



Alerts

FAQs on New Chicago Ordinance Requiring Written Employment Contracts for Domestic Workers

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Insights for Employers

In an effort to ensure "domestic workers" have stability in their schedules and pay, Chicago Mayor Lori Lightfoot and the Chicago Department of Business Affairs and Consumer Protection passed an ordinance that amended the general employment requirements found at Chapter 6-100 of Chicago's Municipal Code. The law took effect on January 1, 2022. The amendment requires all covered employers to provide their domestic workers with written contracts that specifically set forth the domestic worker's work schedule and wage, as agreed by the employer and domestic worker.

Given the broad definition of domestic worker used by the ordinance, this new requirement is especially important for aging services/home care health providers.

Q: Who is a domestic worker under the ordinance?

A: The term "domestic worker" is broadly defined to include a person whose primary duties include: housekeeping; house cleaning; home management; nanny services, childcare; child monitoring; caregiving, personal care, or home health services for elderly persons or persons with illnesses, injuries, or disabilities who require assistance in caring for themselves; laundering; cooking; companion services; chauffeuring; and other household services to members of household or their guests in or about a private home or residence, or any other location where the domestic work is performed.

Conservatively, it is safe to assume that your caregivers (non-medical, companions) are subject to this requirement, as well as home health employees (medical) that provide in-home care to your clients.

Q: Which employers does this apply to?

A: The ordinance is unclear about which employers are subject to the new requirement. Neither the General Employment Requirement Provisions nor the specific provision requiring contracts for domestic workers contain language defining a covered employer.

The ordinance defines domestic worker by relying on the definition of that term found in the Chicago Minimum Wage and Paid Sick Leave Ordinance. Under the Chicago Minimum Wage and Paid Sick Leave Ordinance, a covered

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employer is a person who gainfully employs at least one employee. That definition is without regard to where the employer is located. However, a covered employee under the Chicago Minimum Wage and Paid Sick Leave Ordinance is limited to an employee who, within any two-week period, performs at least two hours of work while physically present within the City of Chicago.

The domestic worker provision then relies on the definition of "work schedule" as that term is defined in the Fair Workweek Ordinance, Ch. 6-110, et seq. Interestingly, a covered employee under that ordinance also relies on the requirement that the employee performs work for the employer while physically present in the City of Chicago.

So, while the new provision addressing contracts for domestic workers is silent in terms of which employers or employees this will specifically apply to, if one relies on the defined terms and concepts of the Minimum Wage and Paid Sick Leave Ordinance, as well as the Fair Workweek Ordinance, any business or individual that employs a "domestic worker" working within the boundaries of the City of Chicago should presume to be subject to the requirement.

Q: How can I comply?

A: If you are a business or individual that employs domestic workers who service clients and/or work within the City of Chicago, you must provide each domestic worker subject to this Ordinance with a written contract that identifies the worker's schedule and wage. The contract must be provided in the worker's language of choice.

To comply with the Work Schedule requirement, employers must look to the definition of Work Schedule as used in the Chicago Fair Workweek Ordinance. Under that Ordinance, Work Schedule is defined as all of an employee's shifts, including specific start and end times for each shift during a calendar week. Given the fluctuation in client care needs and staff availability, you will likely want to include language addressing the potential need for changes to scheduled shift times, if applicable. This will help to put the domestic worker on notice that the work availability may fluctuate based on client and operational needs, and help to avoid potential claims for breach of what is now a written contract. Additionally, as your domestic workers are likely at-will employees, you will want to include language in this contract to preserve that status.

The City of Chicago provides links to template contracts which have been prepared by the Illinois Domestic Workers Coalition. However, we caution against using or relying on such templates for the home care or home health industries, as these templates go beyond what is actually required in the ordinance, address scope of services which are not appropriate to address in this context, and create contractual obligations on a variety of employment terms for what are otherwise at-will employees. The template contracts were likely meant to address individuals employed within homes as nannies, house cleaners, etc. and the communications around the purpose of the ordinance suggests a similar intent and focus.

Q: What are the penalties for violations?

A: Employees who do not receive a written contract can file reports with the city's Bureau of Labor, and violation penalties are enforced by the Office of Labor Standards.

The Ordinance provides for a \$500 fine per violation. Therefore, if an employer of covered domestic workers fails to provide a written contract to one employee, it would be fined \$500. If the employer failed to provide a written contract to two covered domestic workers, it would be fined \$1,000. This fine is enforced for every worker who is not provided a contract.

The Ordinance also contains an anti-retaliation provision. This provision may be applicable if a domestic worker is terminated because they sought a contract under the updated Municipal Code. The anti-retaliation provision imposes a \$1,000 fine on any employer found to have retaliated in violation of the Code. Please contact your Hinshaw attorney to ensure you are ready to comply with this new requirement.