

Fair Workweek Legislation

Compensation for Changed Shifts (“Predictability Pay”) Exceptions

Some schedule changes should not trigger predictability pay – for example, everyone agrees that when workers trade or change shifts with their employer’s permission, no predictability pay should be owed. Other exceptions can have more complex implications, including incentivizing undesirable staffing patterns, making enforcement more challenging, and imposing costs on employees due to their coworkers’ actions. The following chart contrasts the approach taken in the two jurisdictions to enact fair workweek ordinances, San Francisco and Seattle.

San Francisco	Seattle	Policy Considerations
Operations cannot begin or continue due to threats to Employees or property, or when civil authorities recommend that work not begin or continue.	Same	
Operations cannot begin or continue because public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities, or sewer system.	Same	
Operations cannot begin or continue due to an Act of God or other cause not within the Employer's control.	Operations cannot begin or continue due to natural disaster or other cause not within the employer's control pursuant to rules issued by the Director.	The scope of the phrase “other cause not within the employer’s control” can be subject to different interpretations. Rules of statutory construction would indicate that it applies to conditions similar to extraordinary “acts of god” or “natural disasters,” but some employers have argued that it also includes prosaic events such as parades. Best practice is to use legislative language that reserves this exception for truly rare events; alternatively the agency should be empowered to draft rules defining the exception.
Another Employee previously scheduled to work that shift is unable to work due to illness, vacation, or employer-provided paid or unpaid time	Additional hours that the employee volunteers to work in response to a mass communication, in writing from the employer, about the	San Francisco’s broad exception makes enforcement challenging: it may be difficult to verify whether a changed shift was due to a coworker’s absence or a

<p>off where the Employer did not receive at least seven days' notice of the absence.</p>	<p>availability of additional hours, provided that the mass communication is</p> <p>a. Only used for additional hours that are the result of another employee being unable to work scheduled hours, and</p> <p>b. it is clear that accepting such hours in voluntary and the employee has the right to decline such hours.</p>	<p>manager's poor planning. It also means that employees experience uncompensated schedule changes whenever a coworker is absent – an exception that could swallow the rule. Seattle's narrow exception protects workers by requiring their consent to hours added to their schedule to replace an absent coworker – and provides more clarity regarding when the exception applies.</p>
<p>Another Employee previously scheduled to work that shift has not reported to work on time and/or is fired or sent home or told to stay home as a disciplinary action</p>	<p>Employee hours that are subtracted due to disciplinary reasons, provided the employer documents in writing the incident leading to discipline.</p>	<p>When an employee is sent home or suspended due to a bona fide disciplinary action, it's fair to withhold predictability pay from the disciplined employee (as in Seattle) – but not fair to withhold it from a coworker called in as a replacement (as in San Francisco).</p>
<p>The Employer requires the Employee to work overtime (i.e., mandatory overtime)</p>		<p>This exception could encourage employers to impose mandatory overtime, which is unhealthy and contrary to public policy.</p>
<p>The Employee trades shifts with another Employee or requests from the Employer a change in shift(s), hours, or work schedule.</p>	<p>Mutually agreed upon work shift swaps or coverage among employees. The employer may require that it pre-approve work shift swaps or coverage and may assist employees in finding such arrangements. Assistance shall be limited to helping an employee identify other employees who may be available to provide coverage or shift swap and does not include the employer arranging the shift swap or coverage.</p> <p>Employee-requested changes, including additional or subtracted hours, that the employer makes to the employee's work schedule and documents in writing;</p>	<p>An exception for employee-initiated changes preserves worker flexibility.</p>

	<p>Additional hours that an employer requests employees who are currently working, through an in-person group communication, to work to address present and unanticipated customer needs, so long as the hours are consecutive to the hours the employee is currently working and the employee consents to take the hours.</p> <p>Additional hours that the employee consents to work as the result of accepting an offer of work pursuant to [Access to Hours provisions].</p>	<p>The Seattle ordinance also imposes penalties for 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.” Without such a policy, these exceptions could undermine the stability and predictability the ordinance seeks to provide. Consent to added hours is a necessary protection to allow workers to rely on the posted schedule.</p>
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