

# SECURE SCHEDULING ORDINANCE

HOW TO GET IN COMPLIANCE



# Employer Toolkit

# Overview

- The city of Seattle's Secure Scheduling Ordinance takes effect on July 1, 2017.
- The ordinance applies to:
  - Food service and retail establishments with 500+ employees worldwide
  - Full service restaurants with 500+ employees worldwide AND 40 or more locations worldwide
- Employees who are covered:
  - Work at a fixed, point of sale location of a covered employer
  - Work within the city at least 50 percent of the time



# Checklist: Are you ready?

## Notice & posting

- Posters hung visibly
- Posters ready for new hire packets

## Hiring

- Template, fillable document stating estimate of hours details
- Put all employees on your Access to Hours List

## Scheduling

- Day 1 of any new work schedule posted 14 days in advance

## Paying for changes

- Establish your rounding practice
- Decide on your mass communication method and write a template message

## Additional rules

- Create a system for keeping records – 3 years required



# Notice and posting

- You must display a workplace poster with notice of secure scheduling employee rights and requirements.
- The poster must be in English and in the primary language(s) of the employee(s), if the employee's primary language poster is available from the Office of Labor Standards.
- You are encouraged to provide the poster on paper or via email to new hires.
- Posters available at: [www.seattle.gov/laborstandards](http://www.seattle.gov/laborstandards)



# Hiring: Good faith estimate

New employees must be given a written good faith estimate of their work schedule at the time of hire.

- Include the median number of hours an employee can expect to work per week.
- Include whether the employee can expect to work on-call shifts.
- Include the employee's work schedule for one year, divided into three-month increments.



# Hiring: Good faith estimate

Changes to the good faith estimate:

- You must provide a revised good faith estimate as significant changes occur.
- What is a significant change? A significant change is a difference of 30+ percent between the original good faith estimate and the median hours in the written schedule in one or more three-month increments.
- It is the employee's role to recognize a significant change. It is your role to start discussions about the noted significant changes and, if applicable, state a bona fide business reason for the change.



# Breaking it down

## **What is a bona fide business reason?**

- An action causing you to violate a law, statute, ordinance, code and/or governmental executive order
- A significant and identifiable burden of additional costs
- A significant and identifiable detrimental effect on your ability to meet organizational demands
- An action requiring you to pay additional compensation, including as required by this ordinance.



# Hiring: Good faith estimate

If the good faith estimate needs to be updated, you must complete the process within three weeks.

- The employee is responsible for recognizing the significant change and notifying you.
- You need to make an effort to initiate the discussion process with the employees within one week of the notification.

Discussion process can include:

- An explanation of the significant change
- A description of the bona fide business reason for the change
- Any employee concerns regarding the change
- Any revised good faith estimate





# Hiring: Prior to hiring to replace

- Before hiring any new employees, you must first offer the additional hours to the existing team.
- To do so, post written notice of available hours for at least three consecutive days.
- If an employee is interested, but needs more time to decide, they can have an additional two days.
- This process should be used for additional hours, seasonal employees or hiring to replace employees.
- You can limit distribution of hours to full work shifts rather than parceling hours among employees.



# Hiring: Prior to hiring to replace

- The hiring notice needs to include:
  - Description and title of position
  - Required qualifications
  - Total hours by shift
  - Whether the shifts are the same each week or vary
  - Length of time for the required coverage



# Hiring: Prior to hiring to replace

- In a time crunch? It's OK if you:
  - Have an access to hours list
  - Have employees who elect to be removed from the access to hours list – all employees must originally start on the list
  - Send the offer of more hours to only those on the list
  - Receive written confirmation from everyone on the list or all employees on the schedule (if no list) that no one wants the hours -- you can immediately hire and not worry about the three-day posting window



# Scheduling

- Day 1 of any new work schedule must be posted 14 days in advance.
- If you request a change to the posted schedule within the 14 day notice period, the employee:
  - Has the right to decline the changes
  - Is entitled to premium pay



# Breaking it down

## What is premium pay?

- Premium pay is extra pay owed to an employee for various reasons under the Secure Scheduling Ordinance.



# Breaking it down

## **In what situations do I owe premium pay?**

- You must pay an employee at one and one-half times their scheduled rate of pay for the hours worked that are fewer than 10 hours apart.
- Subject to the provisions of this subsection 14.22.050.A, you owe premium pay to employees for each employer-requested change to the employee's written work schedule that occurs after the required 14-day advance notice.



# Breaking it down

## **In what situations do I owe premium pay?**

You owe premium pay for one hour of the employee's scheduled rate of pay, in addition to wages earned, for making these changes after the 14-day posting requirement:

- Adding hours of work
- Changing the date or start or end time of a work shift with no loss of hours



# Breaking it down

## **In what situations do I owe premium pay?**

You must pay the employee no less than one-half times their scheduled rate of pay per hour for any scheduled hours the employee does not work including:

- Subtracting hours from a regular work shift before or after the employee reports for duty
- Changing the date, start or end time of a work shift resulting in a loss of hours
- Canceling a work shift
- Scheduling an on-call shift for which the employee does not actually report to work





# Scheduling: Work schedule changes

An employee can request a change to the schedule.

- If the change is because of a major life event, you must approve the request unless you have a bona fide business reason.
- If you deny the employee's request, you must document and communicate the explanation, including the bona fide business reason.



# Breaking it down

## What is a major life event?

- Includes an expected or unexpected event that a reasonable person believes:
  - Is important, serious or significant
  - Impacts the employee's access to the workplace on a long-term, short-term, or ongoing basis (transportation or housing, for example)

# Breaking it down

## **What is a major life event?**

A major event is related to the employee's:

- Access to the workplace because of changes in the employee's transportation or housing
- Own serious health condition
- Responsibilities as a caregiver
- Enrollment in a career-related educational or training program
- Other job or jobs



# Paying for changes

- You need to pay for each employer-requested change to the written work schedule that occurs after the 14-day window.
- The pay will cost you that employee's scheduled rate of pay at the beginning of their work shift.
- You can use a rounding practice.
- There is a grace period of 15 minutes, in accordance with your rounding practice.
- Additional pay for changes are not booked as additional hours of work.



# Paying for changes: Grace period

## Addition of hours

- Any employee working past their scheduled shift must be paid extra if they work longer than the grace period of 15 minutes.
- Working 30 minutes more than their scheduled shift requires an extra 30 minutes of pay.
- Working 45 minutes more than their scheduled shift requires an extra 45 minutes of pay.
- Working one hour or more than their scheduled shift requires an additional one hour of pay.



# Paying for changes: Grace period

## Subtraction of hours:

- Any employee sent home early (more than the grace period of 15 minutes) must be paid half time for all hours lost.
- Being sent home 30 minutes early requires an additional 15 minutes of pay.
- Being sent home one hour early requires an additional 30 minutes of pay.



# Paying for changes: Exceptions

- You don't pay the employee extra if a shift swap is entirely facilitated by the employee.
- You don't pay the employee extra if you use mass communication and they volunteer to pick up shift.
- You don't pay the employee extra if you make an in-person group request asking for a volunteer to work later than the scheduled shift.



# Breaking it down

## **What is mass communication?**

A written message from you to two or more employees about the availability of additional hours because another employee is unable to work their scheduled hours.

Your message must say:

- The message is mass communication
- Accepting the offer of hours is voluntary
- The employees have the right to decline the offer
- Accepting the hours does not require the restaurant to pay premium pay





# Breaking it down

## **What is in-person group communication?**

A conversation you initiate with two or more on-the-clock employees about the unanticipated availability of additional hours.

The employees can't already be scheduled to work the additional hours and you believe they are qualified for the work.

Your conversation must include:

- Accepting the offer of hours is voluntary
- The employees have the right to decline the offer
- Accepting the hours does not require the restaurant to pay premium pay



# Additional pay

## Right to rest

- Each employee has the right to rest at least 10 hours between shifts.
- Overtime wages must be paid for any hours interfering with this rest time.
- Split shifts are allowed as long as the rest period is 10 hours between work days.



# Additional rules

- Employees can request changes to schedule at any time.
- In the case of a major life event, there must be a clear link between the schedule request and the major life event.
- It's your role to discuss the request with the employee, regardless of your decision.
- Retaliation by you or your management team is not acceptable for an employee following any part of this ordinance.



# Additional rules

An employee working for more than one restaurant is covered or not covered under this ordinance accordingly:

- If the restaurants are under the same ownership, they are covered for this ordinance in full.
- If the restaurants are under different ownership they are not covered.
- If an employee works for two different restaurant corporations under different names, they are only covered in each restaurant individually (without any effect given to restaurant X because of restaurant Y).



# Additional rules

Extra pay is not required when your restaurant has to close because of:

- Threats to employees or property
- A public official saying work cannot begin or continue
- Public utility failure to supply electricity, water, gas, sewer
- Natural disaster
- Other causes beyond your control that prevent the operations from beginning or continuing, including weather events



# Additional rules

- Employees may register a complaint violation against you for an action that occurred as many as three years ago.
- All records must be maintained for three years, including all documentation related to exceptions to premium pay.



# Penalties

- Private right of action is permitted under this ordinance.
- The city's Office of Labor Standards may assess a civil penalty of:
  - Up to \$500 per aggrieved party for the first violation
  - Up to \$1,000 per aggrieved party or an amount equal to 10 percent of total unpaid compensation (whichever is greater) for the second violation
  - Up to \$5,000 per aggrieved party or an amount equal to 10 percent of total unpaid compensation (whichever is greater) for the third or any subsequent violation
- The maximum civil penalty is \$20,000 per aggrieved party.



# Penalties

Violation	Fine
Failure to provide a good faith estimate of work schedule	\$500
Failure to provide a written response for denial of the employee's request for a major life event	\$500
Failure to compensate employee at 1.5 times pay for working hours that are separated by fewer than 10 hours from the previous shift	\$500
Failure to provide at least 14 calendar days of advance notice of work schedule	\$500
Failure to provide notice of work schedule changes	\$500
Failure to comply with prohibitions against asking or requiring an employee to find coverage for scheduled hours if the employee is unable to work for a reason covered by other laws or a major life event	\$500



# Penalties

Violation	Fine
Failure to pay employee additional compensation for work schedule changes	\$500
Failure to comply with prohibition against systemic pattern or practice of significant underscheduling	\$500
Failure to offer additional hours of work to existing employees	\$500
Failure to provide employees with written notice of rights	\$500
Failure to maintain records for 3 years	\$500/missing record
Failure to comply with prohibitions against retaliation for exercising rights	\$1,000/aggrieved party
Failure to provide notice of investigation to employees	\$500
Failure to provide notice of failure to comply with final order to the public	\$500

# Notification of investigation

The Office of Labor Standards will contact you in writing to tell you it is opening an investigation.

- After notification, you must post or notify employees of the investigation using a form provided and displaying it onsite in English and the primary language spoken by the employees.
- If you are found in violation and fail to comply in 30 days, the director of the Office of Labor Standards may require you to post public notice of your failure.



**Additional resources can be found at**  
**[seattlerestaurantalliance.com](http://seattlerestaurantalliance.com)**