



City of Seattle and Proposed Oregon Statewide Predictive Scheduling (HB 2193 / SB 828)

Policy	City of Seattle	Oregon – HB 2193 / SB 828
<b>Employer Coverage</b>	<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>	<ul style="list-style-type: none"> <li>• <b>All Employers:</b> 4-Hour minimum pay if canceled or reduced with less than 24-hour notice (p. 3)</li> <li>• <b>All Employers:</b> Right to Input into Work Schedule (pp. 3-5); more stringent provisions apply to large restaurant and retail employers.</li> <li>• <b>All other substantive provisions (pp. 4-5):</b> Retail, food service, and hospitality establishments with 100+ employees in US and 25+ employees in Oregon, including a chain, integrated enterprise, or a franchise associated with franchisor or network of franchises that employs 100+ employees in US and 25+ employees in Oregon (but for food service establishment that is full service restaurant, also must have 40+ full-service restaurant locations, including chain, integrated enterprise, or franchise).</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>	<ul style="list-style-type: none"> <li>• Hourly/Piece Rate, non-exempt employees (p. 2).</li> <li>• Does not include salaried employees (p. 2).</li> </ul>
<p><b>Good Faith Estimate of Work Schedule</b></p> <p><i>Applies to Large Employers (restaurant, retail, and hospitality)</i></p>	<ul style="list-style-type: none"> <li>• Good faith estimate = Median number of hours and whether employee can expect to work on-call shifts.</li> <li>• New employees = Employer provides a written good faith estimate at time of hire.</li> <li>• Existing employees = 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>	<ul style="list-style-type: none"> <li>• <b>Same as Seattle (p. 6).</b></li> </ul>
<p><b>Right to Request Input into the Work Schedule</b></p> <p><i>Applies to Large Employers (restaurant, retail, and hospitality) and <u>in part</u> to Small Employers</i></p>	<ul style="list-style-type: none"> <li>• New employees (at time of hire) and existing employees = 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”</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Same as Seattle (pp. 3-4 (small) and 5-6 (large)).</b></li> </ul>

	for denying requests related to employee's major life event.	
<b>Right to Rest between Work Shifts</b>  <i>Applies to Large Employers (restaurant, retail, and hospitality)</i>	<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>	<ul style="list-style-type: none"> <li>Same as Seattle (p. 7).</li> </ul>
<b>Advance Notice of Work Schedule</b>  <i>Applies to Large Employers (restaurant, retail, and hospitality)</i>	<ul style="list-style-type: none"> <li>New employees (at time of hire) and employees returning from a leave of absence = advance notice of work schedule that runs through the last date of the currently posted work schedule.</li> <li>Existing employees = Advance notice of 14 days.</li> <li>Employer must provide work schedule in English and primary language of the employee.</li> </ul>	<ul style="list-style-type: none"> <li>Same as Seattle (pp. 6-7).</li> </ul>
<b>Work Schedule Changes</b>  <i>Applies to Large Employers (restaurant, retail, and hospitality)</i>	<ul style="list-style-type: none"> <li>Employer-initiated changes = Employer must provide timely notice by in- person conversation, telephone call, email, text message, or other accessible electronic or written format.</li> <li>Right to decline = Employee has right to decline hours not on work schedule.</li> <li>Employee-initiated changes = 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</li> </ul>	<ul style="list-style-type: none"> <li>Same as Seattle, EXCEPT replacement coverage not addressed (pp. 6-7).</li> </ul>

procedures.

- Finding replacement coverage = Employer's ability to ask or require employees to search for or find replacement coverage.
  - 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);
  - 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;
  - Employer can ask and require employee to find replacement coverage if work schedule change is not for the above reasons.

**Compensation for Work Schedule Changes (Predictability Pay)**

***Applies to Large Employers (restaurant, retail, and hospitality)***

- Additions = One hour of pay at scheduled rate in addition to wages earned.
  - Any addition of hours of work not on the work schedule; or
  - Changing date, start or end time of a work shift with no loss of hours.
- Subtractions = .5x pay at scheduled rate for length of work shift, or the remainder of the work shift.
  - Subtracting hours from a work shift before or after the employee reports for duty;
- **Same as Seattle, EXCEPT (pp 7-8):**
- Exceptions = Requirements for additional compensation do not apply in the following situations:
  - Additional hours that an employer requests of employees who are currently working their shift to address "present and unanticipated customer needs," so long as the hours are consecutive and the employee consents.

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- Changing the date or start or end time of work shift with a loss of hours;
  - Cancelling a work shift; or
  - Scheduling an employee for an on-call shift for which the employee does not need to report to work.
  - Exceptions = Requirements for additional compensation do not apply in the following situations.
    - Mutually agreed upon work shift swaps or coverage among employees (that may be approved by the employer);
    - 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);
    - Additional hours that were included in an "access to hours" offer of work;
    - Employee-requested changes that the employee voluntarily makes to the employee's work schedule and documents in writing;
    - Employee hours that are subtracted due to disciplinary reasons, provided the employer documents in writing the
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incident leading to discipline;

- 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.

**Pattern or Practice of Under Scheduling**

*Applies to Large Employers (restaurant, retail, and hospitality)*

- 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.

● **Same as Seattle (p. 8).**

**Access to Hours for Existing Employees**

*Applies to Large Employers (restaurant, retail, and hospitality)*

- Employer must offer additional hours of work to existing employees before hiring new employees from an external applicant pool or subcontractors, or temporary.
- Posting notice:
  - Post notice for 3 days (can concurrently post it internally and externally).
  - Post written notice of available hours in conspicuous and accessible location where employee notices are customarily posted & in English and primary language(s) of the employees (OLS will create a model notice for translated

● **Same as Seattle (pp. 8-9).**

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- languages).
  - Employees must have workplace access to electronic notice.
  - Offering hours of work:
    - Provide employee with 2 days to accept offer.
    - Offer additional hours to existing, qualified candidates.
    - May assign full work shifts rather than parcel hours among employees.
    - 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.
    - Seasonal Employment = 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.
  - Exceptions (in whole or part):
    - Declination from all existing employees = Employer can immediately proceed with external hiring after providing notice of additional hours to all employees and receiving written declination.
    - Access to hours list = Employer can limit distribution of notice of additional hours of work to employees on the access to
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hours list and can hire externally after receiving written declination.

- All employees are automatically on the access to hours list & 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.
- Hiring programs = 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.
- Overtime = Employer is not required to offer additional hours of work paid at the overtime premium.

**Notice of Rights**

*Applies to all Employers*

- Display poster in the workplace in English and the primary language(s) of employees.
- **Same as Seattle (pp. 9-10).**

**Records**

- Maintain records that demonstrate compliance
  - **Same as Seattle + rebuttable presumption**
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<b>Applies to all Employers</b>	for three years.	that the employer violated a provision of the law for failure to maintain records (p. 10).
<b>Enforcement and Remedies</b>  <b>Applies to all Employers</b>	<ul style="list-style-type: none"> <li>• Fines increase cumulatively by 50% of the fine for each preceding violation</li> <li>• Violators liable for: <ul style="list-style-type: none"> <li>○ Payment of unpaid compensation plus interest in favor of the aggrieved party;</li> <li>○ Liquidated damages in an additional amount of up to twice the unpaid compensation (up to \$500 for first violation; up to greater of \$1,000 or 10% of amount of unpaid compensation for second violation; up to greater of \$5,000 or 10% of unpaid compensation for subsequent violations)</li> <li>○ Fine for retaliation up to \$20,000</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Retaliation or interference with rights is prohibited (p. 11).</li> <li>• Employee may file complaint with BOLI or a civil action (p. 11).</li> <li>• BOLI has same enforcement powers as with respect to other employment rights (p. 11).</li> <li>• In addition to damages, BOLI may assess statutory penalty payable to aggrieved party of (p. 11): <ul style="list-style-type: none"> <li>○ \$500 for first violation;</li> <li>○ \$1,000 for any subsequent violation that occurs within 10 years of the first violation.</li> <li>○ If BOLI determines that the employer paid the full remedy due to an aggrieved party, not including any statutory penalty, within 14 days of service of an order, 50% of statutory penalty waived.</li> </ul> </li> </ul>
<b>Collective Bargaining Agreement Waiver</b>	<ul style="list-style-type: none"> <li>• Collective Bargaining Agreement: Does not apply if employees “expressly” waive requirements AND “in clear and unambiguous terms the employees have ratified an alternative structure for secure scheduling that meets the public policy goals of this Chapter 14.2.”</li> </ul>	<ul style="list-style-type: none"> <li>• No CBA Exemption</li> </ul>
<b>Appeal</b>	<ul style="list-style-type: none"> <li>• Right to appeal via contested hearing and then</li> </ul>	<ul style="list-style-type: none"> <li>• Right to judicial and administrative</li> </ul>

	judicial review	appeals
<b>Two Year Study</b>	<ul style="list-style-type: none"> <li>• Council shall request the City Auditor 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> </ul>	<ul style="list-style-type: none"> <li>• Does not include an impact study.</li> </ul>

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Seattle Ordinance 125135 (2016), available at <http://docdro.id/E8b4Qgy>  
House Bill (HB) 2193 (2017), available at <http://docdro.id/wKx8srM>  
Senate Bill (SB) 828 (2017), available at <http://docdro.id/E7eD9dS>