

Seattle's Secure Scheduling is Here! *Now What?*

Today's webinar will
begin shortly. We are
waiting for attendees
to log on

Presented by:

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What's on Today's "Menu"?

1. **What's Happening?**
2. **Who's Covered?**
3. **The New Interactive Process**
4. **Exceptions**
5. **Retaliation**
6. **How Much Will It Cost Me?**



WHY?



“[T]o establish predictable work schedules that advance race and social equity, promote greater economic security, further the health, safety and welfare of employees, create opportunity for employee input into scheduling practices, and create a mechanism for employees to obtain access to additional hours of work before the employer hires new employees from an external applicant pool or subcontractors, including hiring through the use of temporary services or staffing agencies.”



“Secure scheduling helps working families, young people, students, and workers of color by providing stability and clarity to their work schedule.” - Mayor Ed Murray



“The city’s survey showed that many hourly employees in Seattle are already satisfied with how their employers handle scheduling, so we will continue to work closely with our members to ensure that the rules do not negatively impact the flexibility their employees value.”

- Meadow Johnson, Seattle Metro Chamber of Commerce

Who's Covered?



Who's Covered? Employers

- **"Retail establishment"** means the fixed point-of-sale location of a store retailer, as defined under the 2012 North American Industry Classification System ("NAICS") 441 through 453998.
- <https://www.sba.gov/contracting/getting-started-contractor/determine-your-naics-code>.

Who's Covered? Employers

- **“Food services establishment”** means the fixed point-of-sale location fixed point of sale location for food services contractors; caterers; mobile food services; drinking places (alcoholic beverages); full service restaurants; limited-service restaurants; cafeterias, grill buffets, and buffets; and snack and nonalcoholic beverage bars, as defined under the 2012 North American Industry Classification System ("NAICS") 722.

Who's Covered? Employers

“**Fixed, Point of Sale Location**” means the location where

- The employee works, or
- The employee reports to work, and
- Refers to the **entirety** of such location, including areas open and closed to the public.



Who's Covered? Employers

Joint Employers

Joint (Integrated) Enterprises

Joint and Several Liability



Who's Covered? Employees



- Hourly employee works 50% of the time at the Employer's "fixed, point of sale location" in Seattle
 - Existing Employees: Look at hours worked the previous year
 - New Employees: Reasonable expectation of hours in the upcoming year

Who Isn't Covered? Employees

- Employees who work in hourly administrative or professional positions (e.g., human resources, payroll, receptionist)



Employee “Rights”

- Right to request input into the work schedule
- Right to rest between work shifts
- Right to advance notice of work schedule
- Right to compensation for work schedule changes
- Right to decline additional hours
- Right to additional hours before the employer can hire more
- Right to no retaliation

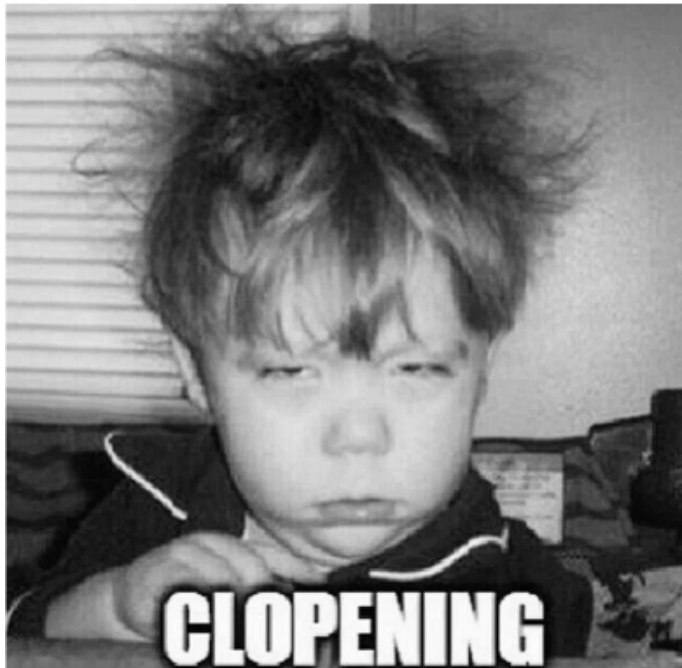


Good Faith Estimates and Schedule Notice



- ✓ Employers must give a “**good faith estimate**” of median hours and if on call work is expected at hire
- ✓ The GFE must be revised once/year, unless there is a “significant change” sooner
- ✓ Employers also must give employees their schedules 14 days in advance.

Sleepless in Seattle?



Regardless of request or consent, employers **must always** pay time-and-a-half for the hours separated by less than 10 hours.

What about On-Call Employees?

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50%
OFF



50%
OFF

What are the Exceptions?

- ✓ When an employee requests changes to a schedule (e.g. when an employee requests to leave work early to attend a concert.)
- ✓ Employee-to-employee volunteer shift swaps.

What are the Exceptions?

- ✓ Employee acceptance of a schedule change in response to a "**mass communication**" from the employer about additional hours due to a scheduled employee not being able to work seeking volunteers.
 - But employees may opt out of/back into receiving mass communications
- ✓ Employee acceptance of a schedule change in response to an "**in-person group communication**" initiated by the employer with two or more currently working employees about additional hours due to unanticipated customer needs seeking volunteers
 - But hours must be consecutive

What are the Exceptions?

- ✓ Employee acceptance of an offer of hours under the "**access to hours**" provision.
- ✓ Employer's **inability to begin or continue operations** due to
 - (1) threats to employees or property;
 - (2) recommendation of public official;
 - (3) public utilities failure;
 - (4) natural disaster;
 - (5) weather event; or
 - (6) an event that would cause the employer to violate a law.



The New Interactive Process . . .

When an employee requests a schedule change . . .

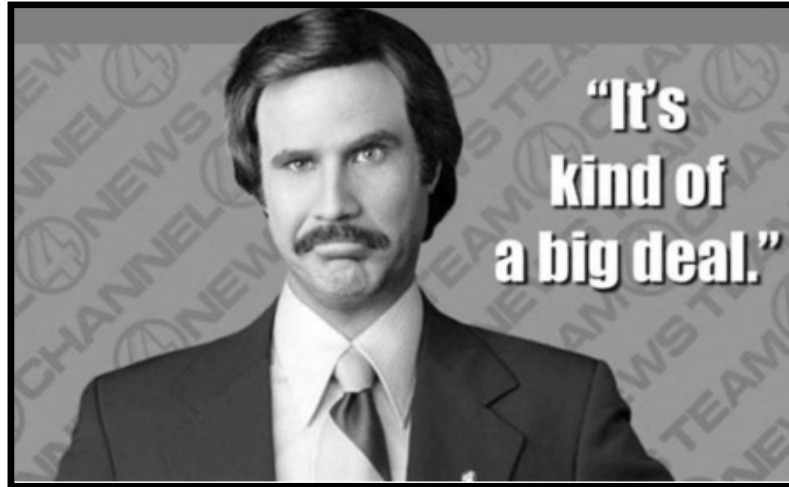
- ✓ If **not due to a major life event**, you must engage in an interactive process. You can grant or deny the request for any reason that is not unlawful.
- ✓ If **due to a major life event**, you must engage in an interactive process with the employee.
 - **You have to grant major-life-event requests unless:**
 1. You have a bona fide business reason for denial;
 2. You provide a written response; and
 3. The response explains the bona fide business reason for the denial.
 - Failure to provide written response = **\$500**



Major Live Event Means . . .

- Change 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.

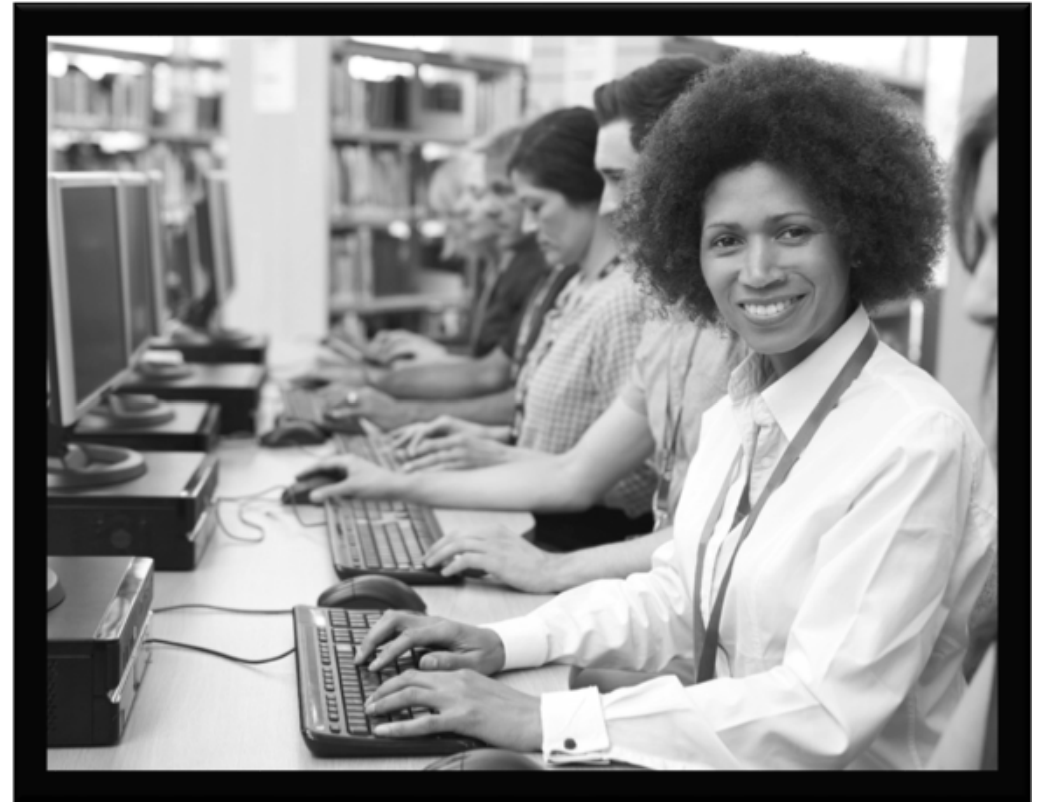
Major Means “Major”



- A foreseeable or unforeseeable event that a reasonable person believes:
- Is important, serious, or significant; and
 - Impacts the employee's access to the workplace on a long-term, short-term, or on-going basis.

“Career-related education or training program”

Covers programs that advance the employee’s chosen pursuit, profession, or occupation in *the same or different line of work for the same or different employer.*



So What's A “Bona Fide Business Reason”?

- ✓ A work schedule change that would require an employer to pay **additional compensation** under the Secure Scheduling Ordinance, the FLSA, the Minimum Wage Act, or the employer's own policy (e.g., holiday pay).
- ✓ An action that would cause the employer to **displace one or more employees** from an existing work schedule arrangement.
- ✓ An action that would cause the employer to **violate an administrative rule**.

So What's A “Bona Fide Business Reason”?

- ✓ An action that would cause the employer to provide a work schedule that conflicts with a seniority system in a written policy or CBA.
- ✓ An action that would cause the employer to violate a bona fide CBA.



So What's A “Bona Fide Business Reason”?

A change that would result in “**significant and identifiable burden of additional costs to the employer**” when considering:

- The nature and cost of the requested scheduling change;
- The overall financial resources of the location/s providing the change;
- The number of persons employed at such location/s;
- The effect on expenses and resources;
- The overall financial resources of the covered employer;
- The overall size of the with respect to the number of its employees;
- The number, type, and location of its facilities;
- The type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity;
- The geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

So What's A “Bona Fide Business Reason”?

- Employer's reduction of employee hours due to bona fide employee discipline.
 - Discipline reason must be documented (presumably in advance of denial), or
 - The employee is not currently in good standing due to a bona fide employer documented discipline or improvement plan.



How will this “interact” with the existing Interactive Process?



What is “Access to Hours”?



What is “Access to Hours”?



Employee Notice must include:

- Description and title of the position;
- Required qualifications for the position;
- Total hours of work being offered;
- Schedule of available work shifts;
- Whether the available work shifts will occur at the same time each; and
- Length of time the employer anticipates requiring coverage of the additional hours.

What is “Access to Hours”?







“Hiring Programs” are excluded, such as for

1. Diversity;
2. Supported employment hiring programs; or
3. Young adult hiring programs, affiliated with a government entity or external non-profit organization that has been approved subject to the rules of the Director or is a program that meets the eligibility criteria for the Work Opportunity Tax Credit as defined by the Department of Labor.

But . . .

- **No more than 15%** of covered employees at one or more fixed, point of sale location or locations may be hired this way.
- Must file notice and get approval from OLS.

No Retaliation Zone

-  Employers may not interfere any right protected by Secure Scheduling.
-  Employees have the right to decline any hours not on the originally posted schedule.
-  Employers may discipline an employee for abuse of the employer's reasonable notification and job requirements for employee-requested work schedule changes or for failing to comply with employers' compliant changes
-  ... provided such changes are not due to a reason covered by another local, state or federal law (e.g. Paid Sick and Safe Time, disability accommodation).

No Retaliation Zone



Rebuttable Presumption:

- If the employer or any other person takes an adverse action against a person within **90 calendar days** of the person's exercise of Secured Scheduling.
- To avoid, the employer must prove that the action would have been taken in the absence of this protected activity

I Changed the Schedule. What'll it Cost Me?

- ✓ “Anyone” can make a report to OLS
- ✓ OLS enforces through investigation; 3 year statute of limitations
- ✓ Written findings of fact and conclusion if violation
- ✓ Penalties (per published schedule)
- ✓ Liquidated Damages (up to twice the unpaid compensation)
- ✓ Interest (12%)
- ✓ “Corrective Actions”
- ✓ Monitored compliance
- ✓ Determine compensation owed to employees
 - During investigation, OLS can make employer deposit bond based on their estimate of compensation, interest, damages and penalties due



I Changed the Schedule. What'll it Cost Me?

- ✓ If an employer adds hours within the 2 week window, the employee is paid for one additional hour of “**predictability pay.**”
 - But . . . does not apply when an employee consents to work additional hours, on less than 14 days’ notice, when the employee is accepting a long-term schedule change based on an access to hours posting.
- ✓ **Show up pay.** If an employee is scheduled for a shift and sent home early, the employee is paid for half of the hours not worked.



I Changed the Schedule. What'll it Cost Me?

- ✓ Employer hires new part-time employees instead of offering additional shifts to existing part-time employees.
- ✓ Fines – \$500 (See Schedule in SMC 14.22)
- ✓ Penalties
 - ✓ If willful: \$750 for first violation, \$1000 each thereafter
 - ✓ To employee: \$500; \$1000; \$5000 up to \$20,000 per employee
 - ✓ A “violation” includes entering Settlement Agreement with OLS
- ✓ Claim for compensation by employees who were denied additional shifts?



I Changed the Schedule. What'll it Cost Me?

- ✓ Employees have a **right to decline** any shift added to their schedule within 2 week notice period without fear of retaliation from their employer.
- ✓ Fine-\$1000 per employee
- ✓ If retaliation occurs, OLS can order:
 - Back pay
 - Reinstatement/front pay
 - 12% interest
 - Penalty payable to employee of up to \$5K



Other Secure Scheduling Traps

✓ “Pattern or practice of underscheduling”

“The employer shall 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*”



Other Secure Scheduling Traps

- ✓ Recordkeeping Requirements
- ✓ Poster and Translation Requirements
- ✓ Waivers (don't get too excited)
 - CBAs only.



Hypothetical . . . Truman

- Truman is one of your best sales associates at your Downtown Seattle store; he is usually scheduled for the closing shift.
- A week before Christmas, on Friday (around dinner time), Trudy calls in sick for her Saturday morning shift.
- Truman, who is closing that night and knows Trudy, tells you that he is happy to cover Trudy's Saturday morning shift.
- Truman was only scheduled to work 25 hours that week.
- What do you/can you do?

Hypothetical . . . Steve

- Long time server Steve works Wed-Sat. He comes to you and says that he needs Saturdays off for the foreseeable future because he is taking computer animation classes to pursue his life long dream of becoming a computer animator.
- He says he is willing to move to the Sunday brunch shift, which pays about the same.
- Giving Steve Saturdays off means that you have to either move someone who works nights to a Saturday brunch shift or someone that works Sunday brunch to Steve's shift.
- What do you/can you do?

Hypothetical . . . Steve

- Tell Steve he was hired for the Saturday shift, so you are sorry, but that means you'll have to let him go.
- Tell Steve that you don't have the budget to hire another server to cover for him, so he has to work Saturdays or he's fired.
- Ask if Sally is willing to swap her Sunday shift for Steve's Saturday shift.
- Tell Sally she will now be working Saturdays instead of Sundays.
- Post the Sunday position internally

Hypothetical . . . Anne

- Anne is your sous chef.
- Anne comes to you and says that she has to take a second job because you haven't given her a raise in 2 years.
- Anne tells you she wants weekends off so she can work her new second job as the sous chef at your key competitor!
- What do you/can you do?

Final Questions?

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