Now & Next
Labor & Employment Alert

Updated October 2, 2023

City of Los Angeles "Fair Work Week" Ordinance becomes effective April 1, 2023

By **Robert H. Pepple and Philip**

Retail businesses in Los Angeles with at least 300 empl
Retail businesses in Lo worldwide are now subject to numerous burdensome
worldwide are now sul with respect to employee work-schedules.
with respect to emplo

What's the impact?

- Effective April 1, 2023, retail employers with at least three hundred employees (worldwide) are required to adhere to a new Fair Work Week ordinance.
- Covered employers are required to provide a written estimate of employee work schedules within 10 days of an employee request, among other obligations.

Los Angeles' Fair Work Week Ordinance (Ordinance), which applies to retail businesses in the City of Los Angeles with at least 300 employees worldwide (including franchises), became effective at the end of September 2023 (i.e., the 180-day grace period beginning April 1, 2023, has elapsed). Covered employers are now required to adhere to several conceptually new and highly nuanced rules regarding how employers set and alter employee work schedules. The novel nature of these rules will require almost all covered employers to adopt new policies and/or

substantially revise their existing policies to comply with the complex framework set out by the ordinance.

Beginning April 1, 2023, retail businesses in the City of Los Angeles with at least 300 employees worldwide (including franchises) are required to adhere to a new Fair Work Week Ordinance (Ordinance). The Ordinance gives rise to several conceptually new, and highly nuanced, rules regarding how employers set and alter employee work schedules. The novel nature of these rules will require almost all covered employers to adopt new policies and/or substantially revise their existing policies to comply with the complex framework set out by the ordinance.

The "spirit" of the Ordinance is to provide employees with advanced notice and consistency in their work schedule and earnings—beginning with the requirement that employers provide their employees with written, good-faith estimates of employee work schedules both: (1) before hiring and (2) within 10 days of the request. The ordinance also includes several other scheduling and record-keeping requirements, which are detailed below.

The ordinance also gives rise to yet another premium and penalty scheme to be levied against employers who do not comply, which are payable to the city and employees for uncured violations of the ordinance. Employers are also responsible for informing employees of their rights under this ordinance.

Scheduling Requirements

Under the Ordinance, employers are obligated to provide prospective and current employees with a written, good-faith estimation of their specific work schedule, fourteen (14) days in advance of the first day of work (Schedule). The Schedule must also list which days the employee will not be scheduled and/or expected to work.

If the employer deviates from the Schedule it originally provided to the employee without a legitimate business reason (that was unknown at the time the original Schedule was provided), the employer will be in prospective violation of the Ordinance, which provides for the opportunity to cure the violation (i.e., fix) in some circumstances.

Notably and unusually, employees have the right to reject any changes that would add work hours or additional shifts not included in the original Schedule, and employers are prohibited from "retaliating" against employees who exercise the right to reject changes to their Schedules.

Ten (10) Hour Rest Periods Between Shifts and (New) Overtime Premium Obligation

Employers must also provide employees with a minimum of 10 hours of rest between shifts, except when the employee provides written consent to work a shift starting less than 10 hours after their previous shift.

Employees who consent to work shifts separated by fewer than (10) hours from their last shift must be compensated at "time and a half" (the ordinance does not state whether this "time and a half" is the hourly or regular rate) for the first eight (8) hours of that shift (i.e., daily overtime requirements apply to what would normally be regular hours). For example:

- Employee A works from 4:00 p.m. on Saturday to midnight on Sunday;
- Employee A consents to work from 8:00 a.m. to 4:00 p.m. on Sunday;
- Employee A must be paid "time and half" for the first eight (8) hours on Sunday.

Current Employees Have "Dibs" on Additional Hours

The Ordinance requires employers to offer available regular work hours to existing employees before hiring new employees for available work. However, employers are not required to offer such hours to (1) employees unqualified to perform the available work (e.g., employees who lack the training to handle cash or the point-of-sale system need not be offered available cashier work before hiring someone with cashier-skills), or (2) if doing so would occasion and/or mandate the payment of overtime (or other) premiums, which is consistent with California's public policy regarding overtime work (See *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal. 5th 542, 552. ("California has a long-standing policy of discouraging employers from imposing overtime work.")

Posting Requirement

Employers must also post a notice of available (or open) shifts to current employees at least 72 hours before hiring a new employee, as well as provide current employees the opportunity to accept the additional available work within the first 48 hours after the posting goes live.

Schedule Changes That Increase or Decrease Hours May Trigger Premium Pay

The Ordinance also creates a dual penalty scheme (Premium Pay) for work Schedule changes:

- Changes that result in (a) no reduction in worktime, or (b) an increase of fifteen (15) minutes or less of worktime = one (1) hour of pay at regular rate (i.e., like a meal premium).

For example, if an employer changes an employee's shift from Monday from noon-6:00 p.m. to Tuesday from noon–6:00 p.m., since there is no reduction in worktime, the employee would only be owed one hour of pay at their regular rate.

- Changes that result in lost work time of at least 15 minutes = amount of lost time x ½ regular rate of pay (i.e., like reporting-time pay)

For example, if an employer reduces an employee's schedule from eight hours to four hours, the employer must pay that employee for two hours at that employee's regular rate of pay (8 hrs. – 4 hrs. = 4 hrs.; 4:00 hrs./2 = 2 hrs. @ regular rate). Notably, employee consent to work additional, or different, hours (when initiated by the employer) does not relieve the employer from the obligation to pay the above-described premiums.

However, the above-described premium pay is not required if:

- An employee initiates the requested schedule change.
- An employee voluntarily accepts a schedule change initiated by an employer due to another employee's scheduled absence or unanticipated customer need.
- An employee accepts additional hours that were offered by the employer pursuant to the Access to Hours provision of the ordinance.
- An employee's hours are reduced due to the employee's violation of the law or the employer's policies.
- The employer's operations are compromised pursuant to law or force majeure (i.e., natural disaster).
- The extra hours worked would require the payment of state-law-mandated overtime (i.e., no "overtime on overtime")

Penalties for Violating the Ordinance

Following a 180-day grace period from the April 1, 2023, effective date (i.e., starting September 29, 2023), the Ordinance may be enforced through civil lawsuits that provide for individual penalties and premiums paid to employees, civil penalties paid to the City of Los Angeles, and equitable relief (if sought and applicable). Prior to then, violating employers will receive only written warnings.

The Ordinance lays out charts of the penalties payable to employees at page 14 of the Ordinance, and the penalties payable to the City of Los Angeles at page 15 of the Ordinance, which is available here.

Next Steps

The Los Angeles Fair Workweek Ordinance creates a complicated web of legal obligations, administrative difficulties, and prospective liability for covered employers. If you are a retail employer in Los Angeles that may be covered by the Ordinance, you should immediately seek guidance from qualified employment counsel to determine the "what" and "how" to comply with these new rules.

Nixon Peabody's lawyers have extensive experience counseling employers in compliance with federal, state, county, and municipal employment laws, including laws like the Ordinance. If you have questions about whether you may be covered by the Ordinance, or (if so) how to comply, do not hesitate to contact the authors of this alert.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

Robert H. Pepple
213.629.6140
rpepple@nixonpeabody.com

Philip Lamborn
213.629.6139
plamborn@nixonpeabody.com