

# City of Seattle

## Secure Scheduling Proposals ♦ 08-16-16

Policy	Proposal
<p><b>Noteworthy Definitions</b></p>	<ul style="list-style-type: none"> <li>• <b>Food Services</b> = Food services contractors; caterers; mobile food services; drinking places with alcoholic beverages; full service restaurants; limited-service restaurants; cafeterias, grill buffets, and buffets; and snack and nonalcoholic beverage bars (under 2012 NAICS 722).</li> <li>• <b>Major life event</b> = major event related to employee’s access to the workplace due to changes in employee’s transportation or housing; employee’s own serious health condition; employee’s responsibilities as a caregiver; employee’s enrollment in a career-related educational or training program; or employee’s other job or jobs.</li> <li>• <b>On-call</b> = Employee waiting time on or off-site.</li> <li>• <b>Retail</b> = Fixed point-of-sale location of a store retailer (under 2012 NAICS 441 through 453998).</li> <li>• <b>Written communication or document</b> = Printed or printable communication in physical or electronic format.</li> </ul>
<p><b>Intent of secure scheduling</b></p>	<ul style="list-style-type: none"> <li>• <b>Public policy goals of the ordinance</b> = Establishing 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 additional employees, or subcontractors, including hiring through the use of temporary services or staffing agencies.</li> </ul>
<p><b>Employer coverage</b></p>	<ul style="list-style-type: none"> <li>• Fixed point of sale, retail and food services establishments with 500+ employees worldwide, counting all employees in the chain, integrated enterprise and franchise network.</li> <li>• Additional requirement for full-service restaurants to have 500+ employees and 40+ locations worldwide.</li> </ul>
<p><b>Employee coverage</b></p>	<ul style="list-style-type: none"> <li>• Hourly, non-exempt employees</li> <li>• Employees must work at a fixed, point of sale location with at least 50% within city of Seattle boundaries.</li> </ul>
<p><b>Good faith estimate of work schedule</b></p>	<ul style="list-style-type: none"> <li>• <b>Good faith estimate</b> = median number of hours and whether employee can expect to work on-call shifts</li> <li>• <b>New employees</b> = employer provides a written good faith estimate at time of hire.</li> <li>• <b>Existing employees</b> = employer updates the estimate once every year and when there is a significant change.</li> <li>• Estimate is part of the “notice of employment information” that is required by Wage Theft Ordinance and must be provided in English and primary language of the employee.</li> <li>• Estimate is not a contractual offer that shall not bind the employer. However, employer shall initiate an interactive process with employee to discuss any significant change from the estimate, and if applicable state a bona fide business reason for the change.</li> </ul>

<b>Right to request input into the work schedule</b>	<ul style="list-style-type: none"> <li>• <b>New employees (at time of hire) and existing employees</b> = Ability to identify limitations or changes in work schedule availability; request not to be scheduled for work shifts during certain times or at certain locations; and identify preferences for the hours or locations of work.</li> <li>• Employer must engage in interactive process to discuss the request.</li> <li>• Employer must have “bona fide business reason” for denying requests related to employee’s major life event.</li> </ul>
<b>Right to rest between work shifts</b>	<ul style="list-style-type: none"> <li>• Unless employee requests or consents to work such hours, employer shall not schedule an employee to work shifts that are separated by less than 10 hours.</li> <li>• Employer must compensate employee at 1.5x scheduled rate of pay for the hours worked less than 10 hours since the previous work shift.</li> <li>• Additional compensation does not apply to split shifts.</li> </ul>
<b>Advance notice of work schedule</b>	<ul style="list-style-type: none"> <li>• <b>New employees (at time of hire) and employees returning from a leave of absence</b> = advance notice of work schedule that runs through the last date of the currently posted work schedule.</li> <li>• <b>Existing employees</b> = advance notice of 14 days</li> <li>• Employer must provide work schedule in English and primary language of the employee.</li> </ul>
<b>Work schedule changes</b>	<ul style="list-style-type: none"> <li>• <b>Employer-initiated changes</b> = Employer must provide timely notice by in-person conversation, telephone call, email, text message, or other accessible electronic or written format.</li> <li>• <b>Right to decline</b> = Employee has right to decline hours not on work schedule.</li> <li>• <b>Employee-initiated changes</b> = Employee must provide notice per the employer's usual and customary notice and procedural requirements for foreseeable changes, or as soon as practicable for unforeseeable circumstances and shall comply with an employer's reasonable normal notification policies and/or call-in procedures.</li> <li>• <b>Finding replacement coverage</b> = Employer’s ability to ask or require employees to search for or find replacement coverage = <ul style="list-style-type: none"> <li>○ Employer cannot ask employee to find replacement coverage if work schedule change is due to a reason covered by another local, state or federal law (e.g. PSST)</li> <li>○ Employer can ask but not require employee to find replacement coverage if work schedule change is due to emergency or major life event that prevents employee from working the scheduled hours</li> <li>○ Employer can ask and require employee to find replacement coverage if work schedule change is not for the above reasons</li> </ul> </li> </ul>
<b>Compensation for work schedule changes (i.e. predictability pay)</b>	<ul style="list-style-type: none"> <li>• <b>Additions = One hour of pay at scheduled rate in addition to wages earned</b> <ul style="list-style-type: none"> <li>○ Any addition of hours of work not on the work schedule; or</li> <li>○ Changing date, start or end time of a work shift with no loss of hours.</li> </ul> </li> <li>• <b>Subtractions = .5x pay at scheduled rate for length of work shift, or the remainder of the work shift</b> <ul style="list-style-type: none"> <li>○ Subtracting hours from a work shift before or after the employee reports for duty;</li> <li>○ Changing the date or start or end time of work shift with a loss of hours;</li> <li>○ Cancelling a work shift; or</li> <li>○ Scheduling an employee for an on-call shift for which the employee does not need to report to work.</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>● <b>Exceptions = Requirements for additional compensation do not apply in the following situations</b> <ul style="list-style-type: none"> <li>○ Mutually agreed upon work shift swaps or coverage among employees (that may be approved by the employer);</li> <li>○ Additional hours that employee volunteers to work in response to an employer’s written mass communication about the availability of additional hours (only available for additional hours that are the result of another employee being unable to work scheduled hours, and it must be clear that accepting such hours is voluntary and employee has the right to decline such hours);</li> <li>○ Additional hours that were included in an “access to hours” offer of work;</li> <li>○ Employee-requested changes that the employee voluntarily makes to the employee’s work schedule and documents in writing</li> <li>○ Employee hours that are subtracted due to disciplinary reasons, provided the employer documents in writing the incident leading to discipline</li> <li>○ Operations cannot begin or continue due to threats to employees or property; when due to the recommendation of a public official work cannot begin or continue; when public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities, or sewer system; or due to natural disaster or other cause not within the employer's control pursuant to rules issued by the Director.</li> </ul> </li> </ul>
<b>Pattern or practice of under scheduling</b>	<ul style="list-style-type: none"> <li>● Systemic pattern or practice of significant under scheduling (i.e. hours that employees actually work are significantly above the hours in the written work schedule) is a violation of the ordinance.</li> </ul>
<b>Access to hours for existing employees</b>	<ul style="list-style-type: none"> <li>● Employer must offer additional hours of work to existing employees before hiring new employees from an external applicant pool or subcontractors, or temporary</li> <li>● <b>Posting notice</b> <ul style="list-style-type: none"> <li>○ Post notice for <u>3 days</u> (can concurrently post it internally and externally).</li> <li>○ Post written notice of available hours in conspicuous and accessible location where employee notices are customarily posted &amp; in English and primary language(s) of the employees (OLS will create a model notice for translated languages). Employees must have workplace access to electronic notice.</li> </ul> </li> <li>● <b>Offering hours of work</b> <ul style="list-style-type: none"> <li>○ Provide employee with <u>2 days</u> to accept offer</li> <li>○ Offer additional hours to existing, qualified candidates</li> <li>○ May assign full work shifts rather than parcel hours among employees</li> <li>○ Employer is encouraged to make reasonable efforts to offer employees training opportunities to gain skills and experience to perform work for which employer typically has additional needs.</li> <li>○ <b>Seasonal Employment</b> = Employer may delay scheduling such hours and permit new employees to start working for training purposes, provided that the employer provides the existing employee with a prospective start date for the additional hours.</li> </ul> </li> </ul>
	<ul style="list-style-type: none"> <li>● <b>Exceptions (in whole or part)</b></li> </ul>

	<ul style="list-style-type: none"> <li>○ <b>Declination from all existing employees</b> = Employer can immediately proceed with external hiring after providing notice of additional hours to all employees and receiving written declination.</li> <li>○ <b>Access to hours list</b> = Employer can limit distribution of notice of additional hours of work to employees on the access to hours list and can hire externally after receiving written declination.</li> <li>○ All employees are automatically on the access to hours list &amp; can ask to be added or removed at time of hire or during employment. Employer must make list available for viewing to employees upon request.</li> <li>○ <b>Hiring programs</b> = Employer can bypass access to hours requirements for additional hours of work that the employer has designated for hiring programs, whether diversity hiring programs or 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.</li> <li>○ <b>Overtime</b> = Employer is not required to offer additional hours of work paid at the overtime premium</li> </ul>
<b>Notice of Rights</b>	<ul style="list-style-type: none"> <li>● Display poster in the workplace in English and the primary language(s) of employees</li> </ul>
<b>Records</b>	<ul style="list-style-type: none"> <li>● Maintain records that demonstrate compliance for three years</li> </ul>
<b>Enforcement &amp; Remedies</b>	<ul style="list-style-type: none"> <li>● Same as PSST, WT, and MW (e.g. up to 3x amount owed, penalties/fines, private right of action)</li> </ul>
<b>Collective Bargaining Agreement Waiver</b>	<ul style="list-style-type: none"> <li>● CBA Waiver for alternative structure for secure scheduling that meets the public policy goals of this ordinance</li> </ul>
<b>Two Year Study</b>	<ul style="list-style-type: none"> <li>● Council shall request the City Auditor, in collaboration with OLS, to contract with academic researchers to conduct an evaluation of the impacts of this ordinance for the baseline, one-year and two-year periods following implementation.</li> <li>● A non-exhaustive list of areas to be studied includes: impacts to businesses (including costs) and employees; differences and challenges between limited and full service restaurants in implementing the ordinance; and the interplay of diversity programs and access to hours lists.</li> <li>● Council, in collaboration with the Executive, shall use the results of the evaluation to identify possible areas for revision and to determine whether to extend application, in whole or in part, to employers in different industries and/or with different thresholds for coverage.</li> </ul>