



FAIR WORKWEEK ORDINANCE DRAFT REGULATIONS OPEN FORUM

Website: www.emeryville.org/1136

Email: fairworkweek@emeryville.org

FORMAT

MISSION

INTRODUCTION OF CITY REPRESENTATIVES

REGULATION OVERVIEW

TIMELINE REVIEW

OPEN FLOOR

OPEN FORUM GUIDELINES

- Please do not speak over other attendees.
- We are on a first name basis.
- You will be able to ask general questions and give feedback after each section is reviewed and an open floor at the end of the presentation.
 - We will not be able to answer questions about individual business practices and their specific compliance with ordinance.
- Feel free to step out/get snacks as needed.
- Please silence cell phones.

As a reminder:

- This session is being recorded and is public record, subject to disclosure.

CITY OF EMERYVILLE PRESENTERS

Michael Guina: City Attorney, City of Emeryville

April Shabazz: Management Analyst, City of Emeryville

Chadrick Smalley: Economic Development and Housing Manager, City of Emeryville

Lin Robertson: Owner & Executive Director, The Labor Compliance Managers

Kate Karniouchina: Dean, Lorry I. Lokey, School of Business and Public Policy, Mills College

Terea Macomber: Outreach Consultant, Mills College

Molly Curley O'Brien: Outreach Consultant, Mills College

FWW REGULATIONS REVIEW

FWW PURPOSE AND INTENT

- Provides standards for work hours for employees in retail and fast food industries above and beyond requirements of state law.
- The FWW protects the public health, safety, and welfare by providing adequate notice of work schedule, compensation for employer-initiated schedule changes, access to sufficient hours of work for part-time employees, healthy rests between shifts, and input into schedules.

FWW OVERVIEW

- 1. Definitions**
- 2. Covered Employers**
- 3. Advance Notice of Work Schedule**
- 4. Notice, Right to Decline, and Compensation for Schedule Changes**
- 5. Offer of Work to Existing Employees**
- 6. Right to Rest**
- 7. Right to Request a Flexible Working Arrangement**
- 8. Notice and Posting**
- 9. Implementation**
- 10. Enforcement**

DEFINITIONS

1. Temporary, On-Call, contract (distinguished from independent contractors), and seasonal Employees.
2. “On Call Shift” means any Shift for which an Employee must, less than 24 hours in advance of the start of the Shift, either contact the Covered Employer or wait to be contacted by the Covered Employer, to learn whether the Covered Employer requires the Employee to report to work for the Shift.
3. “Regular Rate of Pay” includes Commissions earned.

COVERED EMPLOYERS

1. Calculation of the number Employees in a given week shall be made on a quarterly (13 week) period basis. Where the number of Employees fluctuates, the calculation should be an average of Employees per week for the given quarter.
2. To substantiate calculations, all Covered Employers shall maintain a spreadsheet, database or similar record indicating date of hire and date of termination for each Employee.
3. A Covered Employer's calculations shall not include executive and exempt Employees (Regulation 2.b.i.).
4. Calculation includes Temporary, On-Call, and seasonal employees (2.b.ii).
5. Calculation is based on the number of all individuals employed, and shall not be calculated using the number of FTEs (Full Time Equivalents).
6. With multiple locations within the City, the total number of Employees employed within the geographic limits of the City shall be used.

ADVANCE NOTICE OF WORK SCHEDULE

1. Posting of the Work Schedule shall include any On-Call Shifts.
2. Employees shall be able to modify the Work Schedule. 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 Covered Employer arranging the Shift swap or coverage.
3. No Predictability Pay is required where a Covered Employer makes available additional Shifts that Employees may opt to work and the Employee on his/her own initiative volunteers to report for that additional Shift.
4. No Predictability Pay when Shift runs over to complete service where Employee receives Commission or tip.
5. No Predictability Pay for changes to the Work Schedule prior to 14 days requirement.

NOTICE FOR SCHEDULE CHANGES

1. Changes to schedule shall be made in such a manner as to guarantee the Employee is made aware of the schedule change, and the Covered Employer shall document that the information was transmitted to the Employee.
2. Shall not use any methodology for posting that would cause the Employee to incur charges.
3. An electronic scheduling system provided by the Covered Employer to permit Shift-swaps will not incur Predictability Pay.

RIGHT TO DECLINE FOR SCHEDULE CHANGES

1. Employees have Right to Decline several requests to modify work schedules, regardless of timing.
2. A Covered Employer may not retaliate against an Employee for declining a schedule change.
3. Exercise of Right to Decline does not prevent future exercise of Right to Decline.

COMPENSATION FOR SCHEDULE CHANGES

1. Schedule Changes made because of fluctuating or intermittent need, including but not limited to delivery, installation, instruction, and service cancellations, result in Predictability Pay.
2. No Predictability Pay shall be due where a Covered Employer requires an Employee to leave work early, where the Employee receives regular compensation for the entire scheduled Shift. However, Predictability Pay may be required for the Employee who covers that Shift.
3. No Predictability Pay is required where a Covered Employer requires an Employee to leave work early because the Covered Employer disciplines the Employee for good cause and documents the incident leading to the disciplinary action.
4. Unscheduled overtime hours shall give rise to Predictability Pay in addition to the payment of overtime rates.
5. Exemptions shall be limited to the time during which operations cannot begin or continue for the enumerated reasons.

COMPENSATION FOR SCHEDULE CHANGES

Amount of Notice of Schedule Change	Length of Shift Affected	Hours of Predictability Pay (at the Employee's Regular Rate of Pay)
Less than 14 days and more than 24 hours	Any	One hour
Less than 24 hours	Change is a Reduction or Cancellation of Hours	Lesser of: <ul style="list-style-type: none">• The number of hours of the scheduled shift; or• Four hours
Less than 24 hours	All other changes	One hour

OFFER OF WORK TO EXISTING EMPLOYEES

1. The Covered Employer may offer additional work hours to the Part-time Employees of its own discretion, or may seek out interested Part-time Employees by another method, such as by group posting to its existing Part-time Employees.
2. No requirement to offer overtime
3. Employee need not accept full portion of additional hours offered so long as: (1) the total number of additional hours for which the Part-time Employee is scheduled is more than four (4) consecutive hours; and (2) the remainder of the additional hours that the Part-time Employee cannot work is not less than four (4) consecutive hours.
4. Part-time Employees includes all locations of a Covered Employer within the City Limits, and shall not be limited to the specific location that an Employee historically has reported for a Shift.

RIGHT TO REST/”CLOPENINGS”

1. An Employee’s acceptance of “clopening” shift shall be in writing, including email or text exchange.
2. Compensation shall be separate from, and is not exclusive of, Predictability Pay.
 - EMC 5-39.06(b). 1.5 x Regular Rate of Pay for each hour less than 11 hours after end of previous shift
3. An example calculation of the 11 hour period is as follows: If a Shift ends at 8 p.m. on Monday and Employee is scheduled to start a subsequent Shift at 6 a.m. on Tuesday, the Employee is entitled to be paid one-and-a-half times the Employee’s regular rate of pay for the one hour period of 6 a.m.-7 a.m., as that would be performed within 11 hours following the 8 p.m. end of the previous Shift.

RIGHT TO REQUEST A FLEXIBLE WORKING ARRANGEMENT

1. An Employee's request may be a combination of adjustments. The Covered Employer is not required to fulfill all requests, and may suggest a variation or portion of the Employee's request instead of declining the request.
2. Employees may provide documentation supporting their requests under this Section, but are not required to do so.
3. No retaliation.
4. Both an Employee's request under this Section, and the Covered Employer's timely response thereto, shall be made in writing, with those records to be maintained for three years.

NOTICE AND POSTING

I. English and Spanish required

Note:

- *The City will be mailing posters, to be hung in an area that is visible to all employees. Please check and/or update your companies address on the sign-in the sheet.*
- *The City will be sending a Spanish translation of the ordinance via email and/or post.*

IMPLEMENTATION

- I. The City may also accept anonymous or orally reported complaints. Employees who make anonymous complainants cannot collect Predictability Pay.

ENFORCEMENT TEAM

Website: <http://www.thelaborcompliancemanagers.com/contact.html>

ENFORCEMENT

1. The City may create forms for voluntary use by Covered Employers.
2. Covered Employers shall retain records for three years.
3. The following is a non-exhaustive list of documentation that each Employer shall retain under the Ordinance:
 - Spreadsheets or databases used for calculation of number of employees;
 - Calculations of Employee Rates of Pay, including commission analysis;
 - Work schedules transmitted to Employees, including correspondence with Employees regarding schedule changes, regardless of timing;
 - Any postings of additional hours available, and correspondence with Employees regarding the same;
 - Correspondence with Employees regarding their requests for flexible working arrangements; and
 - Any other records referenced in these Regulations or the Ordinance.

TIMELINE

REVIEW OF TIMELINE

June 26 th	Draft Regulations are posted to website/public comment period opens
July 1st	Ordinance becomes effective, soft launch enforcement begins
July 14 th	Written comments “received to-date” are posted to website
July 15th-July 31st	Public Forums are conducted
July 31 st	Public comment period closes
Aug 1 st to Aug 31 st	Revisions are made, educational materials are developed
August 11 th	All written comments received are posted to website
September 1st	Final draft of regulations are posted to website
September 1 st -31 st	Educational workshops/distribution of educational materials
Oct 1 st – Dec 31 st	Employers incorporate materials, test and adjust processes
January 1st 2018	Soft launch enforcement ends, full enforcement begins

IMPORTANT CONTACTS

PLEASE SUBMIT ANY QUESTIONS, CONCERNS OR FEEDBACK

- General email: fairworkweek@emerville.org
- Questions: info.laborstandards@emeryville.org
- Reporting complaints: complaints.laborstandards@emeryville.org
- Phone: 510-596-4351
- Website: emeryville.org/1136

THANK YOU FOR YOUR TIME!

UPCOMING EVENT:

Minimum Wage Ordinance Education Session

Friday, August 4th

12P – 1:30P

ECCL – COMMUNITY ROOM

PLEASE RSVP!