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## OVERVIEW

### What is Chicago's Fair Workweek Ordinance?

Chicago's Fair Workweek Ordinance guarantees that many employees in specific industries get predictable Work Schedules so that they can reasonably plan their income and their lives. Specifically, the Chicago Fair Workweek Ordinance provides Covered Employees with several rights, including:

1. **Right to decline unscheduled hours:** Covered Employees can decline to work unscheduled hours offered to them within 10 days of the beginning of the Work Schedule in which those additional hours are proposed.
2. **Predictability pay:** Covered Employees receive one hour's additional pay when hours are added to a shift, or a shift's time or date is changed with no change to the number of hours, within 10 days of the beginning of the Work Schedule during which that shift takes place. Predictability pay also applies when hours are subtracted from a shift within 10 days of the start of the Work Schedule in which that shift takes place, but with more than 24 hours' notice from the beginning of that shift.
3. **Pay for cancelled hours and shifts:** Covered Employees receive no less than 50% of their pay for any hours that are cancelled with less than 24 hours' notice from the beginning of the shift during which those cancelled hours were to take place. If the entire shift is cancelled under these circumstances, then the Covered Employee must receive no less than 50% of their pay for the entire shift.
4. **Right to Rest:** Covered Employees can decline shifts that begin less than 10 hours following the end of the previous day's shift. When Covered Employees agree to work such a shift, they are then paid at 1.25 time their base rate of pay.
5. **Initial Estimate of Work Schedule:** Covered Employees must receive an initial good faith estimate of their Work Schedule, including the days of the week they can be expected to work, and the start and end times of their shifts for those days.
6. **Submitting complaints:** Covered Employees can submit complaints to the Office of Labor Standards for investigation if they think they have been denied any of the above rights.

### How does the COVID-19 outbreak impact the Chicago Fair Workweek Ordinance?

If COVID-19 causes a material change to an Employer's operations that creates the need for a schedule change, the Employer is exempt from certain provisions of the Chicago Fair Workweek Ordinance (right to decline, predictability pay, and pay for cancelled hours and shifts) for the Work Schedule during which the change takes place, as well as the following Work Schedule. This exception is outlined in the [Rule Pertaining to COVID-19 and Chapter 1-25 of the Municipal Code of Chicago](#).

### **COVERED EMPLOYEES**

#### **How does an employee qualify for the Chicago Fair Workweek Ordinance protections?**

A worker is eligible for the Chicago Fair Workweek Ordinance protections if they satisfy all of the following criteria:

1. Work for an Employer as an employee (as opposed to a contractor) or, if working for a day and temporary labor service agency, work for an Employer for 420 hours within an 18-month period;
2. Spend the majority of their time working for that Employer within the City of Chicago;
3. Perform a majority of their work in a Covered Industry (Building Services, Healthcare, Hotels, Manufacturing, Restaurants, Retail, and Warehouse Services); and
4. Earn less than or equal to \$50,000 per year as a salaried employee, or less than or equal to \$26 per hour as an hourly employee.

Only employees working for certain types of Employers are eligible for the Chicago Fair Workweek Ordinance protections (see below).

#### **What kind of Employer does an employee have to work for to be eligible for the Chicago Fair Workweek Ordinance protections?**

To be eligible for the Chicago Fair Workweek Ordinance protections, in addition to the other requirements outlined above, an employee must work for an Employer that:

1. Employs 100 or more employees among all of its locations (both inside and outside of Chicago) – this number is 250 employees for not-for-profit corporations;
2. Employs among its global count of employees 50 Covered Employees (defined as an employee as opposed to a contractor, spending a majority of their time working in Chicago, performing a majority of their work in a Covered Industry, and earning less than or equal to \$50,000 in salary or \$26 per hour); and
3. Is primarily engaged in a Covered Industry (building services, healthcare, hotels, manufacturing, restaurants, retail, and warehouse services).
4. Franchise restaurants must globally have 30 locations, 250 employees and, for purposes of being an Employer, shall own at least four locations in Chicago.

#### **Is a Covered Employee defined by their base salary or hourly wage, or does the salary include overtime, bonuses, and other types of pay counted?**

For the purposed of the Chicago Fair Workweek Ordinance, salary or hourly wage will always be calculated using the base rate of pay and will not take into account overtime, tips, benefits, bonuses, or any other form of pay beyond the base rate. However, for hotels, set service fees that an employee earns are included in the calculation of the Chicago Fair Workweek Ordinance hourly wage threshold (\$26 per hour).

An employee is considered covered by the Ordinance if they meet the Covered Employee criteria, regardless of how they are paid, how frequently they are paid, the details of their job

description, whether they are considered to be “administrative” or “professional” staff, or whether they are defined as salaried non-exempt or salaried exempt.

### **When does a temporary worker (a worker for a day and temporary labor service agency) become a Covered Employee?**

A temporary worker becomes a Covered Employee once they work 420 hours for an Employer within an 18-month period.

### **Does time worked by a temporary worker before the implementation of the Chicago Fair Workweek Ordinance on July 1, 2020 count towards the 420-hour total required to become a Covered Employee?**

No. Those hours do not count because all elements of the Ordinance go into effect when the Ordinance goes into effect. Specific counts of hours worked will begin once the Ordinance is effective.

### **Where can I find a copy of the Chicago Fair Workweek Ordinance notice?**

The Department of Business Affairs and Consumer Protection provides the Chicago Fair Workweek Ordinance notice on the [website](https://www.chicago.gov/content/dam/city/depts/bacp/OSL/fwwnoticejuly1letter.pdf) of the Office of Labor Standards <https://www.chicago.gov/content/dam/city/depts/bacp/OSL/fwwnoticejuly1letter.pdf>.

### **What notices does an Employer need to be provided to Covered Employees?**

The Employer must provide the Chicago Fair Workweek Ordinance notice to all Covered Employees with their first paycheck covered by the Chicago Fair Workweek Ordinance and in communal areas at a workplace. Notices must be provided in English and any language spoken by employees that do not speak English proficiently, provided that a notice in that language has been provided by the Department of Business Affairs and Consumer Protection on the Office of Labor Standards [website](#).

### **Can notices be transmitted electronically?**

Yes, the notices mandated to be provided with Covered Employee’s paychecks can be transmitted electronically. Likewise, notices can be posted physically in break rooms or other communal areas at a workplace, or can be displayed electronically on electronic bulletin boards and TV monitors in communal areas. All physical notices must be scaled appropriately (8.5 X 11 for notices provided with paychecks, and 11 X 17 for workplace postings). While there are no specific size requirements for electronic notices, they should be at least as legible as the physical notice requirements.

### **I'm an employee and I think my rights under the Chicago Fair Workweek Ordinance have been violated. How can I submit a complaint to the Office of Labor Standards?**

You can submit a complaint several ways:

1. Call 311
2. Use the CHI 311 mobile application
3. Download and mail a complaint form to the Office of Labor Standards, Department of Business Affairs and Consumer Protection, 121 North LaSalle Street, City Hall, Room 805, Chicago, IL 60602. The complaint form can be found online at: <http://www.chicago.gov/laborstandards>.
4. Download and email the complaint to the Office of Labor Standards at [bacplaborstandards@cityofchicago.org](mailto:bacplaborstandards@cityofchicago.org).

Information on the complaint form should detail the basis of your complaint. The Office of Labor Standards will review your complaint and start an investigation.

### **How can an Employer provide records to the Office of Labor Standards during an investigation?**

Employers can provide records electronically or hard copy. The records should be sent to the Office of Labor Standards.

## **RIGHT TO DECLINE UNSCHEDULED HOURS**

*Covered Employees can decline to work unscheduled hours that are added within 10 days of the beginning of the Work Schedule for which those additional hours are proposed. Any changes to the Work Schedule must be posted.*

### **How quickly must an Employer post an amended Work Schedule following a schedule change?**

The Employer must post an amended Work Schedule within 24 hours of a schedule change.

### **Can a Covered Employee working for a healthcare provider decline extra time when that extra time is necessary to care for a patient?**

No, if the extra time is necessary to complete a specific procedure requiring specialized skills, then it is considered an exception, and the Covered Employee cannot decline extra time (nor are they due predictability pay for needing to work longer).

There are a number of conditions that exempt healthcare providers from some of the general requirements of the Ordinance. In certain circumstances, Employers are exempt from some general requirements of the Ordinance, and the Covered Employee may not be able to exercise the right to decline unscheduled hours, receive predictability pay, or receive pay for hours cancelled with less than 24 hours' notice:

1. Healthcare providers are exempt during certain disasters or other catastrophic events and when healthcare providers implement their disaster plans, when those circumstances substantially affect or increase the need for healthcare services.

2. Healthcare providers are exempt when specific procedures requiring specialized skills must be completed. For instance, if a Covered Employee must stay for an extra hour at the end of a shift to complete a session of dialysis, which falls under the definition of a specific procedure requiring specialized skills, the Employer would not need to pay predictability pay nor offer a right to decline that hour of work. The Covered Employee cannot decline those extra hours, and does not need to be paid predictability pay for it.
3. Healthcare providers are granted an exemption during any unexpected substantial increase in demand for healthcare due to large public events, severe weather, violence, or other circumstances beyond the Employer's control. Substantial increases in demand for healthcare that were modelled or forecasted are considered to be unexpected and beyond the Employer's control, given the inherent unpredictability of forecast models across disciplines. This exception would include violent disasters that send large numbers of people to hospitals, surges in cases due to a pandemic, or surges in routine care due to pent up demand due to temporary changes in hospital operations.

### **PREDICTABILITY PAY**

*Covered Employees receive one hour's additional pay when hours are added to a shift, or a shift's time or date is changed with no change to the number of hours, within 10 days of the beginning of the Work Schedule during which that shift takes place. Covered Employees also receive one hour's additional pay when hours are subtracted from a shift within 10 days of the start of the Work Schedule but with more than 24 hours' notice of the beginning of the impacted shift. When hours are subtracted with less than 24 hours' notice of the beginning of a shift, other rules apply – see the following section.*

#### **Does an Employer have to pay predictability pay when a Covered Employee clocks in early or out late, thereby altering their schedule?**

No. If a Covered Employee unilaterally clocks in early or leaves late, it does not constitute a schedule change and the Employer would not have to pay predictability pay.

#### **How is predictability pay calculated for Covered Employees earning overtime or tipped wages? Would Employers have to "pyramid" predictability pay calculations based on overtime rates?**

The calculation of predictability pay or any other premium rate under the Chicago Fair Workweek Ordinance is based on the base rate of pay. If the cancelled or altered shifts would have been paid at the overtime rate, the calculation of predictability pay would still be based on the base rate of pay. Pyramiding, understood as the calculation of a rate of pay under the Chicago Fair Workweek Ordinance based off anything higher than the base rate of pay, is therefore not required by the Chicago Fair Workweek Ordinance.

#### **How is predictability pay calculated for tipped employees?**

If the Covered Employee is a tipped employee, predictability pay is calculated based on the base rate of pay before tips, or the minimum wage, whichever is higher.

### **How is predictability pay calculated for salaried employees?**

Predictability pay is always calculated on an hourly basis based on the regular rate of pay. For salaried employees, this means dividing the salary by 52 weeks and then by 40 hours (assuming a full time schedule).

### **When a Covered Employee is asked to work unscheduled hours due to another employee calling out sick or otherwise using paid time off, does the Employer still have to provide predictability pay?**

Yes, predictability pay is still owed. So long as the reason for a schedule change is not Covered by one or more of the exceptions (outlined in Section 1-25-050 (d) and discussed below), predictability pay is always due to the Covered Employee. Employees shall not be required to find a substitute in the event they are not able to work.

### **When is predictability pay required due to the addition of hours to a shift?**

An Employer must pay predictability pay when hours are added to a shift within 10 days of the start of the Work Schedule in which that shift takes place. Assume that on July 2, an Employer adds additional hours to a shift taking place on July 15, which is during the Work Schedule running from July 10 – 17. The Employer must pay predictability pay. This is because the Employer added hours with only 8 days' notice before the beginning of the Work Schedule during which the impacted shift was to take place (the change was made on July 2, and the Work Schedule was set to start on July 10).

### **When is predictability pay required due to the change of date or time of work with no loss of hours?**

An Employer must pay predictability pay when a shift's date or time is changed within 10 days of the start of the Work Schedule in which that shift takes place. Assume that on July 2, an Employer moves the start time of an 8-hour shift on July 15 from 9 AM to 10 AM, and that shift takes place during the Work Schedule running from July 10 – 17. The Employer must pay predictability pay. This is because the Employer moved the shift with only 8 days' notice before the beginning of the Work Schedule during which the impacted shift is to take place (the change was made on July 2, and the Work Schedule was set to start on July 10).

## **PAY FOR CANCELLED HOURS AND SHIFTS**

*Covered Employees receive no less than 50% of their pay for any hours that are cancelled with less than 24 hours' notice from the beginning of the shift during which those cancelled hours were to take place, up to and including no less than 50% pay for the entire shift, if all hours are cancelled.*

### **When is predictability pay or cancellation pay described above required due to a subtraction of hours from a shift?**

The answer depends on when the subtraction/ cancellation of hours was made. If the subtraction was made within 10 days of the start of the Work Schedule in which the impacted shift takes place, but with greater than 24 hours' notice from the start of that shift, then one

hour of predictability pay is due. If the subtraction was made with less than 24 hours' notice of the start of the shift, then the Employer must pay no less than 50% of the Covered Employee's regular rate of pay for the cancelled hours up to and including the entire shift.

Assume that on July 2, an Employer subtracts hours from a shift on July 15, which takes place during the Work Schedule running from July 10 – 17. The Employer must pay one hour of predictability pay. In fact, in regard to the Work Schedule running from July 10 -17, the above holds true for any subtraction made between July 1 (10 days from the start of the Work Schedule) to within 24 hours of the start of the impacted shift. So, for the shift taking place on July 15, a subtraction announced on July 12 would also require the Employer to pay one hour of predictability pay.

Assume that the shift on July 15 begins at 8 AM and is scheduled to end at 4 PM. Then, on July 14 at noon, the Employer announces that the shift on the 15<sup>th</sup> has been amended to end at 2 PM. In this case, the Employer must pay no less than 50% of the Employee's regular rate of pay for the two subtracted hours. This is because the subtraction was announced less than 24 hours before the start of the impacted shift.

## EXCEPTIONS

*There are a number of exceptions to certain provision of the Chicago Fair Workweek Ordinance. When an exception applies, it only exempts the Employer from adhering to a certain subset of the rights outlined in the Chicago Fair Workweek Ordinance. Other rights, such as Right to Rest (outlined below), have no exceptions.*

### **Under what circumstances are their exceptions to the Chicago Fair Workweek Ordinance?**

Exceptions to certain the Chicago Fair Workweek Ordinance provisions (outlined in the next question) include when a Work Schedule is changed because of:

1. Threats to Employers, Covered Employees, or property, or when civil authorities recommend that work not begin or continue
2. Public utilities fail to supply electricity, water, or gas, or the sewer system fails to serve the location of work
3. Acts of nature including flood, earthquake, tornado, or blizzard
4. War, civil unrest, strikes, threats to public safety, or pandemics
5. Mutually agreed shift trades or coverage arrangements between Covered Employees
6. Work Schedule changes that are mutually agreed to by the Covered Employee and Employer and confirmed in writing
7. A Work Schedule change that is a result of a Covered Employee's request for a shift change, confirmed in writing
8. Subtraction of hours from a Work Schedule for a written, documented disciplinary reason
9. A banquet event being scheduled or rescheduled due to an issue outside the Employer's control, or when attendee counts increase by more than 20%, or a new banquet event is scheduled within 48 hours of the event occurring and after the Employer has provided the Work Schedule

10. Events outside the a manufacturing Employer's control result in changes in the need for Covered Employees
11. Declared national, state, or municipal disasters or other catastrophic events, the implementation of a healthcare Employer's disaster plan, or incident causing a hospital to activate its Emergency Operations Plan that will substantially affect or increase the need for healthcare services
12. Any circumstance in which patient care needs require a Covered Employee at a healthcare Employer's specialized skills through the completion of a procedure
13. Any unexpected substantial increase in demand for healthcare due to large public events, severe weather, violence, or other circumstances beyond the healthcare Employer's control
14. The cancellation, scheduling, rescheduling, postponement, or delay of a ticketed event, or when expected attendance increased by 20% or more, or when the duration of the ticketed event increases due to circumstances outside the Employer's control.
15. Self-scheduling.

### **Under these exceptions, what portions of the Fair Workweek Ordinance do not apply?**

The exceptions to the Chicago Fair Workweek Ordinance (detailed in Section 1-25-050 (d) and outlined above) exempt Employers from only certain provisions of the Ordinance, listed here:

1. **Honoring a Covered Employee's right to decline** any previously unscheduled hours that the Employer adds to the Covered Employee's schedule and for which the Covered Employee has been provided advance notice of less than 10 days before the first day of any new schedule.
2. **Paying predictability pay** for hours of work added with less than 10 days' notice before the first day of any new schedule in which those added hours take place.
3. **Paying predictability pay** for changes in the date or time of a work shift with no loss of hours with less than 10 days' notice before the first day of any new schedule in which those changes take place.
4. **Paying predictability pay** for the cancelation or subtraction of hours from a regular or on-call shift with more than 24 hours' notice from the start of the impacted shift but with less than 10 days' notice before the first day of the Work Schedule in which the impacted shift takes place.
5. **Paying no less than 50% of the Covered Employee's regular rate of pay** for any schedule hours the Covered Employee does not work because the Employer, with less than 24 hours' notice from the start of the impacted shift, subtracts hours from a regular or on-call shift or cancels a regular or on-call shift.

Other provisions of the Chicago Fair Workweek Ordinance, such as right to rest, will still apply under the exceptions.

### **When and how are Employers exempt from the Chicago Fair Workweek Ordinance as a result of COVID-19?**

If COVID-19 causes a material change to an Employer's operations that creates the need for a schedule change, the Employer is exempt from certain provisions of the Chicago Fair Workweek



Ordinance (predictability pay, right to decline, and 50% pay for cancelled hours) for the Work Schedule during which the change takes place, as well as the following Work Schedule.

**The Chicago Fair Workweek Ordinance allows an exception for when a Work Schedule change is the result of a mutually agreed upon shift trade or coverage arrangement between Covered Employees. What is the definition of “mutually agreed” schedule changes?**

Mutually agreed changes are generally understood to occur only when the Employer adds or subtracts hours or shifts in response to a request or offer by the Covered Employee. There may be circumstances where Covered Employees are forced or coerced into signing a so-called mutually agreed schedule. If the Office of Labor Standards receives a complaint, it will review the documents and circumstances.

**Can mutually agreed schedule changes be signed and date and time stamped electronically?**

Yes, mutually agreed changes and any other documentation of schedule changes can be signed and date and time stamped electronically, so long as those records are maintained and provided to the Office of Labor Standards upon request, per the requirements of the Chicago Fair Workweek Ordinance.

**Can mutually agreed changes be made on an ongoing basis, in the form of a waiver of any right to predictability pay for future unscheduled hours or shifts?**

No, such ongoing consent is not allowed.

**Does the exception for mutually agreed changes hold for such arrangements between Covered Employees and non-Covered Employees?**

No, this exception holds only for the arrangement outlined in the law, which is between Covered Employees, not between Covered Employees and non-Covered Employees.

## **RIGHT TO REST**

*Covered Employees can decline shifts that begin less than 10 hours following the end of the previous day's shift. When Covered Employees agree to work such a shift, they are paid at 1.25 times their base rate of pay.*

**Can a Covered Employee agree to work a shift that begins less than 10 hours following the end of the previous day's shift?**

Yes, a Covered Employee can agree to work such a shift, so long as that agreement is documented in writing.

**If a Covered Employee agrees to work a shift that begins less than 10 hours following the end of the previous day's shift, does that shift still need to be paid at 1.25 times base rate of pay?**

Yes, even when a Covered Employee agrees to take such a shift, it still must be paid at the premium rate of 1.25 times base rate of pay (or 1.5 times base rate of pay for any hours that are overtime hours).

**If a Covered Employee is working overtime hours during a shift that begins less than 10 hours following the end of the previous day's shift, how is the premium pay calculated for those hours?**

Any normal hours worked during a shift that begins less than 10 hours following the end of the previous day's shift are paid at 1.25 times base rate of pay. However, for any hours that constitute overtime hours in such a shift, those hours are paid at 1.5 times base rate of pay (the overtime rate).

**Does an Employer need to pay the entire shift Covered by right to rest at 1.25 times base rate of pay, or just those hours that are within 10 hours of the end of the previous day's shift? For instance, if the previous day's shift ended at 9 PM and the next day's shift starts at 6 AM, can the Employer pay one hour at 1.25 times base rate (6 – 7 AM), and then the rest of the shift at base rate, considering it is outside of the 10-hour window that began at 9 PM the previous day?**

The Employer must pay the entire shift at 1.25 times base rate of pay. Right to rest is effective in regard to entire shifts, not portions of shifts.

**Is a shift that begins on one day but extends beyond midnight to end on the next day considered the previous day's shift?**

A shift is deemed to occur on the day on which it started.

**Do the exceptions to the Chicago Fair Workweek Ordinance (Section 1-25-050(d), and outlined above) such as mutually agreed changes, acts of nature, pandemics, and healthcare-specific conditions apply to right to rest?**

No. There are no exceptions to the right to rest provision. Covered Employees always have a right to rest, and must always be paid 1.25 times the base rate of pay for shifts that begin less than 10 hours following the end of the previous day's shift, no matter the circumstances, even when the employee agrees in writing to work the shift.

## **INITIAL ESTIMATES OF WORK SCHEDULES**

*Covered Employees must receive an initial good faith estimate of their Work Schedule, including the days of the week they can be expected to work, and the start and end times of their shifts for those days.*

**What information must be included in a good faith estimate?**

A good faith estimate must be detailed enough to, in effect, act as a sample Work Schedule. It must specify the subset of days of the week that the Covered Employee can expect to work, as well as the start and end times of work for each of those days of the week. The subset of days that the Covered Employee can expect to work should not include all days of the week. It also

must outline the average number of hours the Covered Employee can expect to work each week, which should not significantly exceed the number of hours per week included in the subset of days of the week that the Covered Employee can expect to work. The Employer may not include in the estimate all work shifts for which the Employer staffs its workplace.

**How must an Employer consider a Covered Employee’s request that the Employer modify the projected days and hours of work provided in the initial estimate of Work Schedule?**

An Employer can consider the request at their sole discretion. Only the Employer’s determination of the Covered Employee’s request must be documented in writing.