

Publications

Los Angeles Requires Predictive Schedules and Fair Workweeks for Retail Employees

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CLIENT ALERT | 4.17.2023

The City of Los Angeles Fair Work Week Ordinance (FWWO) requires retail employers to provide advanced notice of work schedules and to compensate employees for schedule changes. The FWWO went into effect on April 1, 2023. There is a 180-day grace period before full enforcement, including fines and penalties, begins on September 28, 2023. Employers with operations in Los Angeles should review their scheduling practices and policies to ensure they comply with the ordinance. Contact your Vorys attorney if you have questions about the Los Angeles FWWO or the similar ordinances in Berkeley, Emeryville, San Francisco and San Jose.

Who is covered by the ordinance?

An employer is covered if: (1) it has 300 or more employees globally; (2) is identified as a retail business in the North American Industry Classification System (NAICS); and (3) exercises control over employees' wages, hours, or working conditions. Workers employed through temporary services, staffing agencies, subsidiaries, and certain franchises count toward the 300-employee threshold. Employees are covered if they perform at least two hours of work within the geographic boundaries of the City of Los Angeles and are entitled to earn the California minimum wage.

Work schedules and shifts

Under the FWWO, employers are required to:

- Provide employees with a good faith estimate (a reasonable, fact-based prediction) of their future work schedules. For new employees, this must be provided before hiring. For current employees, it must be provided within 10 days of an employee's request. If an employee's actual work hours substantially deviate from the estimate in six out of 12 consecutive workweeks, the employer must have a documented, legitimate, business reason that was unknown at the time of the estimate to explain the deviation.

- Engage with employees on their preferences for certain times, hours, or locations for their work schedule. While an employer may accept or deny a request, the employer must provide a written reason for the denial.
- Provide employees advance notice of their work schedules at least 14 calendar days before the start of a work period, by posting the schedule in an accessible location or by electronically transmitting the schedule. An employer who then makes changes with less than 14 days' notice must provide written notice of those changes, and the employee has the right to decline certain changes made with less than 14 days' notice. If an employee voluntarily consents to the changes, the consent must be in writing.

In addition, employers must provide employees rest between their shifts. The FWWO requires that employers obtain an employee's written consent before scheduling any shift that starts less than 10 hours after the last shift and must pay the employee time and a half for the shift following the insufficient rest period.

Predictability pay

Employers must provide predictability pay for certain changes they initiate to work schedules with less than 14 days' notice:

Employer-Initiated Change

Predictability Pay

Increase in hours that exceeds 15 minutes

1 hour at the employee's regular rate of pay

Change to the date, time, or location

1 hour at the employee's regular rate of pay for each change

Reduction of hours by at least 15 minutes

Hours not worked at one-half the employee's regular rate of pay

On-call shift, when the employer does not call the employee to perform work

Hours not worked at one-half the employee's regular rate of pay

Extra hours for current employees

Employers must offer additional work hours to current employees before hiring new employees. The employer must give current employees 72 hours' written notice of the availability of additional work hours if one or more current employees are qualified to do the work, and the additional work hours would not result in the payment of overtime.

Posting and recordkeeping

Employers must conspicuously post the FWWO notice at any workplace in English, Spanish, Chinese (Cantonese and Mandarin), Hindi, Vietnamese, Tagalog, Korean, Japanese, Thai, Armenian, Russian and Farsi, and any other language spoken by at least five percent of the employees at the workplace. Employers must retain documentation of work schedules, written offers and responses for additional work hours, written correspondence about work schedule changes, good faith estimates of work schedules, and any other records that may be required to comply with the FWWO. Records must be retained for at least three years.

Enforcement

Employees may be entitled to restitution and additional penalties for any violations of the FWWO. Employees may file complaints with the Los Angeles Office of Wage Standards if: (1) the employee provides written notice to the employer of the FWWO violations; and (2) the employer does not take action to cure the named violations within 15 calendar days from receipt of the written notice.

Employers who violate the FWWO may have to pay restitution and penalties to each employee whose rights have been violated. Employers may also be liable to the city for a penalty of up to \$50 per day that predictability pay is unlawfully withheld and additional administrative fines for other violations of the FWWO. Each day that a violation exists constitutes a separate and distinct violation.