

Secure Scheduling Ordinance Summary

Effective Date

The ordinance takes effect July 1, 2017.

Food Service Establishments Covered by the Ordinance

Seattle food services establishments with 500 or more employees worldwide are covered by the ordinance. Food services establishments is defined as those entities reporting under the 2012 North American Industry Classification System (NAICS) 722. Chains, integrated enterprises and franchises that employ more than 500 employees in aggregate are covered by the ordinance.

Seattle full service restaurants are only covered if they employ 500 or more employees **AND** have 40 or more locations worldwide.

14-Day Notice of Schedule

Employees must be provided with a written work schedule at least 14 calendar days before the first day of the work schedule. It must be posted in a noticeable and accessible location, in English and in the primary language(s) of the employee(s) at the particular workplace.

Predictability Pay is Owed to Employees for Schedule Changes Within 14 Days

An employee must be paid 1 additional hour of pay for any changes made to the posted 14-day schedule where hours are added or the date, start or end time of a shift is changed.

Reducing Hours

An employee must be paid for half of his or her regular rate of pay for each hour subtracted from the posted 14-day schedule (includes being sent home early from a shift) or any on-call hours the employee was scheduled, but was not requested to report to work.

Exceptions to Predictability Pay

Predictability pay is not required in the following circumstances:

- Shift swaps between employees. The employer may require pre-approval. (The employer may also assist employees in identifying other employees who may be interested in the shift swap, but may not arrange the shift swap.)
- Additional hours an employee volunteers to work in response to a “mass communication,” (i.e. email or text message blast) from the employer, about the availability of additional hours. It may only be used for additional hours that are the result of another employee being unable to work scheduled hours.
- Additional hours an employer requests employees who are currently working, through an in-person group communication, to work to address present and unanticipated customer needs, so long as the hours are consecutive to the hours the employee is currently working and the employee consents to take the hours.
- Additional hours an employee accepts as part of the access to additional shifts provisions (see below);
- Employee-requested changes including additional or subtracted hours the employee voluntarily makes to the employee’s work schedule and documents in writing;
- Employee hours that are subtracted because of disciplinary reasons, provided the employer documents in writing the incident leading to discipline;
- Operations that cannot begin or continue because of threats to employees or property, or because of the recommendation by a public official that work cannot begin or continue;
- Operations that 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; or

- Operations that cannot begin or continue because of natural disaster or other cause not within the employer's control pursuant to rules issued by the director of the city's Office of Labor Standards.

Current Employees Must be Offered Additional Shifts When They Become Available Before Hiring Externally

Before hiring new employees from an external applicant pool or subcontractors, including hiring through the use of temporary services or staffing agencies, an employer must offer additional shifts to current employees when those hours become available at their place of work as defined by the employers usual and customary business practice.

The employer must post written notice of available hours of work for at least three days. The employer must post the notice in English and the primary language(s) of the employee(s) at the particular workplace. The Office of Labor Standards will create and distribute a model notice in English, Spanish and other languages that are necessary for employers to comply with this subsection.

The employer may post the notice concurrently to external candidates.

The employer will offer additional hours of work (shifts) to a current employee who has responded to the offer, and who, to a reasonable employer acting in good faith, is qualified with the skills and experience to perform the work.

The employer will give the employee at least two consecutive calendar days, running from the date of the employer's offer, to accept the additional hours of work.

The employer may limit distribution of hours to full work shift. Example: Employees A and B work Monday, Wednesday and Friday from 10 a.m.-2 p.m. Employee C works Tuesday and Thursday from 2-6 p.m. If employee C quits, there are now two shifts of four hours open. The employer is obligated to first offer those shifts to current employees A and B. Employee A does not have a right to say "I only want to work Tuesday and Thursday 2-4 p.m." The employer could choose to honor that request, but is only obligated to offer the whole 2-6 p.m. block.

The employer may choose among qualified internal candidates following the employer's usual and customary hiring procedures.

If no employee responds to the written notice of additional hours of work following the three-day posting, or accepts an offer of additional hours during the two-day acceptance period, the employer may immediately proceed with hiring new employees from an external applicant pool.

This section does not apply to additional hours of work the employer has designated for hiring programs, including but not limited to diversity, supported employment hiring programs or young adult hiring programs, affiliated with a government entity or external nonprofit organization that has been approved subject to the rules of the director of the Office of Labor Standards, or is a program that meets the eligibility criteria for the Work Opportunity Tax Credit as defined by the Department of Labor.

Access to Hours List as Alternative Process to Offering Additional Shifts to Current Employees

If the employer provides notice of additional hours and receives written confirmation from all such employees that they are not interested in accepting additional hours of work, the employer may immediately proceed with hiring new employees from an external applicant pool.

If the employer chooses to maintain a written Access to Hours List (AHL), the requirement to offer additional hours of work may be limited to employees on the list.

At the time of hire, the employer must notify the employee of the AHL. The employee must be added to the list identifying his or her availability for additional hours. The employee may opt out. Employees may also choose to be added or removed from the list at any time. The list must be accessible to employees for viewing upon request.

If the employer provides notice of additional hours of work to all employees on the AHL and receives written confirmation from all such employees that they are not interested in accepting the additional hours, the employer may immediately proceed with hiring new employees from an external applicant pool.

If additional hours become available, the employer must first attempt to use the AHL before hiring externally. The employer may limit the distribution of hours to full shifts. If the employer makes a good faith effort to contact employees on the AHL and the employees decline or do not respond to the offer, the employer may then hire externally.

Employers may use an online or computer-based scheduling systems and notify the employee through the scheduling system when hours that match their availability from the AHL become available.

An employee may not qualify for the additional hours under the following circumstances:

- Overtime or predictability pay would be required if the employee received the additional hours;
- The employee is not currently in good standing because of a bona fide employer-documented discipline or improvement plan;
- The employee is barred by other laws from conducting the work required in the available hours.

10 Hours Between Work Shifts

There must be 10 hours between scheduled shifts. However, this does not apply to split shifts. Employees may volunteer to work schedules with less than 10 hours between, but must be paid time and a half for any hours worked within 10 hours.

Employees Must be Provided a Good Faith Estimate of the Work Schedule

For new employees, the employer must provide the employee with a written good faith estimate of the employee's work schedule, which is the median number of hours the employee can expect to work each week, and whether the employee can expect to work on-call shifts.

For existing employees, the employer must revise the good faith estimate annually and when there is a significant change to the employee's work schedule because of changes in the employee's availability or to the employer's business needs.

The good faith estimate does not constitute a contractual offer and the employer shall not be bound by the estimate. However, the employer must initiate an "interactive process" with the employee to discuss any significant change from the good faith estimate, and if applicable state a bona fide business reason for the change.

Interactive process is defined as a timely, good faith process that includes a discussion between the employer and the employee for the purpose of arriving at a mutually beneficial arrangement for a work schedule that meets the needs of the employee and the employer. The discussion may include the proposal of alternatives by the employee and the employer.

The employer shall include the good faith estimate, in English and the employee's primary language, with the written notice of employment information.

Employees Have a Right to Provide Input on Their Work Schedule

At time of hire and during employment, the employee may identify any limitations or changes in work schedule availability. The employee has the right to request not to be scheduled for work shifts during certain times or at certain locations and the right to identify preferences for the hours or locations of work.

In this section, "bona fide business reason" is defined as:

1. An action that would cause the employer to violate a law, statute, ordinance, code and/or governmental executive order
 2. A significant and identifiable burden of additional costs to the employer; or
 3. A significant and identifiable detrimental effect on the employer's ability to meet organizational demands, including:
 - a. A significant inability of the employer, despite best efforts, to reorganize work among existing employees;
 - b. A significant detrimental effect on business performance;
 - c. A significant inability to meet customer needs or demands; or
 - d. A significant insufficiency of work during the periods the employee proposes to work.

In this section, "major life event" is defined as a major event related to the employee's access to the workplace because of changes in the employee's transportation or housing; the employee's own serious health condition; the employee's responsibilities as a caregiver; the employee's enrollment in a career-related educational or training program; or the employee's other job or jobs.

The employer must consider and respond to employee requests in the following manner:

- If the employee's request is not because of a major life event, the employer will engage in an interactive process with the employee to discuss the request. The employer may grant or deny the request for any reason that is not unlawful.
- If the employee's request is because of a major life event, the employer must engage in an interactive process with the employee to discuss the request, and may require verifying information from the employee with adequate notice and reasonable time to respond. The employer must grant the request unless the employer has a bona fide business reason for denial and must provide a written response. In the event of a denial, the employer's written response must provide an explanation of the complete or partial denial of the request, and the "bona fide business" reason for the decision.

Notice of Work Schedule Changes

For employer-requested changes to the written work schedule that occur after the 14-day schedule has posted, (1) The employer must provide the employee with timely notice of the change by in-person conversation, telephone call, email, text message or other accessible electronic or written format; and (2) The employee may decline to work any hours not included in the employee's work schedule.

For employee-requested changes to the written work schedule that occur after the 14-day schedule has been posted, the employee must provide notice of the request per the employer's usual and customary notice and procedural requirements.

The employer may not ask or require an employee to find replacement coverage if the employee is unable to work the scheduled hours because of a reason covered by another local, state or federal law that prohibits asking such questions (i.e. paid sick and safe time).

The employer may ask, but not require, the employee to find replacement coverage if the employee is unable to work scheduled hours because of an emergency or major life event that prevents the employee from working scheduled hours, unless the major life event is also covered by another local, state or federal law.

The employer may require the employee to find replacement coverage if the employee is unable to work the scheduled hours because of a reason other than a reason covered by a local, state or federal law or an emergency or major life event.

Pattern or Practice of Underscheduling in Prohibited

The employer may not engage in a systemic pattern or practice of significant underscheduling where the hours that employees actually work are significantly above the hours in the written work schedule.

Notice and Posting Requirements

The Office of Labor Standards must create and distribute a poster giving notice of the rights afforded by the ordinance. It will be produced in English, Spanish and any other languages that are necessary for employers to comply with the ordinance. Employers are required to post the notice in a conspicuous place where it will be seen by employees.

Employer Must Retain Records for 3 Years

Employers must retain the following documents for at least three years:

- Written good faith estimates of employee work schedules;
- Written documentation regarding the employer's bona fide reason for denying the employee's request for a limitation or change in work schedule because of a major life event;
- Work schedules;
- Payroll records, including documentation of predictability pay paid to each employee;
- Written documentation of employee-requested changes to the employee's work schedule that do not incur predictability pay;
- Written employer mass communications, provided to employees about the availability of additional hours, that do not incur predictability pay;
- Written documentation of the incident leading to employee discipline that results in hours subtracted from the employee's work schedule but does not incur predictability pay;
- Written notices for additional hours of work available for employees;
- Written records of employees who have opted out of receiving written notice of additional hours of work (i.e. access to hours list);
- Written confirmation from all employees, or employees on the access to hours list, that they are not interested in accepting additional hours of work if the employer elects to reduce the notice requirements for access to hours; and
- Pursuant to rules issued by the director of the city's Office of Labor Standard, other records that are material and necessary to effectuate the terms of the ordinance.

Upon request, the Office of Labor Standards, in partnership with business and community organizations contracting with the city, will provide technical assistance to employers on implementation of this ordinance, including but not limited to review of employer record-keeping systems for documenting compliance.

Retaliation Prohibited

No employer or any other person shall take any adverse action against any person because the person has exercised in good faith the rights protected under the ordinance.

Penalties

For a first violation the director of the city’s Office of Labor Standards may assess a civil penalty of up to \$500 per aggrieved party. For a second violation up to \$1,000 per aggrieved party, or an amount equal to 10 percent of the total amount of unpaid compensation, whichever is greater. For a third or any subsequent violation a civil penalty of up to \$5,000 per aggrieved party, or an amount equal to 10 percent of the total amount of unpaid compensation, whichever is greater. The maximum civil penalty for a violation of this ordinance is \$20,000 per aggrieved party, or an amount equal to 10 percent of the total amount of unpaid compensation, whichever is greater.

For the following violations, the director of the city’s Office of Labor Standards may assess a fine in the amounts set forth below:

Violation	Fine
Failure to provide a good faith estimate of work schedule	\$500
Failure to provide a written response for denial of the employee’s request for a limitation or change in work schedule because of a major life event	\$500
Failure to compensate employee at one and one-half times pay for working hours that are separated by less than 10 hours from the previous shift	\$500
Failure to provide at least 14 calendar days of advance notice of work schedule	\$500
Failure to provide notice of work schedule changes	\$500
Failure to comply with prohibitions against asking or requiring an employee to find coverage for scheduled hours if the employee is unable to work for a reason covered by other laws or a major life event	\$500
Failure to compensate employee with additional compensation for work schedule changes	\$500
Failure to comply with prohibition against systemic pattern or practice of significant underscheduling	\$500
Failure to offer additional hours of work to existing employees	\$500
Failure to provide employees with written notice of rights	\$500
Failure to maintain records for three years	\$500 per missing record
Failure to comply with prohibitions against retaliation for exercising rights protected	\$1,000 per aggrieved party
Failure to provide notice of investigation to employees	\$500
Failure to provide notice of failure to comply with final order to the public	\$500

Private Right of Action

Any person or class of persons who suffers financial injury as a result of a violation of this ordinance may file a lawsuit against the employer and, upon prevailing, may be awarded reasonable attorney fees and costs, including, without limitation, the payment of any unpaid compensation plus interest because of the person and liquidated damages in an additional amount of up to twice the unpaid compensation; a penalty payable to any aggrieved party of up to \$5,000 if the aggrieved party was subject to prohibited retaliation.

Study of Secure Scheduling Ordinance Impacts

The city will contract with academic researchers who have a proven track record of rigorous analysis of the impacts of labor standards regulations to conduct an evaluation of the impacts of the ordinance for the baseline, one-year and two-year periods following implementation. Areas of evaluation shall include, but not be limited to the impacts to businesses, including costs, and the impacts on employees of the requirements of this ordinance, differences and challenges between limited and full service restaurants in implementing the ordinance, and the interplay of diversity programs and access to hours lists.

Efforts to identify whether other industries have scheduling practices that should be considered for coverage under the ordinance may be conducted under a separate study, by contracting with academic researchers who have a proven track record of rigorous analysis of labor standards regulations.

Ordinance Requirements Can be Waived in a Collective Bargaining Agreement

The requirements of this ordinance do not apply to any employees covered by a collective bargaining agreement if such requirements are expressly waived in the collective bargaining agreement if the employees have ratified an alternative structure for secure scheduling that meets the public policy goals of this ordinance.