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Labor and Employment Alert: Philadelphia Enacts Predictable Scheduling Law for Retailers

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In December 2018, Philadelphia, Pennsylvania enacted its “Fair Workweek Employment Standards Ordinance” to mandate predictable pay and scheduling for employees in the retail, food service, and hospitality industries. The law micromanages employer scheduling, notification, and recordkeeping policies and is expected to affect 130,000 hourly workers when it becomes effective on April 1, 2020.

The law applies to retail, hospitality, and food service employers in the City of Philadelphia employing 250 or more employees with 30 or more locations worldwide, regardless of where those employees work. All full-time, part-time, temporary, and seasonal employees who work in the city and who are eligible for overtime under state or federal law are covered by the Ordinance.

Advance Notice of Work Schedules

Employers must give written, good faith estimates of employees’ work schedules upon hire. The estimate must contain (a) the average number of work hours the employee can expect to work each week over a typical 90-day period; (b) whether the employee can expect to work any on-call shifts; and (c) a subset of days and times or shifts that the employee can typically expect to work or not work.

Employers then must post schedules for all employees no later than 10 days before the first day of any new schedule from January 1, 2020 to December 31, 2020, and no later than 14 days before the first day of any new schedule beginning January 1, 2021. Notice of any schedule changes must be given “as promptly as possible” before the change, and then the schedule must be revised within 24 hours of making the change. Employees may decline to work any hours or additional shifts not included in the posted work schedule.

Employees also have the right to request (a) not to be scheduled during certain days or times or at certain locations;(b) not to work on-call shifts; (c) to work certain hours, days, or locations of work; and (d) to work more or fewer work hours. The law “encourages” employers to “engage

in an interactive process” to discuss employee requests, but may grant or deny the request for any reason that is not unlawful.

Compensation for Changed Work Schedules

Employers must pay predictability pay – in addition to the employee’s regular pay – for most changes to the posted work schedule. If the employer adds time to a shift or changes the date or time or location of a shift with no loss of hours, the employee is due one hour of predictability pay. The employee is due one-half his or her regular rate of pay per hour for any scheduled hours not worked because hours are subtracted from a shift or a shift is cancelled. The Ordinance outlines specific instances when predictability pay is not required (e.g., when an employee requests a shift change in writing or when the employer’s operations are interrupted by reasons beyond its control).

Right to Rest Between Work Shifts

Employees may decline, “without penalty,” any work hours that are scheduled or that occur less than 9 hours after the end of the previous day’s shift, or during the 9 hours following the end of a shift that spanned two days. An employee may consent in writing to work such shifts, but must be paid an additional \$40 for doing so.

Offer of Work to Existing Employees

Before hiring new employees or using temporary employees, an employer must first offer shifts to existing employees. Generally, written notice of available shifts must be provided to existing employees for at least 72 hours. The law contains detailed procedures for allocating additional work to those employees before seeking and using external candidates. Employers must notify employees in writing of their policy for offering and distributing shifts when hired and within 24 hours of any change in the policy, and must post the notice in an accessible location in the workplace.

Employer Notices and Recordkeeping

Employers must conspicuously post the rights and privileges under the Ordinance. Moreover, employers must keep records for two years of their good faith estimates of work schedules and modifications, written consent for shifts, offers of shifts to existing employees and responses to those offers, and payroll records showing the additional compensation paid under the Ordinance. Upon request by any employee, employers must provide original and modified work schedules for all employees at the employee’s location for any previous week for the past two years.

Conclusion

Philadelphia’s Fair Workweek Employment Standards Ordinance is similar to predictable scheduling laws in San Francisco, Seattle, New York City, and Oregon. Covered employers will need to review and revise their scheduling and recordkeeping policies and procedures before 2020 to ensure they comply with the new requirements. Contact your Vorys lawyer if you have questions about the Ordinance or the scheduling laws in other jurisdictions.