employers will owe one hour of predictability pay in addition to the employee's regular pay.

The only exceptions to these negative consequences for the employer include: changes to the schedule in response to serious incidents outside the control of the employer, such as acts of nature or public emergencies; a mutually agreed-upon work schedule change due to a shift trade or a similar arrangement among employees; an employee's request for a shift change that is confirmed in writing, including using approved leave; an employer's subtraction of work hours due to documented disciplinary or just-cause reasons; or when an employee self-schedules.

Employees have a right to rest, including the ability to decline work hours that occur within eleven hours of an employee's last worked shift. If the employee works within eleven hours of his or her last worked shift, then he or she will be compensated at an overtime rate for those hours worked inside the eleven-hour window.

Employees have the right to request modified work schedules, which employers shall consider and in their sole discretion may accept or reject the request. An employer must render a written response to an employee within three days of a request.

The ordinance also allows current part-time workers a first right of refusal when employers consider adding new employees. Employers must first offer qualified part-time employees additional hours up to a total of thirty-five hours per calendar week before hiring, contracting, or using a temporary service or staffing agency to supplement its workforce. These part-time employees have the right to refuse additional hours.

Employers must post notice of employees' rights under the ordinance and provide notice with the employees' first paychecks. Retaliation against employees for exercising rights under the ordinance is prohibited. Employers must maintain for at least three years a record of each employee's name, hours worked, pay rate, and records necessary to demonstrate compliance with the ordinance.

Employers that violate the ordinance will be fined not less than \$300 or more than \$500 for each initial offense. The fine will increase by \$50 for each subsequent offense. Each employee affected constitutes a separate offense. Moreover, the ordinance provides that an employee affected by a violation may file a private cause of action in civil court, within two years of the alleged violation. Employees who prevail in civil actions are entitled to compensation for any damages, including payment of predictability pay unlawfully withheld; litigation costs; expert witness fees; and reasonable attorneys' fees.

In sum, the ordinance requires employers to do the following:

- ▶ Provide new hires with good-faith initial estimates of the average weekly hours, shifts, and any on-call expectations for the first ninety days of employment.
- ▶ Post or disseminate expected work schedules for all employees at least fourteen days in advance, with special consideration for privacy of self-identified victims or family members of victims of sexual and/or domestic violence.
- ▶ Update posted schedules and provide employees with written notice of any changes to prior posted work schedules within twenty-four hours of rendering schedule changes.
- ▶ For any employer changes to schedules less than fourteen day in advance, pay extra money (called “[p]redictability pay”) for changed hours or accept a worker’s right of refusal for any schedule changes made. Predictability pay is equivalent to an employee’s regular hourly rate, and it is received in addition to any wages earned for work performed. The amount of predictability pay will vary depending upon how much notice the employee received:
 - ▶ With more than twenty-four hours’ notice, only one hour of predictability pay will be owed
 - ▶ With less than twenty-four hours’ notice:
 - ▶ If canceling or reducing a shift, four hours of predictability pay or the number of hours in an employee’s scheduled shift will be owed, whichever is less; or
 - ▶ one hour of predictability pay will be owed for any other changes.
- ▶ Consider any employee requests for changes to their work schedules and provide a written decision within three days of the request.
- ▶ Provide rest for at least eleven hours after an employee’s end of shift.
- ▶ For any scheduled hours that occur less than eleven hours after an employee’s end of shift, pay extra money by compensating at an overtime rate (one-and-a-half times the regular rate) for any hours worked inside of eleven-hour window and accept the employee’s right of refusal of the hours.
- ▶ Offer additional hours to part-time workers, up to thirty-five hours per week, prior to hiring, contracting with, or using staffing agencies or temporary services to provide additional labor.
- ▶ Provide notice of an employee’s rights under the ordinance, both publicly posted and included with the employee’s first paycheck.
- ▶ Keep records for at least three years of employee names, hours worked, pay rates, and other necessary information to demonstrate compliance with the ordinance.

Evanston employers may want to train their managers on these matters to avoid extra costs and liability.

Ogletree Deakins’ [Chicago](#) office will continue to monitor developments and will provide updates on the [Hospitality, Retail, Illinois, Trucking and Logistics](#), and [Wage and Hour](#) blogs as additional information becomes available.

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