

Berkeley, California, Adopts a Fair Workweek Ordinance

Starting in November 2023, covered employers in Berkeley, California will need to be prepared to comply with the Berkeley [Fair Workweek Ordinance \(the Ordinance\)](#). The Ordinance requires covered employers to provide work schedules to employees at least 14 calendar days in advance of a shift and provide 11 hours of rest between shifts, among other requirements.

The Ordinance establishes different employee count thresholds, depending on the nature of the business, to determine whether a business is covered by the Ordinance. For example, a business is covered if it: (1) employs at least 10 employees in the city of Berkeley *and* (2) is primarily engaged in the restaurant industry *and* (3) employs at least 100 employees globally. Similarly, a nonprofit corporation with (1) at least 10 employees in the city of Berkeley *and* (2) at least 100 or more employees globally is also covered. The Ordinance also can apply to businesses engaged in the building services, healthcare, hotel, manufacturing, retail, or warehouse services industries if the business (1) employs at least 10 employees in the city of Berkeley *and* (2) employs at least 56 employees total.

A Berkeley employee is covered by the Ordinance if the employee performs at least two hours of work in the city of Berkeley and is classified as nonexempt.

The requirements of the Ordinance include the following:

- Employers will be required to provide employees with their work schedules at least 14 calendar days in advance of their shift by either posting the schedule or providing it electronically. Employees must be provided with written notice of any changes to an employee's work schedule within 24 hours of the change, and the employee has the right to decline the change.
- Employees will have the right to decline shifts that begin less than 11 hours after the end of their previous shifts. However, the employee has the option to agree *in writing* to begin a shift within 11 hours of their previous shift and receive 1.5 times their regular rate of pay for any hours worked within 11 hours of their previous shift.
- Employers are required to provide predictability pay for changes in an employee's schedule, subject to exceptions. An employee is entitled to one hour of pay when an employer provides more than 24 hours of notice for a change to the employee's schedule or for any additions or changes to a shift with less than 24 hours' notice. When an employer provides less than 24 hours' notice for a canceled or reduced shift, an employee is entitled to be paid for four hours of pay or for the number of canceled or reduced hours in the employee's shift, whichever is less.
- Employers must offer additional hours to part-time employees before hiring new employees.
- Employers must provide an anticipated work schedule to new hires.
- Current employees will have the right to request a modified work schedule, including, but not limited to, changes in shift start times, change to part-time work, or reduction in work duties without retaliation.
- Employers must keep records for three years of employees' hours worked, pay rate, 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 the time and method of offering additional hours of work to existing staff.
- Covered employers will be required to post an Ordinance notice along with other required workplace postings. Also, employers must provide current and new employees with written notice of the Ordinance.

The Fair Workweek Ordinance will go into effect in November 2023. Berkeley employers should determine if their business is a covered employer and, if so, prepare for compliance. Employers are encouraged to contact experienced counsel with questions about Berkeley's Fair Workweek Ordinance, any related policies and practices, or any other California wage-and-hour laws.

Authors



[Jill L. Ripke](#)

Senior Counsel

JRipke@perkinscoie.com [310.788.3260](tel:310.788.3260)

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