

Oregon Becomes First State to Require Predictive Scheduling

On August 8, Oregon became the first state to enact a predictive scheduling law. The law will require large employers in the food service, hospitality, and retail industries to provide hourly employees with a written work schedule at least seven days in advance, timely notice of any schedule changes, and a 10-hour rest period between shifts. Starting in July 2018, employees will receive additional compensation for schedule changes without advance notice and for working during the rest period. Employers with operations in Oregon should identify any policy changes that may be needed to ensure compliance.

Background

Retailers and fast-food establishments often rely on flexible and on-call scheduling to cover fluctuating customer demand, high employee turnover and unexpected absences, and to help control labor costs. While many businesses in the service sector and their employees have benefitted from such practices, varying and unpredictable work schedules have also created economic uncertainty, as well as child care and other challenges for some workers.

In November 2014, San Francisco became the first city in the nation to enact a predictable scheduling law aimed at chain stores and restaurants as part of the city's larger "Retail Workers Bill of Rights," which took effect the following year. (See our [July 24, 2015 For Your Information](#).) More recently, employee-friendly ordinances took effect in [Seattle](#) and [Emeryville](#), California that mandate predictable work schedules for employees in the retail and fast food industries. New York City is poised to regulate shift scheduling and pay practices in the fast food industry, and to effectively ban on-call scheduling by retailers starting in November. (See our [June 16, 2017 For Your Information](#).) The trend towards providing more predictability to workers' schedules appears to be gaining momentum, and lawmakers in a number of other states and cities have recently considered "fair workweek" or "predictive scheduling" laws.



Oregon’s Predictive Scheduling Law

On August 8, Oregon became the first state to require employers to give workers advance notice of their schedules when Gov. Kate Brown signed the Fair Work Week Act ([S.B. 828](#)) into law. The so-called “Predictive Scheduling Law” will take effect July 1, 2018.

Covered Employers

The law applies to Oregon employers in the food service, hospitality, and retail industries that have at least 500 employees worldwide, including chains and integrated enterprises. In determining the number of worldwide employees, separate entities that constitute an “integrated enterprise” will be considered a single employer. The Oregon Bureau of Labor and Industries (BOLI) is to adopt rules regarding how to determine whether separate entities are an integrated enterprise.

Covered Employees

Non-exempt employees performing services relating to retail trade, hotels, motels, casino hotels, and food services— including employees subject to a collective bargaining agreement – are covered under the new law. However, it does not apply to salaried, exempt employees, leased workers, and employees of businesses that provide services to or on behalf of an employer.

Advance Scheduling

The new law requires employers to give employees advance notice of their work schedules, and restrict employers’ ability to change schedules once they have been set. For new hires, employers will have to provide a written, good faith estimate of the employee’s work schedule at the time of hire that includes: the median number of hours the employee can expect to work in an average month; whether the employer maintains a voluntary standby list of employees who have asked – but cannot be required – to work additional hours when needed; and whether an employee who is not on that list can expect to work – or to be available to work – on-call shifts.

For existing employees, employers will have to provide a written work schedule at least 7 calendar days in advance, including on-call shifts. The schedule should be posted in a conspicuous workplace location, in English and in the language the employer normally uses to communicate with the employees.

Starting in July 2020, the schedule must be provided at least 14 days before the first day of the work schedule. While the schedule generally must provide for a rest period of at least 10 hours between shifts, an employee may ask or agree to work during that period. For any such hours worked, the employee must be compensated at one-and-a-half times the employee’s normal rate of pay.

While employees may identify limits or changes in their availability and ask not to be scheduled for particular times or work locations, employers are generally under no obligation to accommodate them. However, employers may not retaliate against them for requesting a particular schedule or location.

Schedule Changes

If an employer wants to change the work schedule after the required advance notice has been given, it must provide timely notice to the employee in-person, or by phone, email, text message or other accessible format. However, the employee cannot be required to work a shift that was not included in his or her written work schedule. An employee who agrees to work a changed schedule must be paid for an additional hour at his or her regular rate, in addition to wages earned, if the employer-requested change: adds more than 30 minutes of work to the

employee's shift; changes the date or shift's start or end time with no loss of hours; or schedules the employee to work an additional or on-call shift. If a schedule change results in fewer hours, the employer must pay the employee one-half times his or her regular rate for each scheduled hour he or she does not work because a shift is changed or cancelled.

While employees generally must receive additional compensation for untimely schedule changes, the law does provide certain narrow exceptions. While employees on a standby list are free to turn down additional hours, they are not eligible for additional compensation if they agree to work them. Similarly, additional compensation will not be required for: agreed-to shift swaps by employees; rescheduling at an employee's request; changes of 30 minutes or less in the start or end time of a shift; or the loss of hours for disciplinary reasons. Also excepted are shift cancellations or stoppages at the recommendation of a public official or due to threats to employees or property, public utility failures, natural disasters, or because a ticketed event is canceled, rescheduled, or is changed in duration due to circumstances beyond the employer's control.

Notice, Recordkeeping and Non-Retaliation

Covered employers will be required to post an employee rights notice in the workplace and maintain records evidencing their compliance with the new requirements for three years. BOLI, which is charged with enforcement, may seek penalties of up to \$500 for any violation of these provisions.

Under the new law, it will be an unlawful practice for an employer to interfere with, restrain, deny, or attempt to deny the exercise of any right, or to retaliate or discriminate against employees because they inquired about their rights. Employees will have a private cause of action to enforce their rights and, in addition to any other damages provided by law, BOLI may seek penalties of up to \$1,000 per violation, beginning January 1, 2019.

In Closing

Oregon has become the first state to regulate employer scheduling practices in the food service, hospitality, and retail industries. Service sector employers with operations in Oregon should identify any policy changes that may be needed to ensure compliance.

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