



"Predictable Scheduling" Concept Gaining Momentum

Insights

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In late January, we reported on U.S. Wage and Hour Division Administrator David Weil's comments that the agency is considering whether the federal Fair Labor Standards Act somehow entitles employees to "predictable scheduling". His remarks related to whether there is an enforceable right to a stable work schedule and to advance notice of that schedule.

Perhaps not surprisingly, it turns out that his remarks were a harbinger of apparently-coordinated efforts to press for legally-mandated scheduling requirements.

The Campaign Begins

It is most unlikely to be coincidence that, following Administrator Weil's statements:

- ◆ There have been multiple news reports in recent days of inquiries by New York's Attorney General into the allegedly "increasingly unpredictable and on-call work schedules" of a number of that state's retail employers (prior to assuming her current position, the U.S. Labor Department's Solicitor M. Patricia Smith was New York's Commissioner of Labor);
- ◆ The Economic Policy Institute released a "Briefing Paper" tellingly entitled, "Irregular Work Scheduling And Its Consequences", the conclusions and recommendations of which come as no surprise; and
- ◆ A resolution has been introduced in California's state assembly saying among other things that "[u]npredictable scheduling practices and last-minute work schedule changes cause workers who are already struggling with low wages to live in a constant state of insecurity about when they will work or how much they will earn on any given day" and advocating that employees in "food and general retail establishments" be "afforded some predictability and dignity in how they are scheduled to work".

The targeted practices apparently include irregular schedules, on-call periods, call-in requirements, split shifts, rotating shifts, "unstable schedules", vaguely-described "unfair work scheduling", and so on. EPI contends that approaches like these generate work-family conflict and increase work-related stress.

Retailing and food-service seem to be drawing the most attention at the moment. But EPI also lists "business/repair services, entertainment/recreation, [and] finance/insurance/real estate" as being

among the industries in which it believes undesirable scheduling practices to be widespread.

What Are The Goals?

It is difficult to predict the wide variety of possible legislative or regulatory measures that might flow from these efforts. However, based upon federal proposals introduced last year (S. 2642 and H.R. 5159), proponents' probable aims include (among others) things like:

- Creating an employee right to "request" changes as to the number of hours and times of day worked, the location at which he or she works, the extent to which the person's hours "fluctuate", and advance notice of the work schedule;
- Requiring the employer to "engage in a timely, good faith interactive process" as to the request, including considering alternatives and providing a written reason for denying the request;
- Compelling the employer to grant certain kinds of requests, unless it has a defined "bona fide business reason" for denying them;
- Imposing advance-notice and posting obligations for schedules and schedule changes;
- Mandating minimum or additional payments for reporting to work, for working split-shifts, and for making certain short-notice schedule changes.

The Bottom Line

The public-relations push is probably just getting underway. A steady stream of similar media reports, "studies", position papers, and press-releases is likely in coming months.

Management should anticipate renewed initiatives in Congress, of course. However, activity at the state, county, and even city level can also be expected.

Employers who oppose a one-size-fits-all, effectively-compulsory approach to employee scheduling should be prepared to mount an early, effective response to such proposals.