



THE HOSPITALITY LAW CONFERENCE: SERIES 2.0

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Scheduling: Predictive or Restrictive? Let's Call the Whole Thing Off

2018 HOSPITALITY
LAW CONFERENCE:
SAN DIEGO

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Why Scheduling Regulations?

- Driven by labor organizations/front groups
- 94% of new jobs since 2008 part-time
- 27.4 million American workers are part-timers, working less than 35 hours a week.

But 7.5 million of them crave a full-time work.



TWO VIEWPOINTS

Predictive Scheduling

- Advocates claim workers don't receive enough hours
- Employees asked to be "on-call" but never actually called in
- Frequently scheduled at the last minute to meet staffing needs

Restrictive Scheduling

- Employee/Employer need flexibility
- Another law which increases labor costs –slim profit
- Unforgiving penalties in a variable business



Common Provisions

- Post employee schedules at least two weeks in advance
- Give workers extra pay if their schedules change at the last minute
- Extra hours offered existing employees
- Prohibit retaliation and discrimination against part-time employees



San Francisco-October 15, 2015

- 2014-40 stores and 20 employees in the city
- Extra “predictability pay” penalties for shorter notice schedule changes
- Requires up to four hours of pay for on-call shifts when the worker is not called in
- Provide two week advance notice of schedule
- Requires any additional hours to be offered to existing part-time employees before new hires
- Unexpected change-wait 72 hours for those workers to decide as to extra hours (in writing)



Seattle-July 1, 2017

- Large retailers with 500 or more employees and to full-service restaurants with both 500 or more employees and 40 or more locations nationwide
- Guarantees employees a 10-hour rest period between shifts
- Requires that extra hours be offered first to existing employees
- Requires employers to keep written records of communications about work shifts for three years.
- Fines start at \$500
- Pay 50% of unworked hours
- Must post available additional hours for 3 days before new hire
- Private right of action can result in “treble damages” and penalties



Emeryville, CA-July 1, 2017

- City council announced a “soft launch” until Jan 1, 2018
- Non exempt employees or fast food and retail chains
- Good faith estimate of work prior to hiring
- Compensation for schedule changes
- New hours offered to existing employees
- 55 employees or more worldwide



San Jose, CA-March 13, 2017

- 36+ employees-can petition for hardship to City
- New/additional hours must be offered to existing employees and can designate a response deadline (Even same day)
- No fines, etc for first violation, \$50 plus back wages for second violation



New York City-November 26, 2017

- Retail and Fast Food Employees only
- 14 day advance schedule
- Workers must have at least 11 hours off in between shifts, and if they're needed to clock back in sooner, employers will have to pay that person another \$100
- Offer open shifts to existing staff before hiring anybody new includes chains
- Gives workers chance to deduct portion of pay and donate to "worker-advocacy non-profits"



Oregon-July 1, 2018

- Phased implementation-one week advance initially
- Two week advance notice starts 2020
- 500+ employees worldwide-food service, retail and hospitality
- Workers must have at least 10 hours off in between shifts
- Standby list-volunteer in advance for additional shifts or to be taken off shifts
- Employers are exempted from the penalty during major emergencies



Legislation Attempts

- Washington D.C., Minneapolis, Vermont, Rhode Island, New Hampshire, Massachusetts and Maryland
- California-twice but going to try again in 2018
- Last Bill-10 or more employees to offer additional hours of work to an existing nonexempt employee before hiring an additional employee or subcontractor (Cost Est. \$2.6 Million)



Effects of Restrictive Scheduling

- 35% of employers have become less flexible with employee schedule changes
- 21% are offering fewer part-time positions
- 19% are scheduling fewer workers per shift,
- 17% are offering fewer jobs across the board,
- 6% are pursuing self-service automated
- 6% say they are reducing customer service

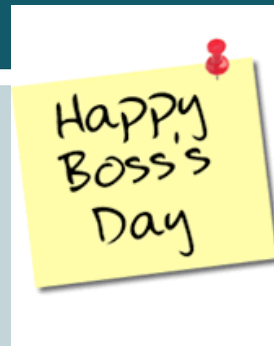


How Can You Make It Work?

- Lots of documentation and forms
- Updated payroll records with additional compensation paid
- Identify employees' shift preferences
- Written good faith estimates for new hires
- Written notices of employees not interested in additional hours
- Adjustment to employee hours due to disciplinary reasons
- Employee responsible for schedule changes
- Mobile scheduling applications



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THANK YOU

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