

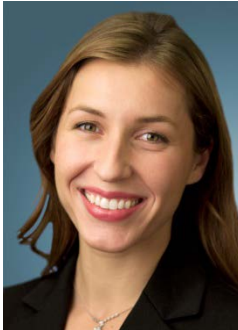


# Stick to the Schedule:

Seattle's Secure Scheduling Ordinance and You



## Presented by



**Gillian Murphy | PARTNER | SEATTLE**

[gillianmurphy@dwt.com](mailto:gillianmurphy@dwt.com)

206.757.8109



**Laura Turczanski | ASSOCIATE | SEATTLE**

[lauraturczanski@dwt.com](mailto:lauraturczanski@dwt.com)

206.757.8181



# Seattle Secure Scheduling Ordinance



- Goes into effect July 1, 2017
- Applies to large retail and food service employers
- Requires employers to provide employees with advance notice of work schedules and pay for schedule changes, among other things



# Covered Employers

- The Secure Scheduling Ordinance applies to **Retail** and **Food Service** employers with 500+ employees worldwide.
  - Full-service restaurants – only covered if 40+ locations worldwide
- Includes franchises, chains, and integrated enterprises
- Coverage based upon employer's 2012 North American Industry Classification System (NAICS) code.
  - Retail: NAICS Code 441 through 453998
  - Food Service: NAICS Code 722
- If in doubt, check your NAICS code at <http://www.seattle.gov/licenses/find-a-business>



# Covered Employees

- Hourly employees
- Who report to work at a fixed point of sale location in Seattle
  - Note: Includes public and non-public areas of the point of sale location (e.g., stockroom), but does not include separate location (e.g., warehouse or distribution center) if those employees do not work in the point of sale location.
- For at least 50% of their work time
- Exclusions: does not include hourly administrative employees such as human resources, receptionist, etc.



# Overview of Requirements

- Good Faith Estimate of Hours
- 14-Day Notice of Work Schedule
- Right to Request Input into Schedule
- 10 Hours of Rest Between Shifts
- Premium Pay for Schedule Changes
- Offer Hours to Current Employees



# Good Faith Estimate

Employer must provide a “good faith estimate” of the median number of hours an employee is anticipated to work each week

- Must cover one year, divided into three-month periods
- Must state whether employee is expected to work on-call shifts

Good faith estimate must be provided

- (1) at time of hire;
- (2) annually thereafter; and
- (3) if “significant change” of 30% or more.

## Implementation Note:

Employers must provide good faith estimate to all current employees by September 28, 2017.



# 14-Day Advance Notice of Work Schedule

- Employer must provide work schedule **14 days in advance**
- Exceptions for “new and returning employees.” These employees may be placed on all currently posted schedules without advance notice.







# Right to Request Input into Schedule

- Employee may request certain days, times, or locations of work **before** the schedule is posted.
- Employee must follow employer’s usual and customary policies for schedule requests.
  - Tip: If you don’t currently have a policy for schedule requests, now is a good time to create one.
- If request is due to “major life event,” employer must provide response in writing and must grant the request unless employer has a “bona fide business reason” to deny the request.





# Right to Request Input into Schedule

- Major life event:
  - transportation,
  - housing,
  - employee's serious health condition,
  - responsibilities as caregiver,
  - educational or training program, or
  - other job(s).
- Employer can request verifying information, but very limited
- Bona fide business reason:
  - Significant & identifiable burden of additional costs
  - Would cause employer to violate administrative rule or collective bargaining agreement
  - Would require employer to pay premium pay
  - Would require employer to displace another employee from previously established schedule



# 10 Hours of Rest Between Shifts



- Employer cannot schedule employee for “clopening” shift (shift separated by less than 10 hours over two days) without employee consent.
- Employer must pay premium pay of 1.5x the scheduled rate of pay for any hours less than 10 hours apart.
- Employee can provide ongoing consent for clopening shifts, but must be able to revoke consent at any time (effective for next posted schedule)
- **Recommendation:** obtain consent in writing and maintain in employee’s file

# Example: Right to Rest Between Shifts

- Employee Jane works a closing shift on Thursday night, ending at 11:00 p.m.
- Jane works Friday morning at 7:00 a.m.
- Jane has consented to work shifts separated by less than 10 hours.
- Is Jane entitled to premium pay?



Yes. Jane's shifts are separated by only 8 hours, so Jane is entitled to be compensated at 1.5x her scheduled rate of pay for the first two hours of her shift on Friday.



# Premium Pay for Schedule Changes and On-Call Shifts

---

Employer must provide “timely notice” of work schedule changes that occur after the schedule has been posted

Employee may decline any hours not on original schedule

---

Employer must pay “premium pay” for employer-requested schedule changes unless an exception applies

Adding hours (or schedule change w/ no loss) = one hour of premium pay at scheduled rate of pay (can be pro-rated).

---

Subtracting hours = 0.5 times the hours reduced times at scheduled rate of pay

---

On-call shifts = 0.5 times the hours on-call but not worked at scheduled rate of pay

---

15-minute grace period before premium pay applies



# Exceptions to Premium Pay

## Exceptions

Employee-requested changes

Shift swaps

Access to hours

Discipline

Operations cannot begin or continue

Mass communication

In-person group communication



# Exceptions to Premium Pay – Mass Communication and In-Person Communication

## Mass Communication

- Written message sent to 2+ employees about availability of additional hours due to a scheduled employee not being able to work
- Must indicate:
  - (1) mass communication;
  - (2) voluntary/right to decline;
  - (3) no premium pay

## Group Communication

- Discussion with 2+ employees about extending shift due to unanticipated customer needs.
- Must indicate:
  - (1) voluntary/right to decline;
  - (2) no premium pay



## Example: Exception to Premium Pay

- On a very sunny day, a restaurant decides to open the patio and needs additional servers beyond their currently scheduled staff.
- The manager sends a text message to a group of servers seeking volunteers to come into work. Is premium pay required?



Yes. The mass communication exception only applies when a scheduled employee is unable to work. It cannot be used to fill additional shifts due to unanticipated business needs.





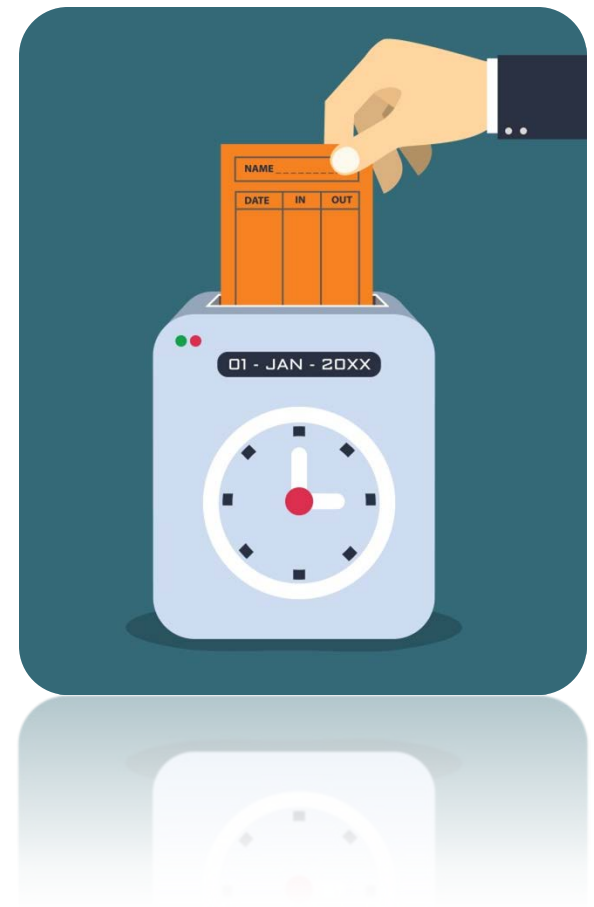
## Example: Exception to Premium Pay

- On a slow day, the manager gathers all cashiers together and let's them know that if anyone wants to go home early, to let the manager know. One employee tells the manager she would like to be sent home early.
  - Is premium pay required?
- Yes. This is considered an employer-initiated schedule change because the employer – not the employee – initiated the conversation, even though the employee later volunteered.
  - There is no in-person group communication exception for reducing hours, so the employee would be entitled to premium pay.



# Access to Hours: Offering Hours to Current Employees Before Hiring

- Before hiring new employees, employer must offer additional hours of work to current employees
  - Must post information about available hours internally for three days.
- If qualified current employee expresses interest, must offer job to employee. The employee has two days to consider the offer.
  - Employer determines whether employee is qualified and employer decides which employee(s) receives hours.





# Access to Hours - Exceptions

Can avoid waiting three days if receive written declination from



(1) all current employees or



(2) all employees on an access to hours list.

Access to Hours List:



Employer can choose to maintain one or more lists (e.g. could have “server” list and “dishwasher” list). All employees must be placed on each list, but they can opt-out of any list.

Diversity Hiring programs:



Employer can hire certain number of employees through diversity hiring programs (with specific requirements)



# Record keeping requirements

- Employer must keep the following records for three years:
  - Good faith estimates
  - Employer's response to employee's schedule request related to major life event
  - Work schedules
  - Payroll records showing premium pay
  - Exceptions to compensation for work schedule changes
  - Notices for additional hours of work and declinations, if applicable
  - Access to hours list(s) (plus any opt-outs)



# Additional Requirements and Information

## Poster

- Expected to be posted on OLS website soon. Must be posted in English and employees' primary language(s) (translations available from OLS).
- Other documents required to be provided in multiple languages: good faith estimate, notice of schedule, access to hours notice

## No retaliation

- Cannot retaliate against employees

## Waiver

- Allowed only through CBA

## Enforcement

- Employee can bring private action and recover up to 3x unpaid wages, plus attorney's costs and additional penalties for retaliation
- OLS has announced "soft launch" of Ordinance from July 1, 2017 through December 31, 2017

# Next Steps and Recommendations

- Post first possible July schedule 14-days in advance (e.g., if next schedule starts July 17, post by July 3).
- Provide premium pay for schedule changes (unless exception applies) for any changes after first schedule has been posted.
- Provide new employees with good faith estimate at time of hire
- Provide current employees with good faith estimate by Sept. 28
- Create policy for schedule change requests
- Post OLS poster as soon as available
- Determine how to document exceptions, employee consent





Questions?

