

Offered by Councilor Michelle Wu Edwards, Essaibi-George, Flynn, and Janey



CITY OF BOSTON IN CITY COUNCIL

AN ORDINANCE REGARDING FAIR WORKWEEK EMPLOYMENT STANDARDS FOR CITY CONTRACTORS

WHEREAS: Hourly workers deserve stable and predictable work hours, more opportunities to work full-time, healthier schedules, and the ability to have a voice in when and where they will work; *and,*

WHEREAS: More than 4 in 5 hourly part-time workers reported that their weekly work hours fluctuated by an average of 87% week to week. This leads to higher levels of work-family conflicts among these workers; *and,*

WHEREAS: More than half of minimum wage workers say they have to work more than one job to make ends meet which often leads to problems balancing their schedule between jobs. This unpredictability also often leads to students dropping out because they are unable to balance work and school; *and*

WHEREAS: Unstable work hours are linked to lead to higher levels of stress and poor mental health outcomes; *and*

WHEREAS: 1 in 2 hourly workers report that their employer schedules them without their input; among workers of color, this is even higher – 55% of Black workers and 58% of Hispanic workers. Workers deserve to have a voice in the scheduling process without fear of retribution; *and*

WHEREAS: Boston should provide its worker with schedules that are predictable, flexible, and that provide enough hours for families to make ends meet; *NOW THEREFORE BE IT*

ORDERED: That the City of Boston Code, Ordinances be amended in Chapter IV by adding after Section 4-8 the following:

**4-9. REQUIRING THE CITY AND ITS CITY VENDERS TO APPLY FAIR
WORKWEEK EMPLOYMENT STANDARDS**

4.9-1. Definitions

- a) **Calendar Week.** A period of seven consecutive days beginning on any designated day.
- b) **Covered Employer.** The City of Boston and any for-profit employer or any not-for-profit employer who employs at least twenty-five (25) FTE's who has been awarded a service contract or service subcontract after the effective date of this section.
- c) **Covered Employee.** A person employed by the city or a covered vendor who directly expends or would directly expend his or her time on the service contract with the City of Boston or on the service subcontract.
- d) **Designated Department.** The City of Boston department or agency, designated by the Mayor, to be responsible for the overall implementation, compliance and enforcement of this Chapter.
- e) **Full-time equivalent (FTE).** A formula to calculate the number of employee work hours which equal one (1) full-time position. For the purposes of this Chapter, full time shall mean the standard number of working hours, between thirty-five (35) hours and forty (40) hours per week, that is used by the covered vendor to determine full time employment.
- e) **On-Call Shift (or On-Call Hours).** Any time that an employer requires an employee to be available to work, and to contact the employer or the employer's designee or wait to be contacted by the employer or its designee, to determine whether the employee must report to work at that time.
- f) **Predictability Pay.** A payment calculated on an hourly basis at the employee's regular rate of pay, and paid to an employee as compensation for changes made by the employer to an employee's work schedule, in addition to any wages earned for work performed by that employee.
- g) **Posted Work Schedule.** The written notice of work hours required to be provided no later than 14 days before the first day of any new schedule pursuant to section 4.9-4(c)
- h) **Shift.** The consecutive hours an employer requires an employee to work or to be on-call to work, provided that breaks totaling two hours or less shall not be considered an interruption of consecutive hours.
- i) **Vendor Agreement.** A written agreement between the City of Boston and any covered vendor that is executed at the time a service contract is signed with the City or a subcontract is signed with a covered vendor.
- j) **Work Schedule.** All of an employee's regular and on-call shifts, including specific start and end times for each shift, during a Calendar Week.
- k) **Youth program.** Any City, State, or Federally funded program which employs youth, as defined by City, State, or Federal guidelines, during the summer, or as part of a school to work program, or in other related seasonal or part-time program.

4.9-2. Notification Requirements

- a) All contracting departments engaged in the awarding of contracts shall provide in writing an explanation designed by the Designated Department of the requirements of this Ordinance in all requests for bids for service contracts with the City of Boston. All persons who have signed a service contract with the City of Boston shall forward a copy of such requirements to any person submitting a bid for a subcontract on the service contract.
- b) Covered vendors shall provide each covered employee with a fact sheet about this Ordinance and shall post a notice about the Ordinance in a conspicuous location visible to all employees. The fact sheet and poster shall be provided to the covered vendor by the Designated Department and shall include the rights and privileges provided under this Ordinance, stating that retaliation against employees for exercising such rights is prohibited, a description of the enforcement provisions of the Ordinance; the name, address, and phone number of a person designated by the designated department to which complaints of noncompliance with this Ordinance should be directed, and any other information as the Designated Department may require.

4.9-3. Vendor Agreements

At the time of signing a service contract with the City of Boston or subcontract with a vendor, the contract with the covered vendor must include a written commitment to comply with the provisions of this Ordinance.

4.9-4. Advance Notice of Work Schedules

- a) Upon hiring an employee, a Covered Employer shall provide such employee with a written, good faith estimate of the employee's work schedule. The employer shall revise the good faith estimate when there is a significant change to the employee's work schedule due to changes in the employee's availability or to the employer's business needs. 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. The good faith estimate shall contain:
1. The average number of work hours the employee can expect to work each week;
 2. Whether the employee can expect to work any on-call shifts;
 3. 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.
- b) At the time of hire and during employment, the employee has the right to make work schedule requests. The requests protected under this section include but are not limited to:
1. Requests not to be scheduled for work shifts during certain days or times or at certain locations,
 2. Requests not to work on-call shifts,
 3. Requests for certain hours, days, or locations of work, and

4. Requests for more or fewer work hours.

The employer is encouraged to engage in an interactive process to discuss such employee requests, but may grant or deny the request for any reason that is not unlawful.

- c) On or before the commencement of employment, a Covered Employer shall provide the employee with a written work schedule that runs through the last date of the currently posted schedule. Thereafter, an employer shall provide written notice of work hours no later than 14 days before the first day of any new schedule pursuant to section 4.9-2(d). Nothing in this Section shall be construed to prohibit an Employer from providing greater advance notice of Employee's work schedules and/or changes in schedules than that required by this Section. An employer who fails to post a written work schedule at least fourteen calendar days before the first day of the work schedule must compensate each employee in the amount of \$75 per day that the schedule is not posted.
- d) Written notice of the work schedule shall be provided by posting the work schedule in a conspicuous place at the workplace that is readily accessible and visible to all employees and transmitting the posted work schedule to each employee. Such transmission may be done electronically if electronic means are regularly used to communicate scheduling information to employees. The posted work schedule shall include the shifts of all current employees at that worksite, whether or not they are scheduled to work or be on-call that week.
- e) A Covered Employer shall provide notice of any proposed changes to the employee's posted work schedule as promptly as possible and prior to the change taking effect. The Covered Employer must revise the written work schedule to reflect any changes within 24 hours of making the change.
- f) An employee may decline to work any hours not included in the posted work schedule. If the employee voluntarily consents to work such hours, such consent must be recorded in writing. A communication of an employee's desire to work shifts made available pursuant to section 4.9-7 shall constitute written consent.

4.9-5. Compensation for Changed Work Schedules

- a) For each employer-initiated change to the posted work schedule that occurs after the advance notice required in section 4.9-4(c), a Covered employer shall pay an employee predictability pay at the following rates:
 - 1. One hour of predictability pay when the Covered Employer adds hours of work or changes the date, time, or location of a work shift with no loss of hours.
 - 2. No less than one-half times the employee's regular rate of pay per hour for any scheduled hours the employee does not work when the Covered Employer subtracts hours from a regular or on-call shift and/or cancels a regular or on-call shift.
- b) A Covered Employer is not required to pay predictability pay under this section 4.9-5 or obtain written consent pursuant to subsection 4.9-4(f) when:

1. An employee requests a shift change in writing, including but not limited to the use of sick leave, vacation leave, or other leave policies offered by the employer;
2. A schedule change 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. The Covered Employer's operations cannot begin or continue due to:
 - a. Threats to the employees or the employer's property;
 - b. The failure of a public utility or the shutdown of public transportation;
 - c. A fire, flood or other natural disaster;
 - d. A state of emergency declared by the President of the United States, the Governor of the state, or the Mayor of the city; or
 - e. Severe weather conditions that pose a threat to employee safety.

4.9-6. Right to Rest Between Work Shifts

- a) An employee may decline, without penalty, any work hours that are scheduled or otherwise occur: (a) less than 11 hours after the end of the previous day's shift, or (b) during the 11 hours following the end of a shift that spanned two days. An employee may consent to work such shifts; however, consent must be provided in writing, either for each such shift or for multiple shifts, and may be revoked in writing at any time during employment.
- b) The employer shall compensate the employee for each instance that the employee works a shift described in subsection 4.9-6(a) at one and one-half times the employee's scheduled rate of pay for the hours worked that are less than eleven hours apart.

4.9-7. Offer of Work to Existing Employees

- a) Before hiring new employees from an external applicant pool or subcontractors, including hiring through the use of temporary services or staffing agencies, a Covered Employer shall offer work shifts to existing employees.
- b) The employer shall post written notice of available work shifts for at least 72 hours, unless a shorter posting period is necessary in order for the work to be timely performed.
 1. The notice shall be in English and in the primary language(s) of the employees at the particular workplace, posted in a conspicuous location at the workplace that is readily accessible to all employees. The notice shall also be provided electronically to each employee if the Covered Employer customarily communicates in such manner with employees.
 2. The notice shall include a description of the position and its required qualifications, the schedule of available shifts, the length of time the employer anticipates requiring coverage of the additional hours, the process by which employees may notify the employer of their desire to work the offered shifts, and an advisement that an employee may accept a subset of the shifts offered.

3. The employer may post the notice concurrently at the location where the shifts described in the notice will be worked, locations other than the location where the work is to be performed, and to external candidates.

c) A Covered Employer shall distribute shifts, in accordance with the criteria contained in the notice required by subsection 4.9-7(b)(2), to one or more employees who have accepted such shifts and who, to a reasonable employer acting in good faith, are qualified to perform the work, provided that:

1. A Covered Employer shall distribute shifts to employees whose regular workplace is the location where the shifts described in the notice will be worked; or, if no such employee accepts the shifts within the time defined in this section, to employees whose regular workplace is a covered location other than the location where such shifts will be worked; or, if no such employee accepts the shifts described in the notice within the time defined in this section, to temporary or seasonal workers who have been continuously assigned for at least four weeks to the location where the shift described in the notice will be worked.
2. The Employer's system for distribution of hours shall 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 the Employer may not distribute hours in a manner intended to avoid application of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18001.

d) A Covered Employer may hire individuals from an external applicant pool or subcontractors to perform the work described in, and in accordance with the criteria set forth in, the notice posted pursuant to subsection 4.9-7(b)(2) if the employer provides notice of available work shifts to all employees as required herein, and:

1. No employee responds to the written notice of available work shifts by the end of the 72-hour posting period; or
2. Within the 72-hour posting period, the employer receives written confirmation from eligible employees that they are not interested in accepting the available work shifts; or
3. Existing employees have accepted a subset of the offered work shifts, in which case the existing employees must be awarded that subset of work shifts and external applicants may be offered the remaining shifts.

e) 4.9-7 shall not be construed to require any Covered Employer to offer employees work hours paid at a premium rate under state or federal law, or to prohibit such employer from offering such work hours.

f) An employer must notify an employee in writing of their policy for offering and distributing work shifts under this section, at the time of hire and within 24 hours of any change, and must post the notice in an accessible location in the workplace. The notice shall communicate:

1. Where employees can access written notices of available work shifts;

2. The process by which employees may notify the employer of their desire to work the available work shifts;
3. The criteria for distribution of work shifts among qualified and interested employees.

g) An employer who fails to offer additional hours of work as required by this section must compensate each existing employee \$100 for each such occurrence. An employer who fails to award hours to the qualified employee who is eligible to receive the hours under the policy posted pursuant to subsection (f)(3) of this section must compensate the qualified employee in the amount of \$1,000.

4.9-7. Regulations

The Designated Department is authorized to coordinate the implementation, administration, and enforcement of this Ordinance, and shall promulgate such regulations or guidelines as it may deem necessary for such purposes.

4.9-8. Employer Records

a) Covered Employers shall keep records necessary to demonstrate compliance with this Chapter, including but not limited to good faith estimates of work schedules, written work schedules and any modifications thereto, written consent for work shifts as required by this Chapter, and offers of work shifts to existing employees and responses to those offers. Employers shall retain such records for a period of three (3) years, and shall allow the Designated Department access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Chapter. When an issue arises as to a Covered Employer's compliance with this Chapter, if the employer does not maintain or retain adequate records documenting compliance, or does not allow the Designated Department reasonable access to such records within 30 days of the Designated Department's request, it shall be presumed that the employer has violated the Chapter, absent clear and convincing evidence otherwise.

b) Upon request by any employee, and in accordance with the rules of the Designated Department, a Covered Employer must provide such employee with work schedules in writing for any previous week worked for the past two years, including the originally posted and modified versions of work schedules.

c) Employers may record employee consent and employee requests pursuant to sections 4.9-4(f), 4.9-5(b)(1), and 4.9-6(a) using any printed or printable communication in physical or electronic format, including a communication that is transmitted through email, text message, or a computer system, or is otherwise sent and maintained electronically.

4.9-9. Enforcement Powers

If necessary for the enforcement of this Ordinance, the Designated Department may issue subpoenas, compel the attendance and testimony of witnesses and production of books, papers, records and documents relating to Cover Employer records necessary for hearing, investigations, and proceedings. The Designated Department may apply to a court of competent jurisdiction to enforce these provisions.

4.9-10. Complaints and Investigations

- a) A complaint of noncompliance with this Ordinance may be filed by any person with the Designated Department, which shall provide a copy of the complaint to each Covered Employer against whom the complaint is made within fourteen (14) business days.
- b) The Designated Department, or its designee shall investigate all complaints of noncompliance. Investigations may include routine reviews, spot checks, and investigations pursuant to complaints. The Designated Department, or its designee, shall have the responsibility to examine promptly all payrolls for compliance upon receiving a complaint, in furtherance of any investigation
- c) Upon receiving a complaint alleging a violation of this Ordinance, the Designated Department shall investigate such complaint and, if appropriate, attempt to resolve it through mediation. The Designated Department may designate representatives, including representatives of unions or nonprofit organizations, to inspect worksites and access records required to be maintained under section 4.9-8. Within 14 business days of receipt of a complaint regarding an alleged violation, the Designated Department shall send a demand letter to the Covered Employer notifying the employer that the Designated Department is in receipt of a complaint of noncompliance and instructing the Covered Employer to provide, within 21 days of receipt of the letter, written confirmation of compliance or an admission of noncompliance and plan for corrective action. The letter shall also inform the Covered Employer that retaliation against an employee for claiming rights under the ordinance is prohibited and subject to additional penalties. The Designated Department shall keep complainants reasonably notified regarding the status of their complaint and any resulting investigation and shall notify complainants of any final decision of the Designated Department, including any mediation result, with respect to the complaint. Whenever the Designated Department finds that a violation of this Chapter has occurred, it shall issue to the offending employer a notice of violation
- d) For violations of this Ordinance, any or all of the following penalties and relief may be offered:
 1. Fines in the amount of three hundred (\$300.00) dollars for each covered employee for each day that the covered vendor is in violation of this Chapter;
 2. The filing of a complaint with the pertinent State or Federal agency;
 3. Wage restitution for each affected employee;
 4. Suspension of ongoing contracts and subcontract payments; and

5. Ineligibility for future contracts with the City for three (3) years or until all penalties and restitution have been paid in full;
6. Any other action deemed appropriate.

4.9-11. Exemptions.

a) The following types of assistance, service contracts and subcontracts shall be exempt from the provisions of this Chapter:

1. Construction contracts awarded by the City of Boston that are subject to the State prevailing wage law;
2. Assistance or contracts awarded to youth programs, as defined in this Chapter, provided that the contract is for stipends to youth in the program;
3. Assistance or contracts awarded to work-study or cooperative educational programs, provided that the assistance or contract is for stipends to students in the programs; and
4. Assistance and contracts awarded to vendors who provide services to the City and are awarded to vendors who provide trainees a stipend or wage as part of a job training program and provides the trainees with additional services, which may include but are not limited to room and board, case management, and job readiness services, and provided further that the trainees do not replace current City funded positions.

b) Covered vendors must certify in an affidavit in a form approved by the designated department and provided by the contracting department and signed by a principal officer of the covered vendor, that one (1) of the exemptions herein applies to them before they can be considered exempt. The covered vendor shall submit the affidavit to the contracting department who shall forward a copy to the Designated Department.

c) Waivers may be granted by the designated department where application of this Chapter to a particular form of assistance, a service contract or subcontract violates a specific State or Federal statutory, regulatory or constitutional provision or provisions. All general waiver requests shall include the following:

1. The assistance, service contract or subcontract to which this Chapter applies;
2. The conflicting statutory, regulatory or constitutional provision or provisions that makes compliance with this Chapter unlawful, and a copy of each such provision; and
3. An explanation of how compliance with this Chapter would violate the cited provision or provisions, and the consequences that would result if this violation were to occur.

A general waiver request shall be submitted directly to the designated department. The designated department shall forward a copy of all requests to the Designated Department.

d) Hardship Waiver. The contracting departments shall monitor, and as necessary, recommend to the Designated Department, individual or group exemptions necessary in cases in which compliance with this Chapter would cause undue economic hardship. Such waivers shall be

subject to the designated department's approval after having held a public hearing on the request.

All hardship waiver requests shall include the following:

1. The service contract or service subcontract to which this Chapter applies; and
2. A detailed explanation of how part or all of the Ordinance will cause undue economic hardship including supporting financial statements.

All hardship waiver requests shall be forwarded to the Designated Department.

4.9-12. Severability

In the event any provision of this Chapter shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

Effective Date. This ordinance shall take effect 120 days after it is signed into law.

Filed on: January 7, 2019