

# THE LOS ANGELES FAIR WORK WEEK ORDINANCE – 10 KEY POINTS RETAIL EMPLOYERS NEED TO KNOW

Insights

Dec 1, 2022

Los Angeles is set to strengthen protections for retail workers in a sweeping law known as the Fair Work Week Ordinance, which the city council approved on November 29. [The ordinance](#) — which is expected to impact about 70,000 retail and grocery workers in Los Angeles — aims to improve working conditions by providing more predictable schedules. If approved by the mayor, the ordinance will take effect in April 2023 and will apply to retail businesses with at least 300 employees globally. Here's what you need to know and what you can do to prepare for the ordinance to ultimately become law.

## Who is Covered?

First, here's how [the ordinance](#) defines a covered "employee," "employer," and "work schedule":

- **Employee:** Any individual who performs at least two hours of work within the geographic boundaries of Los Angeles in a particular workweek and who qualifies as an employee entitled to receive minimum wage under California Labor Code § 1197 and the California Industrial Welfare Commission wage orders.
- **Employer:** Any retail business that has at least 300 employees worldwide, including through a temporary service or staffing agency and is identified as a retail business in the [North American Industry Classification System \(NAICS\)](#) within the retail trade categories and subcategories 44-45.

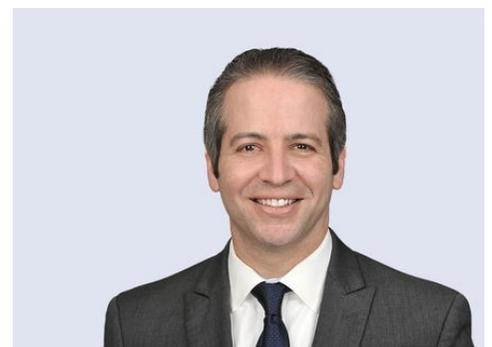
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- **Work schedule:** The schedule of the hours, days, and times — including on-call shifts — when an employer requires an employee to work or be available to work.

## What Will the Ordinance Require?

Here are the 10 key requirements that retail employers should note about this pending ordinance:

1. **Good faith estimate:** Before hiring a job applicant, you'll need to provide the potential new hire with a written "good faith estimate" of their work schedule. Additionally, you'll have to provide the same information within ten days of an employee's request. While the good faith estimate is not a binding contract, if an employee's actual work hours substantially deviate from the estimate, the employer must have a documented, legitimate business reason for the change that was unknown when the estimate was provided to the employee.
2. **Right to request changes to work schedules:** Covered employees have the right to request preferred hours, times, or work locations. The employer may accept or decline requests, so long as the employee is notified in writing of the reason for any denial.
3. **Work schedule:** Employers must provide 14 days advance notice of the employee's work schedule by either:
  - posting the work schedule in an accessible location visible to all employees; or
  - transmitting the work schedule electronically or through another method reasonably calculated to provide actual notice to the employee.

Further, employees must provide written notice (which includes electronic communication) to an employee for any subsequent changes to the work schedule. Employees have the right to decline any hours, shifts, or work location changes not included in the work schedule. If an employee consents to work hours or shift changes not included in the work schedule, the consent must be voluntary and in writing.

4. **Current employees receive priority for additional work:** Employers are required to offer current employees

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additional hours of work prior to hiring a new employee or temporary worker or using a staffing agency if:

- at least one employee is qualified to do the work; and
- the additional work hours would not result in overtime under California Labor Code § 510.

Employers must make this offer either in writing or by posting the offer in an accessible location visible to all employees at least 72 hours before hiring a new employee or engaging a staffing agency or temporary worker. Employees have 48 hours to accept the offer of additional hours in writing.

If you receive written confirmation from all employees during the 72-hour waiting period stating that they are not interested in accepting the additional hours of work, you may immediately proceed with hiring new employees or retaining a contractor, temporary service or staffing agency. If more current employees accept the offer to work than hours are available, you may assign the hours using a fair and equitable distribution method (or as specified in the forthcoming rules and regulations). An employee who accepts the offer for additional hours is not entitled to predictability pay (see below) for those hours if it results in a schedule change.

**5. Predictability pay:** Employers must provide employees with “predictability pay” for last-minute schedule changes or canceled shifts. Employers will owe one hour of pay —calculated on an hourly basis at the employee’s regular rate of pay — for any changes in time, date, or location that do not cut the employee’s work time or add more than 15 minutes to their schedule. If you reduce the scheduled time by 15 minutes or more, you will also owe half the employee’s regular rate of pay for time not worked. This compensation is in addition to any wages earned for work performed by that employee. Predictability pay is not required if:

- the employee requests the schedule change;
- the employee voluntarily accepts the schedule changes either due to another employee’s absence or when offered additional work hours;

- the employee's hours were reduced as a result of the employee's violation of law or the employer's policies;
  - the employer's operations are compromised under law or due to *force majeure*; or
  - when extra hours would result in overtime payments.
6. **Coverage for missing work shift:** Employees are not required to find coverage for scheduled hours if they are unable to work for a reason protected by law.
7. **Rest between shifts:** Employers are required to give workers at least 10 hours of rest between shifts unless they receive an employee's written consent. Furthermore, you must provide a premium of 1.5 times the regular rate of pay for each shift not separated by at least 10 hours. This rule applies to "closures" when employees are scheduled to close a store and return the next morning for its opening.
8. **Record retention and inspection:** You will have to retain the following records for current and former employees for at least three years:
- work schedules for all employees;
  - copies of written offers to employees for additional work hours and written responses from employees;
  - written correspondence with employees regarding work schedule changes, including requests, approvals, and denials;
  - a good faith estimate of hours provided to new and existing employees; and
  - any other records the designated administrative agency may require to demonstrate compliance. Employers must provide timely access to these records to the agency.
9. **Posting requirements:** You will need to post the city's forthcoming notice to inform employees of their rights. Posters must be in English, Spanish, Chinese (Cantonese and Mandarin), Hindi, Vietnamese, Tagalog, Korean, Japanese, Thai, Armenian, Russian, Farsi, and any other language spoken by at least five percent of employees at the worksite.

10. **Penalties:** Employers could be fined up to \$500 per penalty for violating the ordinance, and the fine will be payable to the employee.

### **What Should Los Angeles Employers Do?**

You should note that the Fair Work Week Ordinance still needs to be approved by the mayor. However, if you are covered by the ordinance's definition of "employer," you should start developing a game plan to implement these likely changes — particularly the work schedule and predictability pay requirements. Employers doing business in Los Angeles should closely examine your scheduling practices and policies, as you will likely need to revise your policies, possibly introduce new software, and train your managers.

You should also review your servicing or contracting agreements with any staffing or temporary agencies to ensure compliance with the new law once it's finalized. Additionally, you should ensure compliance with record retention procedures and posting requirements. Finally, be sure to communicate these potential changes to managers and make sure your payroll department is aware of the potential need to handle predictability pay.

### **Conclusion**

We will continue to monitor events and provide updates as warranted, so make sure you are signed up to receive [Fisher Phillips' Insights](#) directly to your inbox to get the latest information about the future of the Los Angeles Fair Work Week Ordinance. If you have any questions regarding how to position your organization to comply with the expected requirements, please consult your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Los Angeles office](#).