



# Office of the City Clerk

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## Legislation Details (With Text)

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**Final action:**

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**Sponsors:** Waguespack, Scott, Foulkes, Toni, Pawar, Ameya, Mell, Deborah, Lopez, Raymond A., Hairston, Leslie A., Sawyer, Roderick T., Sadlowski Garza, Susan, Taliaferro, Chris, Moreno, Proco Joe, Ramirez-Rosa, Carlos, Arena, John, Munoz, Ricardo, Villegas, Gilbert, Moore, David H., Cappleman, James, Santiago, Milagros

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Date	Ver.	Action By	Action	Result
5/29/2019	1	City Council	Failed to Pass	
6/28/2017	1	City Council	Referred	

### THE CHICAGO FAIR WORKWEEK ORDINANCE

#### 010 - Definitions

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

"Calendar Week" shall mean a period of seven consecutive days starting on Sunday. "City" shall mean the City of Chicago.

"Employer" means any individual, natural person, corporation, nonprofit corporation, general partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, any other legal or commercial entity, whether domestic or foreign), or any person or group or persons who directly or indirectly (including through the services of a temporary services or staffing agency or similar entity) employs or exercises control over the wages, hours or working conditions of one or more Covered Employee. To qualify as an Employer, such individual, group, or entity must (1) maintain a business facility within the geographic boundaries of the City and/or (2) be subject to one or more of the license

requirements in Title 4 of this Code and/or (3) employ one or more individuals within a dwelling unit or a residence, or any other location within the geographic boundaries of the City.

"Department" means the Department of Business Affairs and Consumer Protection or any succeeding office, agency or department.

"Commissioner" means the Commissioner of the Department of Business Affairs and Consumer Protection or his or her authorized representatives, or that of any succeeding office, agency or department.

"Employee" shall mean any individual permitted to work by an Employer.

"Covered Employee" means any Employee who, in any particular two-week period, performs at least two hours of work for an Employer while physically present within the geographic boundaries of the City. For purposes of this definition, time spent traveling in the City that is compensated time, including, but not limited to, deliveries, sales calls, and travel related to other business activity taking place within the City, shall constitute work while physically present within the geographic boundaries of the City; however, time spent traveling in the City that is uncompensated commuting time shall not constitute work while physically present within the geographic boundaries of the City. An employee who is paid on a salary basis and whose rate of pay per week is greater than the current 40<sup>th</sup> percentile of weekly earnings of full-time non-hourly workers in the Midwest Census Region, exclusive of board, lodging, or other facilities, as determined by the U.S. Department of Labor, but never less than \$50,000 per year, or \$962 per week, shall not be considered a Covered Employee for the purposes of this Chapter. An employee shall be considered to be paid on a "salary basis" if the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed, and without regard to the number of days or hours worked. No other terms or conditions of employment, including the location of work performed, shall be required to determine who is a Covered Employee.

"Predictability Pay" means wages paid to a Covered Employee, calculated on an hourly basis at the Employee's regular rate of pay as that term is used in 29 U.S.C. § 207(e), 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

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by that Employee.

"Shift" means the consecutive hours an Employer schedules an Employee to work including Employer-approved meal periods and rest periods.

"Work Schedule" means all of an Employee's shifts, including specific start and end times for each shift, during a calendar week.

(1) Application to Collective Bargaining Agreements

To the extent permitted by law, all or any portion of the applicable requirements of this Chapter may be waived in a bona fide collective bargaining agreement; provided, that such waiver is explicitly set forth in such agreement in unambiguous terms and that the parties thereto intend to and do thereby waive all of or a specific portion(s) of this Chapter.

**020 - Advance Notice of Work Schedules**

(a) Initial Estimate of Work Schedule

(1) Prior to or on commencement of employment, an Employer shall provide every Covered Employee with a good faith estimate in writing of the Employee's work schedule, including minimum hours.

(2) Prior to or on commencement of employment, the Employee may request that the Employer modify the estimated work schedule provided under subsection (a)(1) of this section. The Employer shall consider any such request, and in its sole discretion may accept or reject the request, provided that the Employer shall notify the Employee

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of Employer's determination in writing prior to commencement of employment.

(b) Two Weeks' Advance Notice of Work Schedule. An Employer shall provide its Employees with at least two weeks' notice of their Work Schedules by doing one of the following at least every 14 days (on a "Biweekly Schedule"): (1) posting the Work Schedule in a conspicuous place at the workplace that is readily accessible and visible to all Employees; and/or (2) transmitting the Work Schedule by electronic means, so long as all Employees are given access to the electronic schedule at the workplace or remotely. Additionally, upon written or oral request of an Employee, Employer shall transmit the Work Schedule by electronic means of the Employee's choosing. Employers shall provide each new Employee prior to or on the new Employee's first day of employment with an initial Work Schedule that runs through the date that the next Biweekly Schedule for existing Employees is scheduled to be posted or distributed.

Thereafter, the Employer shall include the new Employee in an existing Biweekly Schedule with other Employees. If the Employer changes an Employee's Work Schedule after it is posted and/or transmitted, such changes shall be subject to the notice and compensation requirements set forth in this Chapter. This notice requirement shall not apply to any schedule changes the Employee initiates, such as Employee-requested sick leave, time off, shift trades, or additional shifts.

**030 - Notice, Right to Decline, and Compensation for Schedule Changes**

(a) 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 Employee's schedule, and for which the Employee has been provided advance notice of

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less than 14 days.

(b) Subject to the exceptions in subsection (d) of this Section, an Employer shall provide a Covered Employee with compensation, as defined below, per Shift for each previously scheduled Shift after which the Employer:

- 1) adds hours to a previously scheduled shift;
- 2) subtracts hours from a previously scheduled shift;
- 3) moves a previously scheduled shift to another date or time; or
- 4) cancels a previously scheduled shift.

(c) An Employer shall provide a Covered Employee with compensation for each previously unscheduled Shift that the Employer adds to the Covered Employee's schedule:

- 1) With less than 14 days' notice, but 24 hours or more notice to the Covered Employee: one hour of Predictability Pay;

2) With less than 24 hours' notice to the Covered Employee, (i) four hours or the number of hours in the employee's scheduled shift, whichever is less, when hours are canceled or reduced; (ii) one hour of predictability pay for all other changes, including those instances when employers make a real time request that a Covered Employee extend their shift. The compensation required by this subsection shall be in addition to the Covered Employee's regular pay for working that shift.

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

(1) Operations cannot begin or continue due to threats to Employers,

Employees, or property, or when civil authorities recommend that work not begin or continue;

2) Operations cannot begin or continue because public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities or sewer system;

3) Operations cannot begin or continue due to: acts of nature (including but not limited to flood, fire, explosion, earthquake, tidal wave, drought), war, civil unrest, strikes, or other cause not within the Employer's control;

4) Mutually agreed upon work shift swaps or coverage among employees.

(e) Nothing in this section shall be construed to prohibit an Employer from providing greater advance notice of Covered Employee's work schedules and/or changes in schedules than that required by this section.

**040 - Offer of Additional Work Hours to Existing Employees**

a) Subject to the limitations herein, before hiring new Employees or contract Employees, including hiring through the use of temporary services or staffing agencies, an Employer shall first offer additional hours of work to existing Employee(s) if the Employee(s) are qualified to do the additional work, as reasonably and in good faith determined by the Employer.

b) An Employer has discretion to divide the additional work hours among Covered

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Employees consistent with this section, provided that: (1) the Employer's system for distribution of hours must not discriminate on the basis of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity or expression, disability, age, marital or familial status, nor on the basis of family caregiving responsibilities or status as a student; (2) the Employer may not distribute hours in a manner intended to avoid application of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18001, or any succeeding law under the United States Code.

(c) A Covered Employee may, but is not required to, accept the

Employer's offer of additional work under this section.

1) For additional work for an expected duration of more than two weeks; the Covered Employee shall have 72 hours to accept the additional hours, after which time the Employer may hire new Employees to work the additional hours.

2) When the Employer's offer of additional work under this Section is for an expected duration of two weeks or less, the Covered Employee shall have 24 hours to accept the additional hours, after which time the Employer may hire new Employees to work the additional hours. Employers must extend in good faith the offer of additional work hours for the longest period the Employer reasonably expects the additional hours will be required.

3) The 24- or 72-hour periods referred to in this subsection begin either when the Covered Employee receives the written offer of additional hours, or when the Employer posts the offer of additional hours as described in subsection (d), whichever is sooner. A Covered Employee who wishes to accept the additional hours must do so in writing.

(d) When this section requires an Employer to offer additional hours to existing Covered Employees, the Employer shall make the offer either in writing or by posting the offer in a conspicuous location in the workplace where notices to Employees are

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customarily posted. Employers may post the notice electronically on an internal website in a conspicuous location and which website is readily accessible to all Employees. The notice shall include the total hours of work being offered, the schedule of available shifts, whether those shifts will occur at the same time each week, and the length of time the Employer anticipates requiring coverage of the additional hours, and the process by which Employees may notify the Employer of their desire to work the offered hours.

(e) The Employer shall retain each written offer no less than three years as required under this Chapter.

(f) This Section shall not be construed to require any Employer to offer Employees work hours paid at a premium rate as required by law nor to prohibit any Employer from offering such work hours.

### **050 - Right to Rest**

An Employee has the right to decline work hours that occur during the 11 hours following the end of a shift. An employee who agrees in writing to work hours described in this section shall be compensated one-and-a-half times the employee's regular rate of pay for any hours worked less than

11 hours following the end of a previous shift.

### **060 - Right to Request a Flexible Working Arrangement**

An Employee has the right to request a modified work schedule, including but not limited to additional shifts or hours; changes in days of work or start and/or end times for the shift; permission to exchange Shifts with other Employees; limitations on availability; part-time employment; job sharing arrangements; reduction or change in work duties; or part-year employment. An Employer shall not retaliate against an Employee for exercising his or her rights under this Section. All responses to requests shall be made in writing by the Employer.

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### **070 - Notice and Posting**

a) The Department shall publish and make available to Employers, in English and other languages as provided in any implementing regulations, a notice suitable for posting by Employers in the workplace informing Covered Employees of their rights under this Chapter.

b) Each Employer shall give written notification to each current Covered Employee and to each new Covered Employee at time of hire, of his or her rights under this Chapter. The notification shall be in English and other languages as provided in any implementing regulations, and shall also be posted prominently in areas at the work site where it will be seen by all Covered Employees. Every Employer shall also provide each Employee at the time of hire with the Employer's name, address, and telephone number in writing. Failure to post such notice shall render the Employer subject to administrative citation, pursuant to the provisions of this chapter. The Department is authorized to prepare sample notices and Employer use of such notices shall constitute compliance with this subsection.

### **080 - Implementation. Authority and Investigation**

(a) Regulations. The City shall coordinate implementation and enforcement of this ordinance and shall promulgate appropriate guidelines or rules for such purposes. Any

guidelines or rules promulgated by the City shall have the force and effect of law and may be relied on by Employers, Employees and other parties to determine their rights and responsibilities under this chapter.

Any guidelines or rules may establish procedures for ensuring fair, efficient and cost-effective implementation of this ordinance, including supplementary procedures for

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helping to inform Covered Employees of their rights under this Chapter, for monitoring Employer compliance with this chapter, and for providing administrative hearings to determine whether an Employer has violated the requirements of this chapter.

b) Reporting Violations. An aggrieved Covered Employee may report to the Department, in writing any suspected violation of this Chapter. The Department shall keep confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the Employee reporting the violation. Provided, however, that with the authorization of such Covered Employee, the Department may disclose his or her name and identifying information as necessary to enforce this chapter or other Employee protection laws. A Covered Employee may report to the City that his or her employer has committed any violation of this ordinance and may file a complaint with the City within three years of the violation. Where such violation is continuing, the complaint must be filed within three years of the last occurrence of the alleged violation.

c) Investigation. The City may investigate any possible violations of this chapter by an Employer. The Department shall have the authority to inspect workplaces, interview persons, and subpoena records or other items relevant to the enforcement of this chapter. All complaints filed with the City shall be investigated, unless the complaint is not timely, the City lacks jurisdiction over the complaint, or if the complaint does not state facts that, if true, would constitute a violation of this chapter.

(d) Informal Resolution. If the Department investigates a complaint, the Department shall make every effort to resolve complaints informally and in a timely manner. The Department's investigation and pursuit of informal resolution does not limit or act as a prerequisite for an Employee's right to bring a private action against an Employer as

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provided in this Chapter.

(e) Enforcement. Where compliance with the provisions of this Ordinance is not forthcoming, the Department may, by and through the Commissioner take any appropriate enforcement action to ensure compliance, including but not limited to the following:

(1) Ineligibility for City Transactions. The City may pursue any remedy available to it under 2-92-320 of the City of Chicago Municipal Code defining offenses that render businesses ineligible for City Transactions.

(2) Administrative Fine. The City may issue an administrative citation to the Employer pursuant to provisions of the Municipal Code of the City of Chicago. The amount of this fine shall vary based on the provision of this Chapter violated, as specified below:

i. A fine may be assessed for retaliation by an Employer against an Employee for exercising rights protected under this Chapter. The fine shall be \$1,000 for each Covered Employee retaliated against.

ii. A fine of \$500.00 may be assessed for any of the following violations of this Chapter:

1) Failure to provide notice of Employee rights under this Chapter.

2) Failure to timely provide an initial work schedule or to timely update work schedules following changes.

(3) Failure to provide required and appropriate predictability pay for schedule changes.

(4) Failure to offer additional work hours to existing Covered Employees

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before hiring new Employees or temporary staff or to award work to a qualified Covered Employee.

5) Failure to comply with those provisions regarding Right to Rest.

6) Failure to comply with those provisions regarding Employer's duty to respond to Covered Employees under the section regarding Right to Request.

(7) Failure to comply with those provisions regarding Notice and Posting.

8) Failure to maintain payroll records for the minimum period of time as provided in this Ordinance.

9) Failure to allow the City access to payroll records.

The employee may recover in a civil action any and all penalties and remedies provided for in this Chapter. Such action shall be brought within three years from the date of the violation. Where such violation is continuing, the action must be brought within three years of the last occurrence of the alleged violation.

Any agreement between the employee and employer that would violate this Ordinance is no defense to any administrative or civil action.

**090 - Remedies.**

(a) The remedies for violation of this Ordinance include but are not limited to:

1. The payment of Predictability Pay unlawfully withheld, and the payment of an additional sum as a civil penalty in the amount of \$500 to each Covered Employee whose rights under this chapter were violated for each day or portion thereof

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that the violation occurred or continued, and fines imposed pursuant to other provisions of this ordinance or state law.

2. Reimbursement of the City's administrative costs of enforcement and reasonable attorney's fees.

3. If a repeated violation of this ordinance has been finally determined in a period from July 1 to June 30 of the following year, the City may require the Employer to pay an additional sum as a civil penalty in the amount of \$500 to the City for each Covered Employee or person whose rights under this chapter were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this chapter or state law.

b) The remedies, fines, and procedures provided under this chapter are cumulative and are not intended to be exclusive of any other available remedies, penalties and procedures established by law which may be pursued to address violations of this ordinance. Actions taken pursuant to this ordinance shall not prejudice or adversely affect any other action, administrative or judicial, that may be brought to abate a violation or to seek compensation for damages suffered. The employee may also recover any damages incurred, punitive damages, injunctive relief as may be appropriate, and costs and reasonable attorney's fees as may be allowed by the City or the court and as necessary to make the employee whole. Any sums recovered by the City on behalf of an employee under this ordinance shall be paid to the

employee or employees affected.

c) No criminal penalties shall attach for any violation of this Chapter, nor shall this Chapter give rise to any cause of action for damages against the City.

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(d) Retaliation Barred. An Employer shall not discharge, reduce the compensation of, discriminate against, or take any adverse employment action against a Covered Employee, including discipline, suspension, transfer or assignment to a lesser position in terms of job classification, job security, or other condition of employment, reduction or hours or denial of additional hours, informing another Employer that the person has engaged in activities protected by this Chapter, or reporting or threatening to report the actual or suspected citizenship or immigration status of a Covered Employee, former Employee or family member of a Covered Employee to a federal, state or local agency, for making a complaint to the City, participating in any of the City's proceedings, using any civil remedies to enforce his or her rights, or otherwise asserting his or her rights under this Chapter. It shall be unlawful for the Employer to discharge any Covered Employee who who has initiated a complaint unless the Employer has clear and convincing evidence of just cause for such discharge.

e) Retention of Records. Each Employer shall maintain for at least five years for each Covered Employee a record of his or her name, hours worked, pay rate, initial posted schedule and all subsequent changes to that schedule, consent to work hours where such consent is required by this Chapter, and documentation of the time and method of offering additional hours of work to existing staff. Each Employer shall provide each Covered Employee a copy of the records relating to such Employee upon the Employee's reasonable request.

f) City Access. Each Employer shall permit access to work sites and relevant records for authorized

City representatives for the purpose of monitoring compliance with this Chapter and investigating Employee complaints of noncompliance, including production for inspection and copying of its Employment records, but without allowing Social Security numbers to become a

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### **matter of public record. 100 - No Preemption of**

#### **Higher Standards**

The purpose of this Chapter is to ensure minimum labor standards. This Chapter does not preempt or prevent the establishment of superior employment standards (including higher wages) or the expansion of coverage by ordinance, resolution, contract, or any other action of the City. No part of this Chapter shall be construed to limit a discharged Employee's right to bring a common law cause of action for wrongful termination or to seek any other available remedy at law or otherwise. Nothing in this Chapter shall be construed to interfere with any private right of action. Any claim or action filed under this Chapter must be made within three (3) years of the alleged conduct resulting in the complaint.

#### **110-Severability**

If any provision or application of this Chapter is declared illegal, invalid or inoperative, in whole or in part, by any court of competent jurisdiction, the remaining provisions and portions thereof and applications not declared illegal, invalid or inoperative shall remain in full force or effect. Nothing herein may be construed to impair any contractual obligations of the City.

#### **120 -- Effective Date**

This ordinance shall be in full force and effect after July 1, 2018.

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Scott Waguespack Alderman,  
32nd Ward

Toni Foulkes Alderman, 16 th Ward  
Ameya Pawar Alderman, 47th Ward

Deborah Mell Alderman, 33rd Ward

Sophia King Alderman, 4th Ward  
Roderick Sawyer Alderman, 6th Ward  
/ Leslie Hairston Alderman, 5th Ward  
~7 Susan Sadlowski-Garza Alderman, 10th Ward

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Chris Taliaferro Alderman, 29th Ward  
Pavid Moore ^ilf1frpTir> 17tb.vyacd^

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