



## LA County enacts Fair Workweek laws

JJ Johnston

**E**mployers often shuffle their workers' schedules around, trying to respond quickly to legitimate business concerns. An unanticipated weather event might significantly lower sales; a transportation strike could severely delay deliveries; a top salesperson could decide to return a day earlier than originally planned. Why pay for unnecessary staff?

It may make perfect sense for a business to try to reduce costs in response to changing circumstances, but seemingly random schedule changes can wreak havoc on the lives of affected workers. Commitments have already been made, plans have already been changed and money has already been budgeted. Last-minute changes can completely upend employees' lives.

Cities and states across the country have begun to recognize the problems posed for hourly workers by unpredictable schedules, and they have taken action. Employees in many jurisdictions are now able to rely on the schedules given to them by their employers, or they can expect to

be compensated for the inconvenience created by last-minute changes. Instead of being moved around like pawns on a chess board, they are now treated as game pieces that actually matter.

### 'Fair Workweek' laws

"Fair Workweek," or predictive scheduling laws, are intended to protect hourly workers from becoming pawns on an employer's game board. For workers in the food service, hospitality and retail industries, schedule disruptions are a common fact of their lives. Working for meager pay, these workers are vulnerable and less capable of responding to economic downturns than other classes of workers.

Employers subject to Fair Workweek laws are required to give schedules to their employees at least two weeks in advance, and they must pay those workers when schedules are changed without adequate notice. The goal of predictive scheduling is to provide assurance to workers that their livelihood cannot be arbitrarily and summarily put at risk.

Predictive scheduling laws have been adopted in New York City, Chicago, Philadelphia and Oregon. In California, the cities of Berkeley, Emeryville, San Francisco, San Jose and Los Angeles now require large employers to predictively schedule their workers. And starting July 1, large retail employers in unincorporated Los Angeles County must also comply with a Fair Workweek ordinance.

### Work schedules

The Los Angeles County ordinance applies to retail employers with more than 300 employees worldwide that operate in unincorporated areas of the county. Employers must now provide employees with their work schedules at least 14 calendar days in advance, and employees can decline any changes to their original schedules that add hours or shifts.

In addition, employers must give employees a written estimate of their expected work schedules when they are hired and within 10 calendar days of an employee's request. If actual hours, locations or shifts deviate sub-

stantially from the written estimate, the employer must be able to explain why it didn't know of business matters that might impact schedules at the time it provided the good faith estimate.

### Predictability pay

Whenever an employer-initiated schedule change results in lack of work for a previously scheduled employee, the employer must pay the affected employee half their regular rate of pay for the time that wasn't worked. For any schedule change that doesn't result in a loss of time or that adds more than 15 minutes to the original work schedule, employers must pay employees an additional hour of pay at their regular rate.

This "predictability pay" is intended to provide stability for hourly workers who depend on the receipt of a regular paycheck. It is not required when the employee is the party who requested the schedule change or if the employee voluntarily accepted a schedule change because of another employee's absence. Predictability pay is also not required when an employee

accepts extra hours that are offered by the employer before it hires new workers, when the employee's hours are reduced because the employee violated the law or the employer's policies, the employer's operations are "compromised pursuant to law," or the worker will be paid overtime for his or her extra hours worked.

### Other requirements

Under the new LA County ordinance, employers must give their workers at least 10 hours of rest between shifts unless the employee consents in writing to forgo that long a rest break between shifts. If consent is given, the employee must still be paid time and a half for each shift that is not separated by at least 10 hours from the prior shift.

Current employees must be offered available work hours before an employer can hire new staff, and the offer must be made in writing or posted at the work-site at least 72 hours before new staff is hired. Current employees have 48 hours to accept additional hours in writing; if they don't accept the offer, the employer is free to hire new staff to cover the additional work.

### What this means for employers

Fair Workweek laws may provide comfort to workers, but they insert a level of technical compliance for employers that can be both confusing and challenging. When companies have operations across multiple jurisdictions, they may be required to adhere to several different predictive scheduling algorithms. If they follow a single set of guidelines, they risk being non-compliant in other regions.

Employers must train managers and HR professionals on Fair Workweek requirements applicable to their specific workforces and communicate with employees about their rights, including the right to decline last-minute schedule modifications and to accept additional work hours. Employers should keep records of worker schedules, shift changes and related communications.

When claims involving predictive scheduling are brought to mediation, the analysis may be complicated for a company with operations in many places. The mediator should be able to help unravel the employer's Fair Workweek roadmap to determine how

a particular employee dispute should be resolved. If the company can show that it made its best efforts to comply with applicable requirements, the parties should be able to reach a mutually satisfactory resolution.

### Conclusion

Fair Workweek laws provide important protections for hourly workers who generally have little negotiating power but pressing financial obligations. The laws require employers to give careful thought to their scheduling practices, but they may also create potential minefields for companies that have far-flung operations.

Yes, employees deserve to have predictable schedules, but employers deserve to have a clear understanding of the laws with which they must comply. It will be up to Los Angeles County to provide guidelines and assistance for its employers who are now subject to the new ordinance. Even before guidelines are issued, large companies should be monitoring and updating their scheduling systems, training their management and communicating with their employees about these important new rights.



**JJ Johnston** is the founder of Johnston Mediation. He has been mediating employment and class action matters for more than two decades and has more than three decades' experience as an employment attorney representing both plaintiffs and defendants in a wide range of cases, including wage and hour class actions, PAGA claims, wrongful terminations, discrimination and retaliation cases, sexual harassment cases, prevailing wage claims, fair pay act claims, and defamation claims.