

5/1/23
5/22/23

24-O-23

AN ORDINANCE

**Amending the City of Evanston City Code to
Create 3-34 “Evanston Fair Workweek Ordinance”**

WHEREAS, The City of Evanston acknowledges that all workers deserve healthy, predictable schedules, the opportunity to work, and flexibility to care for their families; and

WHEREAS, women and workers of color are most likely to experience the effects of a new, more volatile workweek; and

WHEREAS, last minute scheduling impacts workers' ability to obtain childcare, schedule appointments, or take shifts for second jobs; and last-minute cancellations leave workers without pay; and

WHEREAS, millions of working people are getting too few hours and can only find part-time jobs, despite needing full-time hours to support their families;

WHEREAS, fair workweek ordinances, also known as fair scheduling, address underemployment, advance notice of schedules so workers can make adequate accommodations and plans, and gives workers the right to adequately rest between closing and opening shifts; and

WHEREAS, City Council has determined that it is in the best interests of the City to create a fair work week ordinance to protect the interest of employees in the City,

NOW BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: That Chapter 34, Evanston Fair Work Week Ordinance, of Title 3, Business Regulation, is hereby further created by adding the following:

CHAPTER 34 – EVANSTON FAIR WORK WEEK ORDINANCE

3-34-1. -PURPOSE AND INTENT.

This chapter shall be known and may be cited as the "City of Evanston or Evanston" Fair Workweek Ordinance". It is the purpose of this chapter and the policy of the City to require adequate notice of work schedules, compensation for employer-initiated schedule changes, access to sufficient hours of work for part-time employees, healthy rest between shifts, and a protected right to have input into schedules.

This ordinance should be interpreted and applied as defined in this Chapter.

3-34-2. –DEFINITIONS.

As used in this Chapter, the following terms shall have the following meanings:

<u>CALENDAR WEEK.</u>	<u>A period of seven consecutive days.</u>
<u>COVERED EMPLOYER.</u>	<u>A person (including a natural person, corporation, nonprofit corporation, general partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign), who directly or indirectly (including through the services of a temporary services or staffing agency or similar entity) employs or exercises control over one hundred (100) or more employees in Covered Industries, as defined in this Section. "Covered Employer" shall include franchisees with fewer than one hundred (100) employees but are associated with a franchisor or a network of franchises with franchisees with more than 30 locations globally.</u>
<u>COVERED INDUSTRY.</u>	<u>(1) Hospitality: any business advertised or held out to</u>

the public to be an inn, hotel, motel, family hotel, apartment hotel, lodging house, dormitory or other place, where sleeping or rooming accommodations are furnished, used or maintained for hire or rent for the accommodation of guests, lodgers or roomers, and in which seven or more sleeping rooms, in any combination on one or more floors of such building or structure, are not intermingled on any given floor with dwelling units owned by persons other than the hotel. The term shall not include "single-room occupancy buildings", "bed-and-breakfast establishments", or "vacation rentals" licensed or registered, or required to be licensed or registered, by the city.

(2) Food Service and Restaurants: any business licensed to serve food in the City of Evanston which also has, globally, at least 30 locations and at least 200 employees in the aggregate. The term "Restaurant" shall not include businesses limited to three or fewer locations in the City that are owned by one Employer and operating under a sole franchise.

(3) Retail: any business engaged in the sale to end users of tangible products that are primarily for personal, household, or family purposes, including, but not limited to, appliances, clothing, electronics, groceries, and household items.

(4) Warehouse service: any business engaged in the storage of goods, wares, or commodities for hire or compensation, and, in connection with this operation, may include the loading, packing, sorting, stacking, wrapping, distribution, and delivery of those goods.

(5) Manufacturing: any business engaged in the production of tangible goods for use from raw or prepared materials by giving the materials new forms, qualities, properties, or combinations, whether by hand-labor or machines.

(6) Building Services: any business engaging in the care and maintenance of property, including, but not limited to, janitorial services, building maintenance services, and security services. This definition does not include on-duty police officers or other government officials performing their official duties.

<u>EMPLOYEE.</u>	<u>Any person who:</u> (1) <u>In a Calendar Week performs at least two hours of work within the geographic boundaries of the City of Evanston; and</u> (2) <u>Qualifies as an Employee entitled to payment of a minimum wage from any Employer under the Illinois minimum wage law, as provide under Illinois Labor Law</u>
<u>FRANCHISE.</u>	<u>The same as defined in Illinois Law 815 ILCS 705/3 of the Illinois Franchise Disclosure Act.</u>
<u>FRANCHISEE.</u>	<u>The same as defined in Illinois Law 815 ILCS 705/3 of the Illinois Franchise Disclosure Act.</u>
<u>FRANCHISOR.</u>	<u>The same as defined in Illinois Law 815 ILCS 705/3 of the Illinois Franchise Disclosure Act.</u>
<u>PREDICTABILITY PAY.</u>	<u>Wages paid to an Employee, calculated on an hourly basis at the Employee's regular rate as compensation for schedule changes made by a Covered Employer to a schedule pursuant to this chapter, in addition to any wages earned for work performed by that Employee.</u>
<u>WORK SCHEDULE.</u>	<u>All of an Employee's shifts, including specific start and end times for each shift, during a Calendar Week.</u>
<u>WRITING OR WRITTEN</u>	<u>Printed or printable communication in physical or electronic format including a communication that is transmitted through electronic mail, text message or a computer system or is otherwise sent and stored electronically.</u>

3-34-3. -APPLICATION TO COLLECTIVE BARGAINING AGREEMENTS.

Nothing in this chapter shall be deemed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing in order to establish wages or other conditions of work in excess of the applicable minimum standards of the provisions of this chapter. To the extent permitted by law, all or any portion of the applicable requirements of this Chapter may be waived in a bona fide collective bargaining agreement; provided, that such waiver is explicitly set forth in such agreement in clear and unambiguous terms

that the parties thereto intend to and do thereby waive all of or a specific portion(s) of this Chapter.

3-34-4. ADVANCE NOTICE OF WORK SCHEDULES.

(A) Initial estimate of work schedule.

(1) Prior to or on commencement of employment, an Employer shall provide every Employee with a good faith estimate in writing of the Employee's projected days and hours of work for the first ninety days of employment, including:

(a) The average number of weekly work hours the Employee can expect to work each week;

(b) Whether the Employee can expect to work any on-call shifts;

(c) A subset of days and a subset of times or shifts that the Employee can expect to work, or days of the week and times or shifts on which the Employee will not be scheduled to work. The good faith estimate is not a contractual offer binding the Employer, but an estimate made without a good faith basis is a violation of this section.

(2) Prior to or on commencement of employment, the Employee may request that the Employer modify the projected days and hours of work provided under subsection (A)(1) of this section. The Employer shall consider any such request, and in its sole discretion may accept or reject the request, provided that the Employer shall notify the Employee of Employer's determination in writing within three days of the request.

(B) Advance notice of work schedule.

(1) An Employer shall provide its Employees with written notice of work hours no later than 14 days before the first day of any new Work Schedule by posting the Work Schedule within the unit or department or workgroup either in a conspicuous place at the workplace that is readily accessible and visible to all Covered Employees or using the usual methods of communication, or both. The written Work Schedule shall include the shifts and on-call status of all current Employees at that worksite. Additionally, upon written request of an Employee, an Employer shall transmit the Work Schedule by electronic means.

(2) An Employer may change an Employee's Work Schedule after it is posted and/or transmitted, up to the deadline articulated in subsection (B)(1) without penalty. After that deadline, such changes shall be subject to the notice and compensation requirements set forth in this chapter.

(3) Employees who Self-schedule shall not be bound by this subsection (B), nor shall their Employers to the extent that the Employee Self schedules.

(4) An Employee who is a victim of Domestic Violence or Sexual Violence or who has a family or household member who is a victim may request that the Employee's Work Schedule not be posted or transmitted to other employees. An oral or written request shall be sufficient and implemented immediately and is sufficient until the Covered Employee gives written permission to post the Employee's schedule. An Employer may request a written statement from the Covered Employee that states that the Covered Employee is, or has a family or household member who is, a victim of Domestic Violence or Sexual Violence. The written statement shall constitute the documentation needed for the Employer to implement the request. The Employer may not require a written statement more than once in a calendar year from any Employee for this purpose.

3-34-5. NOTICE, RIGHT TO DECLINE, AND COMPENSATION FOR SCHEDULE CHANGES.

(A) Right to decline. Subject to the exceptions in subsection (D) of this section, an Employee has the right to decline any previously unscheduled hours that the Employer adds to the Employee's schedule, and for which the Employee has been provided advance notice of less than 14 days before the first day of any new schedule.

(B) Alterations. Subject to the exceptions in subsection (D) of this Section, a Covered Employer shall provide an Employee with the following compensation per Shift for each previously scheduled Shift that the Covered Employer adds or subtracts hours, moves to another date or time, cancels, or each previously unscheduled Shift that the Covered Employer adds to the Employee's schedule:

(1) With less than 14 days' notice, but 24 hours or more notice to the Employee: one hour of Predictability Pay;

(2) With less than 24 hours to the Employee: (i) four hours or the number of hours in the Employee's scheduled Shift, whichever is less, when hours are canceled or reduced; (ii) one hour of Predictability Pay for all other changes. The compensation required by this subsection shall be in addition to the Employee's regular pay for working that Shift.

(C) The Employer shall amend the posted Work Schedule and transmit it to the Employee in writing within 24 hours of a schedule change.

(D) Exceptions. The requirements of this section shall not apply in the following circumstances:

(1) A Work Schedule change because:

(a) of threats to Employers, Employees, or property, or when civil authorities recommend that work not begin or continue;

(b) public utilities fail to supply electricity, water, or gas, or the sewer system fails to serve the location of work;

(c) of acts of nature (including, but not limited to, flood, earthquake, tornado, or blizzard) or weather that would prohibit business operations, including but not limited to rain impacting landscape operations;

(d) war, civil unrest, strikes, threats to public safety, or pandemics.

(e) If there is a work schedule change requiring an employee to work additional hours due to an event described in subsections (a)-(e) above, an employer is required to:

(i) Within 72 hours of the schedule change, provide notice in writing to the employee of the schedule change and the reason for the schedule change as well as why the employee is deemed essential to the continued operations of the employer, and

(i) Pay the employee whose schedule has been changed, \$2.00 per hour as hazard pay in addition to the wages that the employee would normally earn for the shift that the employee works. The hazard pay shall continue for the entire duration that the employee

is required to work in any of the events described in subsection (a)-(e).

(2) A Work Schedule change that is the result of a mutually agreed upon shift trade or coverage arrangement between Employees, subject to any existing Employer policy regarding required conditions for Employees to exchange shifts.

(3) An Employee requests a shift change that is confirmed in writing, including but not limited to use of sick leave, vacation leave, or other policies offered by the Employer.

(4) An Employer subtracts hours from a Work Schedule for disciplinary reasons for just cause, provided the Employer documents the incident leading to the Employee's discipline in writing.

(5) When Covered Employees Self-schedule.

3-34-6. OFFER OF ADDITIONAL WORK HOURS TO EXISTING EMPLOYEES.

(A) Subject to the limitations herein, before hiring new Employees or contract Employees, including hiring through the use of temporary services or staffing agencies, a Covered Employer shall first offer additional hours of work to existing Part-time Employee(s) if the Part-time Employee(s) are qualified to do the additional work, as reasonably and in good faith determined by the Covered Employer. This Section requires Covered Employers to offer to Part-time Employees only up to the number of hours required to give the Part-time Employee 35 hours of work in a Calendar Week.

(B) A Covered Employer has discretion to divide the additional work hours among Part-time Employees consistent with the Section provided that: (1) the Employer's system for distribution of hours must not discriminate on the basis of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity, disability, age, marital or familial status, nor on the basis of family caregiving responsibilities or status as a student; and (2) the Employer may not distribute hours in a manner intended to avoid application of the Patient Protection and Affordable Care Act, 42 Y.S. C. SS 18001.

(C) A Part-time Employee may, but is not required to, accept the Covered Employer's offer of additional work under this Section.

(1) For additional work for an expected duration of more than two weeks; the Part-time Employee shall have 72 hours to accept the additional hours, after which time the Covered Employer may hire new Employees to work the additional hours.

(2) When the Covered Employer's offer of additional work under this Section is for an expected duration of two weeks or less; the Part-time Employee shall have 24 hours to accept the additional hours, after which time the Covered Employer may hire new Employees to work the additional hours.

(3) The 24- or 72-hour periods referred to in this subsection begin either when the Employee receives the written offer of additional hours, or when the Covered Employer posts the offer of additional hours as described subsection (D), whichever is sooner. A Part-time Employee who wishes to accept the additional hours must do so in writing.

(D) When this Section requires a Covered Employer to offer additional hours to existing Part-time Employees, the Covered Employer shall make the offer either in writing or by posting the offer in a conspicuous location in the workplace where notices to Employees are customarily posted. Covered Employers may post the notice electronically on an internal website in a conspicuous location and which website is readily accessible to all Employees. The notice shall include the total hours of work being offered, the schedule of available shifts, whether those shifts will occur at the same time each week, and the length of time the Covered Employer anticipates requiring coverage of the additional hours, and the process by which Part-time Employees may notify the Covered Employer of their desire to work the offered hours.

3-34-7. RIGHT TO REST.

(A) An Employee has the right to decline work hours that occur within 11 hours of the Employee's last Shift, or

(B) An Employee who agrees in writing to work hours described in this Section shall be compensated at one-and-a-half (1.5) times the Employee's regular rate of pay for any hours worked less than 11 hours following the end of a previous shift.

3-34-8. RIGHT TO REQUEST A FLEXIBLE WORKING ARRANGEMENT.

An Employee has the right to request a modified Work Schedule, including, but not limited, to additional shifts or hours; changes in days of work; changes in shift start and end times; permission to exchange shifts with other employees; limitations on availability; part-time employment; job sharing arrangements; reduction or change in work duties; or part-year employment.

3-34-9. NOTICE AND POSTING.

(A) Every Employer shall post in a conspicuous place in each facility where any Employee works that is located within the geographic boundaries of the City a notice advising the Employees of their rights under this chapter. The City Manager shall prepare and make available a form notice that satisfies the requirements of this subsection (A).

(B) Every Employer shall provide with the first paycheck subject to this chapter a notice advising the Employee of their rights under this chapter. The City Manager shall prepare and make available a form notice that satisfies the requirements of this subsection (B).

(C) All notices and postings that name individual Covered Employees shall comply with Section 3-34-9.

3-34-10. RETALIATION PROHIBITED.

(A) It shall be unlawful for any Employer to discriminate in any manner or take any adverse action against any Employee in retaliation for exercising any right under this chapter, including, but not limited to, disclosing, reporting, or testifying about any violation of this chapter or rules promulgated thereunder. For purposes of this section, prohibited adverse actions include, but are not limited to, termination, denial of promotion, negative evaluations, punitive schedule changes, punitive decreases in the desirability of work assignments, and other acts of harassment shown to be linked to such exercise of rights.

(B) A violation of this section shall subject the Employer to a \$1,000.00 fine per occurrence.

3-34-11. AVOIDANCE OF APPLICATION.

It shall be unlawful for an Employer to engage in any of the following to avoid coverage under this chapter: (i) change a regular rate of pay, (ii) interfere with, restrain, deny, or

change scheduled workdays or hours, or (iii) hire, rehire, terminate, or suspend, even temporarily.

3-34-12. ENFORCEMENT – RULES.

The City shall administer and enforce this chapter and is authorized to adopt rules to effectuate that administration and enforcement.

3-34-13. VIOLATION – PENALTY.

Any Employer who violates this chapter or any rule promulgated thereunder shall be subject to a fine of not less than \$300.00 nor more than \$500.00 for each initial offense. Each Employee whose rights are affected shall constitute a separate and distinct offense to which a separate fine shall apply. Each day that a violation occurs shall constitute a separate and distinct offense to which a separate increased fine amount shall apply. The fine shall increase by \$50 for each subsequent offense. Any agreement between the Employee and Employer that would violate this chapter is no defense to an enforcement action.

3-34-14. PRIVATE CAUSE OF ACTION.

(A) An employee may initiate a civil action in a court of competent jurisdiction, asserting that they were subjected to a violation of this ordinance.

(B) Any claim or action filed under this ordinance must be made within two years of the alleged conduct resulting in the complaint.

(C) An Employee who prevails in a civil action pursuant to this section shall be entitled to an award of compensation for any damages sustained, including the payment of Predictability Pay unlawfully withheld, as a result of the violation, including litigation costs, expert witness fees, and reasonable attorney's fees.

3-34-15. NON-EXCLUSIVE REMEDY.

The remedies, fines, and procedures provided under this chapter are cumulative and are not intended to be exclusive of any other available remedies, penalties, and procedures established by law which may be pursued to address violations of this chapter.

3-34-16. RETENTION OF RECORDS.

Each Employer shall maintain for at least three years, or for the duration of any claim, civil action, or investigation pending pursuant to this chapter, whichever is longer, a record of each Employee's name, hours worked, pay rate, and records necessary to demonstrate compliance with this chapter, including but not limited to good faith estimates of Work Schedules, initial posted schedule and all subsequent changes to that schedule, consent to work hours where such consent is required by this chapter, and documentation of offers of hours of work to existing staff and responses to such offers. Each Employer shall provide each Covered Employee a copy of the records relating to such Covered Employee upon the Covered Employee's reasonable request.

3-34-17. ACCESS TO WORK SITE.

Each Employer shall permit access to work sites and relevant records for authorized City representatives for the purpose of monitoring compliance with this chapter and investigating Employee complaints of noncompliance, including production for inspection and copying of its employment records.

3-34-18. NO PREEMPTION OF HIGHER STANDARDS.

The purpose of this Chapter is to ensure minimum labor standards. This Chapter does not preempt or prevent the establishment of superior employment standards (including higher wages) or the expansion of coverage by ordinance, resolution, contract, or any other action of the City. This Chapter shall not be construed to limit a discharged Employee's right to bring a common law cause of action for wrongful termination.

3-34-19. SEVERABILITY.

If any provision of application of this Chapter is declared illegal, invalid or inoperative, in whole or in part, by any court of competent jurisdiction, the remaining provisions and portions thereof and applications not declared illegal, invalid or inoperative shall remain in full force or effect. Nothing herein may be construed to impair any contractual obligations of the City. This Chapter shall not be applied to the extent it will cause the loss of any Federal or State funding of City activities.

SECTION 2: That the findings and recitals contained herein are declared to be prima facie evidence of the law of the City and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

SECTION 3: That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4: That this Ordinance 24-O-23 shall be in full force and effect from and after September 1, 2023 in the manner provided by law.

SECTION 5: That if any provision of this Ordinance 24-O-23 or application thereof to any person or circumstance is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Ordinance 24-O-23 that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Ordinance 24-O-23 is severable.

Introduced: May 1, 2023

Approved:

Adopted: May 22, 2023

June 5, 2023

Daniel Biss

Daniel Biss, Mayor

Attest:

Approved as to form:

Stephanie Mendoza

Nicholas E. Cummings

Stephanie Mendoza, City Clerk

Nicholas E. Cummings, Corporation Counsel