BACP
Business Affairs and Consumer Protection

# Fair Workweek Frequently Asked Questions

The Office of Labor Standards offers the following letter to clarify issues related to consent and mutual agreements, and further delineate when a consent would be vitiated by a lack of clarity or proper and consistent with the Fair Workweek Ordinance.

Applicable terms from the Ordinance

**6-110-020 Definitions.**

As used in this chapter, the following terms shall have the following meanings:

"Predictability Pay" means wages paid to a Covered Employee, calculated on an hourly basis at the Employee's regular rate as compensation for schedule changes made by an Employer to a Covered Employee's schedule pursuant to this chapter, in addition to any wages earned for work performed by that Employee.

**6-110-050 Schedule changes.**

(a) Right to decline. Subject to the exceptions in subsection (d) of this section, a Covered Employee has the 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 from July 1, 2020, to June 30, 2022, and less than 14 days before the first day of any new schedule beginning July 1, 2022.

(b) Alterations. Subject to the exceptions in subsection (d) of this section, if an Employer alters a Covered Employee's Work Schedule after the deadline articulated in Section 6-110-040(b)(1), in addition to the regular rate of pay, the Covered Employee shall receive:

(1) One hour of Predictability Pay for each shift in which the Employer:

(A) adds hours of work.

(B) changes the date or time of a work shift with no loss of hours.

(C) with more than 24 hours' notice, cancels or subtracts hours from a regular or on-call shift.

(2) No less than 50 percent of the Covered Employee's regular rate of pay for any scheduled hours the Covered Employee does not work because the Employer, with less than 24 hours' notice subtracts hours from a regular or on-call shift or cancels a regular or on-call shift, including while the Covered Employee is working on a shift.

(c) The Employer shall amend the posted Work Schedule and transmit it to the Covered Employee in writing within 24 hours of a schedule change.

(d) Exceptions. The requirements of this section shall not apply in the following circumstances:

…

(2) A Work Schedule change that is the result of a mutually agreed upon shift trade or coverage arrangement between Covered Employees, subject to any existing Employer policy regarding required conditions for Covered Employees to exchange shifts.

(3) A Work Schedule change that is mutually agreed to by the Covered Employee and Employer and is confirmed in writing.

(4) A Covered Employee requests a shift change, that is confirmed in writing, including but not limited to use of sick leave, vacation leave, or other policies offered by the Employer.

Illustrative Examples:

**1. Employee initiated changes:**

Covered Employee calls the manager and asks to start late. That is not an instance that merits predictability pay.

**2. Employer initiated changes:**

Employer has three Covered Employees call off from the second shift. The first shift is still working. The manager walks around the business and asks out loud, "can anyone stay late?":

This is an Employer-initiated change. While the Covered Employee may "agree" to the additional work or schedule change by staying past the regularly scheduled end of shift, it is a shift change and would therefore require the Employer to pay predictability pay. Simply because the Covered Employee agreed to the shift change is not an agreement to waive the predictability pay requirement. A mutual agreement is separate. A mutual agreement must be executed pursuant to an informed consent process whereby the Covered Employee knows that they have a right to decline and knows that they could have been paid predictability pay. Only after this informed consent process takes place is there a valid mutual agreement. Employers that coach, indicate, tell workers that they should select or take such shift changes since they "agree" to extend their shift, or change their shift to take on additional hours should give their Covered Employees: 1. The right to decline, and 2. Paid predictability pay under the Ordinance. This should not be treated as a Covered Employee-initiated shift change, nor is it a mutual agreement.