

## Chicago City Council Delays Private Right of Action in Fair Workweek Ordinance

With the July 1 deadline looming and most businesses still closed or operating at a reduced capacity, the Chicago City Council has amended the Fair Workweek (FWW) Ordinance to delay the filing of private employee lawsuits until January 1, 2021. However, the amendment did not otherwise change the effective date of the ordinance, meaning that the city's Office of Labor Standards within the Business Affairs and Consumer Protection (BACP) Department will begin enforcement as planned on July 1.

Potentially the most expansive fair scheduling law in the nation, the FWW Ordinance applies with some exceptions to larger employers in the building services, health care, hotel, manufacturing, restaurant, retail, and warehouse services industries. Starting on July 1, covered employers will generally have to post work schedules (either physically or electronically) at least 10 days in advance for employees earning less than \$50,000 annually or \$26/hour. We discussed the wide-ranging scope and numerous exceptions to these provisions last August.

### Penalties for Non-Compliance

Unfortunately, while employers might applaud a temporary reprieve from employee lawsuits, the proposed amendment does nothing to delay the ordinance's most exacting requirements. This is an ordinance with teeth. As of July 1, the BACP will have the power to investigate violations of the FWW Ordinance and levy fines of between \$300 and \$500 *per day, per employee*. Thus, a covered employer who fails to provide appropriate scheduling notice for 10 of its employees for a single work-week (Monday-Friday) could be subject to a fine of up to \$25,000.

### Exhausting the Administrative Process

The FWW Ordinance's private right of action allows an employee to file an action in civil court if he or she is unable to resolve the issue through the BACP's administrative process, which is as follows:

1. First, the employee must file an administrative complaint outlining the alleged violation with the BACP,
2. After processing the complaint, the BACP will forward the allegations to the employer, giving it a chance to either contest or cure the alleged violation,
3. Once the employer responds, the BACP will investigate and issue a final finding that: (a) the complaint was justified and it has enforced a resolution against the employer; (b) the employer has cured the violation; or (c) the BACP has found the complaint to be unjustified and unsupported.

The BACP is expected to make the administrative complaint form available on July 1. Filing a complaint will be very straightforward. In addition to filing by mail, employees will be able to file by email. Employees will also be able to initiate the complaint process over the phone or by using Chicago's 311 mobile services app.

### Final Rules and Guidance Published

On May 12, BACP published long-awaited final rules and FAQs interpreting the FWW Ordinance and giving covered employers answers to some of the most important questions it raised. A look at the guidance reveals the following:

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### Related Practice Areas

- Labor & Employment

Employers must publish new amended schedules within 24 hours of a schedule change.

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Eligibility for employees under the FWW Ordinance is based on salary (or hourly wage) alone, and does not include bonuses, tips, benefits or other compensation.

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Within the scheduling period (at first 10 days, then 14 days beginning in July 2022), the employer's obligation to provide one hour of "predictability pay" will be triggered by any change of more than 15 minutes to the posted schedule.

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Employers must follow specific notice and posting requirements (e.g., the required notice of employee rights under the FWW Ordinance must be posted in English and any other language spoken at the employer's facility and scaled to fit on an 11x17 sheet of paper). The official poster can be found [here](#).

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Each year, the notice of employee rights under the ordinance must be provided in hard copy along with the employee's paycheck or transmitted electronically during the first week of July.

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Employers must maintain schedules, changes to those schedules, and other records for three years under the ordinance.

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Employees may voluntarily (in writing) agree to waive the 10-hour rest requirement between shifts.

## Temporary Allowance for Schedule Changes Due to COVID-19

In a [related announcement](#), the BACP clarified that scheduling changes made because of the COVID-19 pandemic **do not** have to follow procedures outlined in the FWW Ordinance. However, employers should be cautious about relying on this exemption, which only applies when the pandemic has caused an employer to "materially change its operating hours, operating plan, or the goods or services provided by the Employer, which results in the work schedule change." This exemption will continue until Mayor Lightfoot's pandemic Emergency Executive Order has been withdrawn.

## Employers Must Prepare

With the effective date of the ordinance just over a month away, employers should be taking steps to avoid hefty fines. In addition to determining whether they are covered, employers need to examine their current scheduling practices to ensure they are compliant. Employers with collective bargaining agreements need to address the FWW Ordinance in their next contract negotiations, pending the outcome of a federal lawsuit seeking to enjoin such an improper impact on collective bargaining. Finally, employers should review the final rules, guidance from the BACP, and the planned actions to ensure notice to employees and compliance with the FWW Ordinance starting July 1.

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