

CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Discussion of External Workforce Secure Scheduling Regulations		
DEPARTMENT:	City Manager's Office		
PRESENTED BY:	Alex Herzog, CMO Management Analyst		
ACTION:	<input type="checkbox"/> Ordinance	<input type="checkbox"/> Resolution	<input type="checkbox"/> Motion
	<input checked="" type="checkbox"/> Discussion	<input type="checkbox"/> Public Hearing	

PROBLEM/ISSUE STATEMENT:

Council has discussed various external and internal workforce regulations over the past few months, including increased minimum wage, paid sick leave, and supplemental paid family leave regulations. Councilmembers Salomon and McConnell have requested tonight's discussion of another external workforce regulation, secure scheduling (sometimes called "fair scheduling").

Though secure scheduling regulations have been implemented in only a handful of jurisdictions in the nation, they are typically applicable to large-scale employers. Generally such regulations aim to improve the consistency, predictability, and livability of retail workers' schedules, and often include provisions whereby employers must:

- Provide employees advance notice of their work schedules
- Pay them for reporting to work as scheduled and for time they are "on call"
- Provide the ability to request schedule changes without fear of retaliation

Tonight, staff will present a couple of models of how secure scheduling regulations can be structured. Staff is also interested in understanding if Council has any further questions or information that staff should bring back for Council consideration of potential regulations.

RESOURCE/FINANCIAL IMPACT:

There is no financial impact of tonight's discussion.

If Council enacts secure scheduling regulations, there would likely be little impact to the City's employees and budgets. Most secure scheduling models are applicable to only large-scale employers; the City would likely not fit that definition if regulations similar to others are adopted. Even if the City were to be included in such regulations, the City's policies and practices meet or exceed the intent of secure and predictable scheduling and provide fair compensation for unexpected events.

However, there may be a significant impact on various City processes and operations. If Council enacts secured scheduling regulations, staff would need to identify the City's existing policies and practices that meet the intent of the regulation and, if Council directs, change those policies and practices to exactly match new regulations. More

information on potential changes to policies and practices is in the Resource/Financial Impact section below.

Seattle's suite of workforce regulations (paid sick and safe time, minimum wage, fair chance employment, secure scheduling, and wage theft) are enforced by the City's Office of Labor Standards. This Office has full-time staff dedicated to receiving and investigating complaints, and conducting outreach to businesses. In preliminary discussions about Seattle's various regulations, Seattle staff noted the need to undertake significant business outreach efforts after continually finding that businesses in Seattle were unaware of the regulations three years after their enactment, and therefore not in compliance. In fact, after implementing a number of workforce regulations, an additional \$1 million was authorized for the Office to expand outreach and education efforts.

Businesses operating in Shoreline would be impacted. Though, depending on the specific provisions of the regulations, the extent and manner in which employers and employees would be effected is difficult to estimate.

RECOMMENDATION

No formal action is required at this time. Staff recommends that Council discuss the various aspects of secure scheduling. Council should also determine if there are any further questions or information that staff should bring back for Council consideration of potential regulations.

If the Council is in favor of potentially enacting secure scheduling regulations, further outreach, legal review, and policy development would have to be conducted. Also, if the City enacts additional workforce regulations, outreach and enforcement of those would fall to the City. Other local jurisdictions' experiences with implementing workforce regulations, including secure scheduling, indicate that Shoreline may need additional full-time staff for purposes of outreach and enforcement of these regulations.

Approved By: City Manager **DT** City Attorney **MK**

BACKGROUND

At the Council's Strategic Planning Workshop in February 2016, Councilmembers asked staff to return with various external workforce regulations for discussion, including increased minimum wage and paid sick leave. At its March 28 and December 5, 2016 meetings, Council discussed these two regulations and other external workforce regulations. Materials from the March 28 meeting can be found on the City's website: <http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/council/staffreports/2016/staffreport032816-8a.pdf>. Materials from the December 5 meeting can also be found on the City's website: <http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/council/staffreports/2016/staffreport120516-9c.pdf>.

Since the December 5 meeting, Council discussed, and ultimately adopted on February 27, a new internal policy: Supplemental Paid Family Leave for most regular City employees. Materials from the February 27 meeting at which the Supplemental Paid Family Leave policy was adopted can be found on the City's website: <http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/council/staffreports/2017/staffreport022717-8a.pdf>.

Councilmembers Salomon and McConnell have requested tonight's discussion of secure scheduling.

DISCUSSION

There are only a few jurisdictions in the country that have implemented secure scheduling regulations. Seattle is the second municipality in the nation to adopt secure scheduling regulations, after San Francisco. Several other cities are considering secure scheduling laws, including New York City and Washington DC.

Seattle Model:

Beginning in March 2016, City policymakers conducted extensive outreach in the business and labor community to gather information on best practices, challenges, and scheduling needs of both workers and employers. City staff conducted roundtable conversations with business and labor leaders, visited workplaces, and separately met with business owners, scheduling managers, and individual workers to better understand how schedules are created and their impact on workers' lives.

Seattle's secure scheduling legislation (Attachment A) was adopted on September 19, 2016 and will take effect July 1, 2017.

The legislation extends to retail and quick or limited food service establishments with more than 500 employees worldwide, and full service restaurants with more than 500 employees and 40 full-service restaurant locations worldwide. Key provisions include:

- **Good Faith Estimate:** Upon hire, employers must provide a good faith estimate of the median hours an employee can expect to work, including on-call shifts.
- **Right to Request:** Employees may request schedule preferences to balance their other commitments, like caring for a family member, working another job

and attending school. Employers must engage in an interactive process with employees to discuss these requests, and must grant a request related to a major life event unless there is a business reason.

- **Advance Notice:** Employers must post employees' work schedules 14 days in advance.
 - Additional hours: If an employer adds hours to the employee's schedule after it is posted, the employer must pay the employee for one additional hour of "predictability pay."
 - Subtracted hours: If an employee is scheduled for a shift and then sent home early, the employer must pay the employee for half of the hours not worked.
 - On-Call Protections: Employees receive half-time pay for any shift they are "on-call" and do not get called into work.
 - Exceptions to predictability pay:
 - When an employee requests changes to a schedule (e.g. when an employee requests to leave work early to attend a concert.)
 - When an employee finds replacement coverage for hours through an employee-to-employee shift swap.
 - When an employer provides notice of additional hours through mass communication and an employee volunteers to cover hours.
 - When an employer conducts an in-person group conversation with employees currently on shift to cover new hours to address customer needs and an employee consents to take the hours.
- **Right to Rest:** If the gap between a closing and opening shift (i.e. "clopening") is less than 10 hours, the employer must pay the employee time-and-a-half for the difference.
- **Access to Hours:** Employers must offer additional hours of work to qualified existing employees before hiring external employees.
- **Record-Keeping Requirements:** Employers must keep records for three years to show compliance.
- **Protection from Retaliation:** Employees have the right to decline any hours not on the originally posted schedule.
- **Workplace Poster:** Employers must display the City of Seattle's workplace poster in a conspicuous and accessible place at the worksite, in English and the employees' primary language(s). The Office of Labor Standards will create the poster and provide translations.

San Francisco Model:

The San Francisco Board of Supervisors passed two ordinances addressing scheduling, hours, and retention at formula retail establishments on November 25, 2014. The legislation took effect October 3, 2015.

The laws apply to "Formula Retail Establishments" (or chain stores) with at least 40 formula retail establishments worldwide and 20 or more employees in San Francisco as well as their janitorial and security contractors. Key provisions include:

- **Offering Additional Work to Part-time Employees:** Covered employers must offer any extra work hours to current qualified part-time employees in writing before hiring new employees or using contractors or staffing agencies to perform additional work.
- **Employee Retention:** If a covered Formula Retail Establishment is sold, the Successor Employer must retain, for 90 days, eligible employees who worked for the former employer for at least six months prior to the sale. The employer must post a notice of the "change in control" and provide employees with a notice about their rights.
- **Scheduling:**
 - **Initial Estimate of Work Schedule** - Covered employers are required to provide new employees with a good faith written estimate of the employee's expected minimum number of scheduled shifts per month and the days and hours of those shifts.
 - **Two Weeks' Notice of Work Schedules** - Employers must provide employees with their schedules two weeks in advance. Schedules may be posted in the workplace or provided electronically, so long as employees are given access to the electronic schedules at work.
 - **Predictability Pay for Schedule Changes** - If changes are made to an employee's schedule with less than seven days' notice, the employer must pay the employee a premium of 1 to 4 hours of pay at the employee's regular hourly rate (depending on the amount of notice and the length of the shift).
 - **Pay for on Call Shifts** - If an employee is required to be "on-call," but is not called in to work the employer must pay the employee a premium of 2 to 4 hours of pay at the employee's regular hourly rate (depending on the amount of notice and the length of the shift).
 - **Exceptions** - Employers do not have to provide "predictability pay" or payment for on-call shifts if any of the following conditions apply:
 - Operations cannot begin or continue due to threats to Employees or property;
 - Operations cannot begin or continue because public utilities fail;
 - Operations cannot begin or continue due to an Act of God or other cause not within the Employer's control (such as an earthquake);
 - Another Employee previously scheduled to work that shift is unable to work and did not provide at least seven days' notice;
 - Another Employee failed to report to work or was sent home;
 - The Employer requires the Employee to work overtime; or
 - The Employee trades shifts with another Employee or requests a change in shifts.
- **Equal Treatment for Part-time Employees:** Employers must provide equal treatment to part-time employees, as compared to full-time employees at their same level, with respect to (1) starting hourly wage, (2) access to employer-provided paid time off and unpaid time off; and (3) eligibility for promotions. Hourly wage differentials are permissible if they are based on reasons other than part-time status, such as seniority or merit systems. Further, employees' time off allotments may be prorated based on hours worked.

- **Retaliation Prohibited:** It is illegal for an employer to take adverse action against any person in retaliation for exercising his or her rights under the Ordinances.
- **Janitorial and Security Contractors:** Janitorial and security contractors of Formula Retail Establishments covered by these Ordinances must comply with most of the provisions of Police Code Articles 33 F and G, and Formula Retail Establishments must notify their contractors of these requirements.

RESOURCE/FINANCIAL IMPACT

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However, there may be a significant impact on various City processes and operations. If Council enacts secured scheduling regulations, staff would need to identify the City's existing policies and practices that meet the intent of the regulation and, if Council directs, change those policies and practices to exactly match new regulations. Based on the Seattle and San Francisco models, the following is an example of policies and practices that would need to change to exactly match those particular regulations:

Sampling of Regulated Mandates from Seattle and San Francisco Models	Related City Policies and/or Practices That Would Need Updating to Match Those Models
<ul style="list-style-type: none"> • Additional hours & 'Predictability Pay' • Subtracted hours & ½ of shift not worked pay • On-Call pay for time spent on call but not called in • 'Clopening' Pay for hours between shifts not worked • Mandated staffing protocols for extra hours • Starting hourly wage 	<ul style="list-style-type: none"> • Overtime pay • Stand by pay • Call back pay • Compensatory time • 12 hour shifts and pay to transition into 12-hour shifts • Shift differential • Pay for meal breaks • Inclement weather and premium pay for work on days when the city is closed • Recruitment and selection • Pay schedules and starting salaries

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ATTACHMENTS

Attachment A: City of Seattle Secure Scheduling Flyer



SECURE SCHEDULING

Adding Stability & Predictability to Workers' Schedules & Incomes

 Councilmembers Lisa Herbold and M. Lorena González with Mayor Ed Murray

Problem

Retail and food services employees currently bear a significant burden of unpredictability in the workplace: last minute schedule changes, inadequate hours, back-to-back shifts that prevent a good night's sleep, and being on call without being paid.

Solution

Secure Scheduling will give employees more stability in their schedules as well as opportunities to earn additional, predictable income if desired.

Who




- Hourly Seattle employees working at:
- Retail, food services or drinking establishments with 500+ employees worldwide
 - Full-service restaurants with 500+ worldwide employees and 40+ full service locations worldwide

How It Works






Schedule Set 14 Days in Advance

Employers must give employees their schedules 14 days in advance.

-  When the employer subtracts hours, the employee is paid for half of the hours not worked.
-  When the employer adds hours, the employee is paid for one additional hour.
-  When an employer doesn't ask an on-call employee to report for duty, the employee is paid half the hours not worked.

Protecting Workers' Flexibility - Predictability pay doesn't apply:

-  When an employee requests changes to a schedule.
-  When employee finds replacement coverage for hours through an employee-to-employee shift swap.
-  When an employer provides notice of additional hours through mass communication and receives a volunteer to cover hours.



Maintain Workers' Flexibility

The City understands the flexible benefits of working in the retail and food services industries. Employees will continue to enjoy their current flexibility; they can swap shifts and pick-up new shifts.




Access to Full-Time Hours

Before hiring new employees, employers must offer additional hours to qualified internal candidates. Part-time unpredictable pay isn't enough to make ends meet in an increasingly expensive city.



Right to Rest

Employees have a right to decline closing and opening shifts that are separated by less than 10 hours.

-  If the gap between the closing and opening is less than 10 hours, time-and-a-half kicks in for the difference.
e.g. 8 hour gap = 2 hours of time-and-a-half.



Worker Schedule Input

To help balance their other commitments, like caring for a family member, working another job and attending school, employees may request preferences on their schedule.

Questions?

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