

Predictive Scheduling Laws and Ordinances Gaining Momentum

As part of the growing trend of legislation related to the workforce, including changes to paid-time off policies and sick leave policies, numerous state and local governments across the country have passed, or are considering, ordinances regarding predictive scheduling, or more commonly referred to as “fair Workweek” laws and ordinances. The State of Oregon has passed a comprehensive state-wide fair Workweek law, and the cities of Emeryville (California), New York, San Francisco, San José and Seattle, have enacted similar protections at the local level. Joining this growing list of state and local governments is the City of Brotherly Love. On December 6, 2018, the Philadelphia City Council passed Bill No. 180649, otherwise known as the “Fair Workweek Employment Standards,” making it the second largest city, behind New York, to adopt such an ordinance. The Philadelphia Ordinance will take effect on January 1, 2020. Other jurisdictions may join this list soon as Connecticut, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, North Carolina and Rhode Island are currently considering similar legislation.

Each law or ordinance is slightly different in its specifics, but each generally include provisions such as advance notice of work schedules, additional compensation for unexpected schedule changes or “on-call” hours, the right to accept or decline added or lengthened shifts, mandatory “rest periods” between shifts, and the right to request scheduling accommodations. These fair Workweek laws apply primarily to people working in chain retail stores and fast-food restaurants but, in some cases, extend beyond those industries. Failure to comply with these laws will make employers subject to fines if they change employee schedules within the defined timeframes. For example, the Philly ordinance requires companies with more than 250 employees and more than 30 locations to give workers in the retail, restaurant, and hospitality sectors good faith estimates of the employee’s work schedule upon hire, written notice of the actual schedule on or before commencement of employment, 14 days advanced notice of any new schedule, and finally, advanced notice of any proposed changes to a posted work schedule. Further, the ordinance prohibits Philadelphia retail, restaurant, and hospitality employers from using temporary and other workers supplied by third parties, including Staffing Firms, unless such businesses first offer additional work to their existing employees.



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Predictive Scheduling Laws and Ordinances... *Continued*

Although not directed at the Staffing Industry, and mostly ignoring the unique place that temporary staffing plays in the effected industry sectors, these measures will and do have a direct impact on the Staffing Industry. First, by making it difficult for Staffing Firms to comply, these laws and ordinances effectively deny jobs to thousands of temporary and contract workers and eliminate the common “bridge” to permanent employment for such workers. Second, the workplace flexibility that many temporary workers seek is greatly impeded by the various forms of advanced written notice regarding schedules and changes to the same, making already thin applicant pools even less populated.

These challenges may also create opportunities for the Staffing Industry, however. First, like many other legislative issues shared by Staffing Companies and their clients, these issues can be addressed contractually. The obligations and liabilities inherent in these new laws and ordinances can be negotiated, apportioned and memorialized in the provisions of the contracts between the parties. Second, Staffing Companies have the unique opportunity to solve many of the issues that these laws and ordinances create for the affected employers. In short, Staffing Companies can pitch these new laws as a reason their clients should let them take on all of the subject employees. It is what Staffing Companies are designed to do and would streamline compliance with these laws.

To learn more about these issues, we invite our readers to register for our January 9, 2019 webinar: “Predictive Scheduling & Fair Workweek Ordinances: How they will impact the Staffing Industry” (<https://register.gotowebinar.com/register/4078600295464654081>).

About Becker LLC

Becker LLC is a premier mid-market firm recognized as a leader in the staffing industry serving New York, New Jersey, Philadelphia and California. The firm provides forward thinking, mission-critical advice to staffing industry entrepreneurs and management on high stakes, complex legal matters as well as day-to-day matters and long-terms plans. The firm serves as general counsel to the Mid-Atlantic Staffing Association and is a member of both the New York Staffing Association and New Jersey Staffing Association.

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