

Philadelphia Moves Forward with Fair Workweek Law Despite COVID-19 Pandemic



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On April 21, 2020, the Mayor's Office of Labor issued a post restating the key provisions of the city of Philadelphia's new Fair Workweek law, which took effect on April 1 despite the COVID-19 pandemic. The Fair Workweek law in Philadelphia requires covered employers to provide service, retail, and hospitality workers with a predictable work schedule. It also requires employers to provide good faith estimates and 10-day advance notice of work schedules, along with other worker protections.

Covered employers include retail, hospitality, and food services establishments with 250 or more employees (including full-time, part-time, seasonal, and temporary workers) and 30 or more locations worldwide, including chain establishments and franchises. While many such employers are currently not operating as a result of COVID-19, the new law presents an issue for them as they restart operations.

The new ordinance requires covered employers to:

- Post and provide 10-day advance notice of work schedules;
- Provide new employees with a written, good faith estimate of the employee's work schedule and revise the good faith estimate when there is a significant change to the employee's work schedule due to changes in the employee's availability or to the employer's business needs (employers have until July 1, 2020, to provide existing employees with a written good faith estimate of average work hours);
- Obtain employee consent when requesting to add hours to the employee's posted work schedule;
- Obtain employee consent in writing, and compensate the employee \$40, in the event it wants the employee to work any hours scheduled less than nine hours after the end of the previous day's shift;
- Offer existing employees the right to additional work shifts before hiring new employees;
- Notify each employee of its policy for offering and distributing work shifts under this law, at the time of hire and within 24 hours of any change in the policy; and
- Award predictability pay, a premium pay given to employees when there is an employer initiated change to the 10-day advance notice of work schedule (the city has confirmed that this predictability pay requirement will not be enforced until further notice due to COVID-19 and associated impacts on business activity).

As mentioned above, the city will not be enforcing the predictability pay requirement until further notice. Aside from that, employers are expected to comply with all other provisions of the law at the present time.

The Fair Workweek law is complex and requires employers to adjust their practices relating to scheduling of employees and assignment of work. To the extent employers are not already in compliance with the law, they should begin by taking the following first steps in order to meet the challenges of fulfilling their obligations: (1) Begin averaging hours for existing employees in order to meet the good faith estimate deadline of July 1, 2020; (2) Change scheduling practices to account for the 10-day advance notice of work schedules; and (3) Develop a written policy that complies with the law. Employers must prove compliance with the law if an employee files a complaint, and employers are in the best position to do so when they have specific policies and procedures in place that have been developed or modified to conform with the law, such as the following: policy for call-outs; procedure for documenting shift swaps; procedure for how time stamped schedules will be recorded and kept; procedure for monitoring good faith estimates; and policy on how new work hours will be distributed to existing employees. Because the law provides

that its provisions may be waived in a collective bargaining agreement, covered employers with collective bargaining agreements should consider seeking a waiver of the law's requirements.

Employers that have questions about compliance with the new law can email fairworkweek@phila.gov, or contact a Cozen O'Connor Labor and Employment attorney.