

Working Draft 7/17/19

Committee on Workforce Development

**SUBSTITUTE**  
**ORDINANCE**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:**

**SECTION 1.** Title 1 of the Municipal Code of Chicago is hereby amended by adding a new Chapter 1-25 as follows:

**CHAPTER 1-25 CHICAGO FAIR WORKWEEK ORDINANCE**

**1-25-010 Purpose and Intent.**

This Chapter shall be known and may be cited as the "Chicago Fair Workweek Ordinance." It is the purpose of this Chapter and the policy of the City: (i) to enact and enforce fair and equitable employment scheduling practices in the City of Chicago; and (ii) to provide the working people of Chicago with protections that ensure employer scheduling practices do not unreasonably prevent workers from attending to their families, health, education and other obligations.

**1-25-020 Definitions.**

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

"Airport Support Services" means services performed pursuant to a Certified Service Provider License Agreement for operation at Chicago O'Hare International Airport and Chicago-Midway International Airport by persons who are not subject to Title II of the Railway Labor Act (45 U.S.C. 181 *et seq.*).

"Banquet Event" means [placeholder].

"Building Services" means the care and maintenance of property, including, but not limited to, janitorial services, building maintenance services, and security services. This definition does not include on-duty police officers or other government officials performing their official duties.

"Commissioner" means the Commissioner of Business Affairs and Consumer Protection or the Commissioner's designee.

“Covered Employee” means an individual who meets all of the following (a) through (d): (a) performs work for an employer in the capacity of ~~(i) an employee, as distinguished from a contractor, determined pursuant to Internal Revenue Service guidelines, or (ii) a worker for a day and temporary labor service agency, as defined in the Day and Temporary Labor Services Act, 820 ILCS 175/5, who has been on assignment to the employer for XX days;~~ (b) spends the majority 75% of their time at work for that employer while physically present within the City of Chicago, (c) performs the majority of their work in a Covered Industry for that employer, and (d) earns less than or equal to the annual full time equivalent of \$50,000 per year as a salaried employee and who is non-exempt under the Fair Labor Standards Act, or less than or equal to \$XX.00 per hour as an hourly employee, from that employer.

**Comment [JB1]:** Temporary agency staff are employees of the agency; not the Employer they are working at. Trying to include them as covered employees of the retaining employer under this ordinance will create conflicts in how the term “employee” is used in various employment laws.

**Comment [JB2]:** The apparent intent is that the annual salary threshold should be applied to the annual full time equivalent of the employee’s salary, since this provision is intended to prevent employers from avoiding the ordinance by converting hourly employees to an annual salary. A salaried employee who is paid \$50/hour, but only works 1 day per week, should not be covered by the ordinance because they are not a low wage worker, but are paid the equivalent of \$100,000 per year. The annual full time salary threshold should be equal to the hourly rate multiplied by 2080 hours in order to avoid a disparity between hourly and salaried employees.

**Comment [JB3]:** This ordinance should not apply to exempt employees, since they are subject to different requirements under federal labor laws, which take precedence over state and local laws.

**Comment [JB4]:** IHA has discussed this provision with a key Safety net Hospital leader and we wish to discuss it with the Mayor’s office in conjunction with the proposed clarification of Section 50(d)(3).

“Covered Industry” means:

- (1) Airport Support Services;
- (2) Building Services;
- (3) Healthcare;
- (4) Hotels;
- (5) Manufacturing;
- (6) Restaurants;
- (7) Retail; and
- (8) Warehouse Services.

“Department” means the Department of Business Affairs and Consumer Protection.

“Domestic Violence” means abuse, as defined in Section 103 of the Illinois Domestic Violence Act of 1986, 750 ILCS 60/101 *et seq.*

“Employer” means a person who meets all of the following: (a) employs 100 or more Covered Employees who spend 75% of their time at work for that employer while physically present within the City of Chicago, or, in the case of not-for-profit corporations, employs 250 or more Covered Employees who spend 75% of their time at work for that employer while physically present within the City of Chicago; and (b) is primarily engaged in a Covered Industry. Numbers of Covered Employees will be aggregated if they are employed by members of a single unitary business group. For purposes of this subsection, the term “unitary business group” is as defined for Illinois income tax purposes.

“Family member” shall have the definition applied to that term in Section 1-24-010.

“Healthcare” means health care or long-term care facility that requires licensure under one of the following Illinois licensing acts: the Hospital Licensing Act, the Nursing Home Care Act, the Specialized Mental Health Rehabilitation Facilities Act, the Assisted Living and Shared Housing Act, the Life Care Facilities Act, or the Ambulatory Surgical Treatment Center Act.

“Hotel” shall have definition applied to that term in Section 4-6-180.

“Manufacturing” means the production of tangible goods for use from raw or prepared materials by giving the materials new forms, qualities, properties, or combinations, whether by hand-labor or machines.

“Person” shall have the definition applied to that term in Section 1-4-090(e).

“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.

“Regular rate” shall have the definition applied to that term in 29 U.S.C. § 207(e).

“Restaurant” means any business licensed to serve food in the City of Chicago which also has at least 30 locations globally and at least 250 Covered Employees. In determining the number of locations a Restaurant owns or operates, franchisees that operate 3 or fewer locations shall be considered separate from franchisors and other franchisees operating the same brand.

“Retail” means any business that is engaged primarily in the sale of products that are primarily for personal, household, or family purposes, including, but not limited to, appliances, clothing, electronics, groceries, and household items.

“Self-schedule” means the practice of an employee to self-select work shifts without employer pre-approval pursuant to a mutually acceptable agreement.

“Sexual Violence” means any conduct proscribed by Article 11 of the Criminal Code of 2012, as well as the provisions in Article 12 related to stalking, 720 ILCS 5/12-7.3, 12-7.4, and 12-7.5.

“Shift” means the consecutive hours an Employer schedules an Covered Employee to work, [or an Employee self-schedules](#), including Employer-approved meal periods and rest periods.

“Ticketed Event” means a sporting, entertainment, civic, charitable or other event with a ticketed attendance of at least 5,000 people and that requires a ticket for admission. The form of the ticket may be electronic, physical, or as a name on a list held by the event’s ticket auditor.

“Warehouse Services” means the storage of goods, wares, or commodities for hire or compensation, and, in connection with this operation, may include the loading, packing, sorting, stacking, wrapping, distribution, and delivery of those goods.

“Work Schedule” means all of a Covered Employee’s shifts, including specific start and end times for each shift, during a calendar week.

“Writing” or “written” means a printed or printable communication in physical or electronic format including a communication that is transmitted through electronic mail, text message or a computer system or is otherwise sent and stored electronically.

**1-25-030 Application to Collective Bargaining Agreements.**

Nothing in this Chapter shall be deemed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing in order to establish wages or other conditions of work in excess of the applicable minimum standards of the provisions of this Chapter. Nothing in this Chapter shall be deemed to affect the validity or change the terms of bona fide collective bargaining agreements in force on the effective date of this Chapter. After the effective date of this Chapter, the requirements of this Chapter ~~shall not apply to employees covered by~~ ~~may be waived in~~ a bona fide collective bargaining agreement, ~~unless such agreement explicitly adopts the terms of this Chapter but only if the waiver is set forth explicitly in such agreement~~ in clear and unambiguous terms.

**1-25-040 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 Covered Employee’s projected number of days and hours of work for the first ninety days of employment, including:

(A) The average number of weekly work hours the Covered Employee can expect to work each week;

(B) Whether the Covered Employee can expect to work any on-call shifts;

(C) ~~A subset of days and a subset of times or shifts that the Covered Employee can expect to work, or days of the week and times or shifts on which the Covered Employee will not be scheduled to work.~~ The good faith estimate under this section is not a contractual offer binding the Employer, but an estimate made without a good faith basis is a violation of this section.

(2) Prior to or on commencement of employment, the Covered Employee may request that the Employer modify the projected days and hours of work 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 Covered Employee of Employer’s determination in writing within three

business days of the request, or as soon as practicable.

**Comment [JB5]:** Offers are often made far in advance of a start date and managers may be on vacation or on leave when a modification request is received, so some flexibility is needed to reply to such requests.

(b) Advance Notice of Work Schedule.

(1) An Employer shall provide its Covered Employees with written notice of work hours by posting the Work Schedule no later than 10 days before the first day of any new schedule from April 1, 2020, to March 31, 2022, and shall post the Work Schedule no later than 14 days before the first day of any new Work Schedule beginning April 1, 2022, by posting the Work Schedule in a conspicuous place at the workplace that is readily accessible and visible to all Covered Employees within the unit or department. The written Work Schedule shall include the shifts and on-call status of all current Covered Employees at that worksite, unit or department. ~~Additionally, upon written request of a Covered Employee, an Employer shall transmit the Work Schedule by electronic means.~~

**Comment [JB6]:** It is not feasible for a hospital that employees several hundred employees in different department's to post the work schedule so it is visible to all employees.

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(2) An Employer may change a Covered Employee's Work Schedule after it is posted ~~and/or transmitted~~, up to the deadline articulated in subsection (b)(1) without penalty. After that deadline, such changes shall be subject to the notice and compensation requirements set forth in this Chapter.

**Comment [JB7]:** A hospital that employs several hundred employees cannot accommodate individual requests for how to transmit the work schedule. A lack of uniform means of transmission will result in potential claims of a lack of notice of the work schedule.

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(3) Covered Employees who Self-schedule shall not be bound by this Subsection (b), nor shall their Employers.

(4) A Covered Employee who is a victim of Domestic Violence or Sexual Violence or who has a family or household member who is a victim may request that the Covered Employee's Work Schedule not be posted or transmitted to other Covered Employees. A written request shall be sufficient and implemented immediately and is sufficient until the Covered Employee gives written permission to post their schedule. An Employer may request a written statement from the Covered Employee that states that the Covered Employee is a victim or has a family or household member who is a victim. The written statement shall constitute the documentation needed for the Employer to implement the request. The Employer may not require a written statement more than once in a calendar year from any Covered Employee for this purpose.

**1-25-050 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 April 1, 2020, to March 31, 2022, and less than 14 days before the first day of any new schedule beginning April 1, 2022.

(b) *Alterations.* Subject to the exceptions in Subsection (d) of this section, if an Employer alters a Covered Employee's schedule after the deadline articulated in Section 1-25-040(b)(1), in addition to the customary compensation, the Covered Employee shall receive:

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

- (A) adds hours of work, except if the addition is due to an Employee being unable to work and providing less than 24 hours notice to the Employer.
- (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% 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 or as soon as practicable if the schedule change is due to an Employee being unable to work and providing less than 24 hours notice to the Employer.

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

- (1) A Work Schedule change because:
  - (A) of threats to Employers, Covered Employees, or property, or when civil authorities recommend that work not begin or continue;
  - (B) public utilities fail to supply electricity, water, or gas, or the sewer system fails to serve the location of work;
  - (C) of acts of nature (including, but not limited to, flood, earthquake, tornado, heat advisory, or blizzard);
  - (D) war, civil unrest, strikes, threats to public safety, ~~or~~ pandemics, or other causes not within the Employer's reasonable control.

(2) A schedule change 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 change to a Covered Employee's Work Schedule that is mutually agreed to by the Covered Employee and Employer and is confirmed in writing, including but not limited to instances where the Covered Employee requests to be offered additional hours to address unanticipated needs that are outside the control of the Employer provided that the Employer notifies each Covered Employee in writing that the Covered Employee may request, at any time, to no longer be offered additional hours, and that the Covered Employee may decline such hours.

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

(5) An Employer subtracts hours from a Covered Employee's work schedule for disciplinary or investigatory reasons ~~for just cause~~, provided the Employer documents

**Comment [JB8]:** This language is to clarify that an employee may make a standing request to work additional hours.

**Comment [JB9]:** If the employee does not submit the request in writing, then the change would be subject to the penalty. Whether the request must be submitted in writing should be up to the Employer's policy. In some cases, Employers and employees may prefer verbal requests.

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**Comment [JB10]:** At times employees need to be suspended pending the outcome of an investigation in the interests of patient safety. This Ordinance should not discourage such actions.

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the incident leading to the Covered Employee's [investigation or](#) discipline in writing.

(6) A Ticketed Event is cancelled, scheduled, rescheduled, postponed, delayed, increases in expected attendance by 20% or more, or increases in duration, due to circumstances that are outside the Employer's control and that occur after the Employer provides the posted Work Schedule with the notice required by this Section 1-25-050. Additional hours due to a change in a ticketed event's duration that fall within this exemption will also be fully exempt from this Section.

(7) A Banquet Event is scheduled or rescheduled under circumstances that are outside the Employer's control, the attendee counts increase by more than 20%, or a new banquet event is scheduled within 48 hours of the event occurring, after the Employer provides the posted Work Schedule.

(8) When Covered Employees Self-schedule.

(9) When, in Manufacturing, events outside of the control of the manufacturer result in a change in the need for Covered Employees, including, but not limited to, when a customer requests the manufacturer to delay production or there is a delay in the receipt of raw materials or component parts needed for production.

(10) This section shall not apply to a Healthcare Employer in (i) any declared national, State, or municipal disaster or other catastrophic event, or any implementation of an Employer's disaster plan, [incidents causing a hospital to activate its Emergency Operations Plan, or any other circumstance outside the control of the Employer,](#) that will substantially affect or increase the need for healthcare services; or (ii) any circumstance in which patient care needs require specialized skills through the completion of a procedure.

**Comment [JB11]:** Hospitals are required to have an Emergency Operations Plan (EOP) which describes how a facility will respond to and recover from all hazards. Based on a recent IHA survey, hospitals have activated their EOPs to respond to active shooter and bomb threats, loss of utilities at the facility, flooding, decontamination, and natural disasters.

**Comment [JB12]:** If manufacturers have this exception under #9, hospitals should have equal treatment, especially given the potential harm to access to health care.

**1-25-060 Offer of Additional Work Hours to Existing Employees.**

(a) Subject to the limitations in this Chapter, when an Employer needs to fill additional shifts of work, the Employer shall first offer additional shifts of work to existing Covered Employees if the Covered Employees are qualified to do the additional work, as determined by the Employer. ~~If offered shifts are not accepted by Covered Employees, the shifts shall be offered to temporary or seasonal workers who have worked on behalf of the Employer for two or more weeks.~~

**Comment [JB13]:** This ordinance should not dictate Hospitals' hiring decisions. A hospital may determine that a new candidate is more qualified than an existing part time employee or a person from a staffing agency. Hospitals are legally obligated for assuring the quality of care provided to their patients. They must have the discretion to employ the best qualified employees to meet that obligation.

(b) An Employer shall distribute additional shifts in compliance with Subsection (a), 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, or marital or familial status;

(2) the Employer may not discriminatorily refrain from increasing the hours of Covered Employees to avoid changing their status from part-time to full-time employees.

(c) This section shall not be construed to require any employer to schedule employees to work hours required to be paid at an [overtime or any other](#) premium rate.

(d) Notwithstanding any provision in this section, a healthcare employer may offer additional shifts to or hire an employee based on the employer's sole determination of who is the best qualified employee.

**Comment [JB14]:** This ordinance should not dictate Hospitals' hiring decisions. A hospital may determine that a new candidate is more qualified than an existing part time employee or a person from a staffing agency. Hospitals are legally obligated for assuring the quality of care provided to their patients. They must have the discretion to employ the best qualified employees to meet that obligation.

**1-25-065 Increased permanent hours.**

An Employer with a need for ongoing, non-temporary additional work hours may hire new employees only after determining that it has more work hours available than it does work hours desired by its qualified Covered Employees, or its Covered Employees do not have the qualifications necessary to perform the new work available. This section shall not be construed to require any employer to schedule employees to work hours required to be paid at a premium rate. Notwithstanding any provision in this section, a healthcare employer may offer additional shifts to or hire an employee based on the employer's sole determination of who is the best qualified employee.

**Comment [JB15]:** This ordinance should not dictate Hospitals' hiring decisions. A hospital may determine that a new candidate is more qualified than an existing part time employee or a person from a staffing agency. Hospitals are legally obligated for assuring the quality of care provided to their patients. They must have the discretion to employ the best qualified employees to meet that obligation.

**Comment [JB16]:** See above comment.

**1-25-070 Right to Rest.**

A Covered Employee has the right to decline Work Schedule hours that are less than 10 hours after the end of the previous day's shift.

**1-25-080 Right to Request a Flexible Working Arrangement.**

A Covered 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 Covered 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 a Covered Employee for exercising rights under this Section. The Employer may consider any such request, and in its sole discretion may accept or reject the request, provided that the Employer shall notify the Covered Employee of Employer's determination. All such requests and responses to requests shallshould be made in writing by the Employer.

**Comment [JB17]:** Redundant with Section 100.

**1-25-090 Notice and Posting.**

(a) Every Employer shall post in a conspicuous place in each facility where any Covered Employee works that is located within the geographic boundaries of the City using the usual and customary methods of communications to Employees a notice advising the Covered Employees of their rights under this Chapter. The Commissioner shall prepare and make available a form notice that satisfies the requirements of this Subsection 1-25-090(a).

(b) Every Employer shall provide with the first paycheck subject to this Chapter a notice advising the Covered Employee of their rights under this Chapter. The Commissioner shall prepare and make available a form notice that satisfies the requirements of this Subsection 1-25-090(b).

**Comment [JB18]:** Most employees use direct deposit of pay checks. This notice requirement is covered by subsection (a).

(c) All notices and postings that name individual Covered Employees shall comply with Section 1-25-040.

**1-25-100 Retaliation prohibited.**

(a) It shall be unlawful for any Employer to discriminate in any manner or take any adverse action against any Covered Employee in retaliation for exercising any right under this Chapter, ~~including, but not limited to, disclosing, reporting, or testifying about any violation of this Chapter or rules promulgated thereunder. For purposes of this Section, prohibited adverse actions include, but are not limited to, unjustified termination, unjustified denial of promotion, unjustified negative evaluations, punitive schedule changes, punitive decreases in the desirability of work assignments, and other acts of harassment shown to be linked to such exercise of rights.~~

**Comment [JB19]:** A laundry list of potential retaliation simply creates ambiguity in what is prohibited. Such decisions are best left to a court to decide.

(b) A violation of this section shall subject the Employer to a \$1,000 fine.

**1-25-110 Avoidance of Application.**

It shall be unlawful for an Employer to interfere with, restrain, deny, change work days or hours scheduled, or hire, rehire, terminate, or suspend, even temporarily, an Employee to avoid coverage under this Chapter.

**1-25-120 Enforcement – Rules.**

The Department shall administer and enforce this Chapter and is authorized to adopt rules to effectuate that administration and enforcement.

**1-25-130 Violation – Penalty.**

Any Employer who ~~engages in a repeated pattern or practice of violating~~ this Chapter or any rule promulgated thereunder shall be subject to a fine of not less than \$300.00 nor more than \$500.00 for each offense. ~~Before imposing such a fine, the City shall first provide the opportunity for the Employer to enter into a corrective action plan to come into compliance with this Chapter.~~ Each Covered Employee whose rights are affected shall constitute a separate and distinct offense to which a separate fine shall apply. Each day that a violation occurs shall constitute a separate and distinct offense to which a separate fine shall apply. Any agreement between the Employee and Employer that would violate this Chapter is no defense to an enforcement action.

**1-25-140 Private cause of action.**

(a) If an Employer engages in a repeated pattern or practice of ~~violating~~ this Chapter, the affected Covered Employee may initiate a civil action if the Covered Employee has complained about the violation to the City in accordance with this Chapter and rules promulgated thereunder, and the Commissioner has issued a letter to the Covered Employee that the Department will not be seeking enforcement in the matter, or 90 days have passed after a documented complaint to the City and the City has not responded.

(b) Any claim or action filed under this Chapter must be made within six months ~~two years~~ of the alleged conduct resulting in the complaint.

(c) A Covered Employee who prevails in a civil action pursuant to this section shall be entitled to an award of compensation for any damages sustained, including the payment of Predictability Pay unlawfully withheld, as a result of the violation, including litigation costs, expert witness fees, and reasonable attorney's fees up to a maximum of \$2,500 per civil action.

**Comment [JB20]:** IHA supports the Employer community's position that this section should be deleted and enforcement should be with the City. Litigation will be used to harass employers and generate attorney's fees.

If this section is retained, at a minimum, the changes proposed in this section must be included.

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**1-25-150 Non-exclusive Remedy.**

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 Chapter.

**1-25-160 Retention of Records.**

Each Employer shall maintain for at least ~~3~~ 3 months ~~years~~, or for the duration of any claim, civil action, or investigation pending pursuant to this Chapter, whichever is longer, a record of each Covered Employee's name, hours worked, pay rate, and records necessary to demonstrate compliance with this Chapter, including but not limited to good faith estimates of work schedules, 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 offers of hours of work to existing staff and responses to such offers. Each Employer shall provide each Covered Employee a copy of the records relating to such Covered Employee upon the Covered Employee's reasonable request.

**1-25-170 Access to Work Site.**

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.

**1-25-180 Evaluation.**

The Commissioner shall study the effect of this Chapter and report to the City Council by September 30, 2021.

**SECTION 2.** Following due passage and publication, this ordinance shall be in full force and effect on July 1, 2020.

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Susan Sadlowski-Garza  
Alderman, 10th Ward

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Michael D Rodriguez  
Alderman, 22nd Ward

DRAFT