

# CITY OF LOS ANGELES



## RULES AND REGULATIONS IMPLEMENTING THE FAIR WORK WEEK ORDINANCE

REFLECTS ALL REVISIONS THROUGH SEPTEMBER 26, 2023

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IMPLEMENTING THE FAIR WORK WEEK ORDINANCE**

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## **RULES AND REGULATIONS IMPLEMENTING THE FAIR WORK WEEK ORDINANCE**

The Department of Public Works, Bureau of Contract Administration, Office of Wage Standards (“OWS”) promulgates these Rules and Regulations as the Designated Administrative Agency (“DAA”) pursuant to Section 185.01.B and 188.13 of the Los Angeles Municipal Code (“LAMC”). The OWS may also amend or revise these Fair Work Week Ordinance (“FWWO” or “the Ordinance”) Rules and Regulations from time to time, consistent with applicable law.

### **SCOPE OF OWS AUTHORITY**

Under LAMC Section 185.01(B) the OWS enforces the FWWO. Pursuant to LAMC Sections 188.07 and 188.08, the OWS may order restitution, and impose penalties and administrative fines for the violation of the FWWO. When necessary to carry out its function as the DAA, the OWS may conduct inquiries and investigations into areas outside of the FWWO to determine compliance with the FWWO.

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### **DEFINITIONS**

In addition to the definitions in LAMC Section 185.01, the following terms have the following meanings for purposes of LAMC Sections 185 & 188:

**“Employer”** under the FWWO is (1) a retail business, (2) with at least 300 global employees, (3) that exercises control (directly or indirectly) over the wages, hours or working conditions of any Employee.

**“Good Faith Estimate”** is a reasonable, fact-based prediction of an Employee’s Work Schedule that can be based on forecasts, prior hours worked by a similarly-situated Employee, or other relevant information.

**“Self-Scheduling Employee”** is a worker that selects all of their own work Shifts (including work days and Shifts for each day) without an Employer’s pre-approval, pursuant to a mutually acceptable agreement.

**“Subsidiary”** is any business entity in which an Employer has an interest of more than 50 percent (50%).

**“Work Period”** refers to any established and regularly recurring period of work which cannot be less than one Work Week. Except for this limitation, the Work Period can be any length, and it need not coincide with a pay period.

**“Work Week”** means any seven (7) consecutive days, starting with the same calendar day each week. A Work Week shall be a fixed and regularly occurring period of seven (7) consecutive 24-hour periods which is equivalent to a period of 168 hours.

**“Written Notice”** or **“In Writing”** shall include typed and printed communications between Employers and Employees, including electronic communications such as emails, text messages, scheduling applications, or messaging applications that can be saved as a record.

## **RULES AND REGULATIONS IMPLEMENTING THE FAIR WORK WEEK ORDINANCE**

### **REGULATION #1: DETERMINING WHO IS A COVERED EMPLOYEE**

The OWS is tasked with determining whether an Employee is subject to the FWWO. The OWS shall apply the following guidelines in making the determination if an Employee is covered by the FWWO:

- a. In any Work Week, the individual performs at least two (2) hours of work within the geographic boundaries of the City of Los Angeles for a covered Employer including full-time, part-time, temporary or seasonal work;
- b. The individual qualifies for the minimum wage under the California minimum wage law; and
- c. The individual's primary work location supports retail operations, including but not limited to the retail store or warehouse. If the primary work of the individual is to support administrative functions related to the corporate office, the individual is not covered.

An employee is not covered by the FWWO if the individual performs all work outside the City, even if the Employer is based in the City. Hours worked outside the City are not covered by the FWWO.

#### ***Example 1***

*A part-time assistant works in the corporate offices of a covered retail business. Since the assistant works at a corporate office, they would not be covered by the FWWO.*

#### ***Example 2***

*A janitor works 20 hours a week at a covered retail store located in the City of Los Angeles. The janitor was placed at the store by a temporary staffing agency. Unless the retail store can provide evidence that the janitor is a bona fide independent contractor, the janitor is presumed to be a covered Employee, and is covered by the FWWO for the hours they work at the retail store. The retail store must provide them with the same rights as other covered Employees working at the store.*

The FWWO applies to Employees; however, merely labeling a worker as an “independent contractor” does not make it so. California law will be applied regardless of how an Employer labels a worker. A worker is presumed to be an Employee under the FWWO, and an Employer has the burden of demonstrating that a worker is a bona fide independent contractor and not an Employee.

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### REGULATION #2: DETERMINING WHO IS A COVERED EMPLOYER

A covered **Employer** must satisfy all of the following criteria:

- a. Is a retail business;
- b. Has at least 300 employees globally; and
- c. Exercises control (directly or indirectly) over the wages, hours or working conditions of any Employee.

#### 2.1 DETERMINING WHETHER AN EMPLOYER IS A RETAIL BUSINESS

A **retail business** is any business whose principal North American Industry Classification Systems (NAICS) code is within the retail trade categories and subcategories 44 through 45. If the business has more than one unique line of business and identifies with more than one NAICS code, the OWS will consider the NAICS code that corresponds with the business's principal business activity, which is the activity that the business derives the largest percentage of its total receipts.

##### **Example 1**

*An Employer located in the City of Los Angeles primarily operates as a grocery store. The Employer also operates a café within their store that is staffed by the Employer's workers. The breakdown of the Employer's total receipts for the year is as follows: 80% from grocery sales and 20% from café sales. Although the Employer has a line of business that is not within a NAICS retail category (the café), the largest percentage of its total receipts is from their retail sales. As such, the Employer's principal NAICS code would fall within the retail trade categories and if the other conditions are met, then the Employer and all of their Employees, including those staffing the café, would be covered by this Ordinance.*

##### **Example 2**

*A hair salon located in the City of Los Angeles derives revenue from two unique lines of business, hair styling services and the sale of hair care products. The breakdown of the hair salon's receipts for the year is as follows: 60% from hair styling and 40% from hair care product sales. Although the sale of hair care products is a retail function, the largest percentage of the salon's total receipts is from the hair styling services. As such, the salon's principal NAICS code would not fall within the retail trade categories and the salon and their employees would not be covered by this Ordinance.*

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### 2.2 CALCULATING AN EMPLOYER’S NUMBER OF GLOBAL EMPLOYEES

An Employer must have at least 300 employees among its worldwide locations to be covered under the Ordinance. If the number of employees varies throughout the year, the OWS will calculate the current year’s number of employees based upon the weighted average number of employees who worked for the Employer for compensation per week during the previous calendar year. The calculation should be based on the number of employees and not full-time equivalents.

#### **Example**

*For a majority of 2022, a retail Employer with a single location within the City of Los Angeles employed an average of 250 Employees per week. To meet increased demand during the 3<sup>rd</sup> quarter, the Employer hired an additional 250 seasonal workers. For 13 weeks, the Employer has an average of 500 Employees per week and an average of 250 Employees per week for the remaining 29 weeks of the year. Therefore, for calendar year 2022, the Employer had a weighted average of 312.5 Employees per week and would be covered by the Ordinance in 2023.*

#### Assumptions

*For 39 weeks, the Employer employed 250 qualified Employees per week.  
For 13 weeks, the Employer employed 500 qualified Employees per week.*

#### Calculation

$$\begin{aligned} \text{Avg Emp per Week} &= 250 \text{ Employees} \times \left( \frac{39 \text{ Weeks}}{52 \text{ Weeks}} \right) + 500 \text{ Employees} \times \left( \frac{13 \text{ Weeks}}{52 \text{ Weeks}} \right) \\ &= 250 \text{ Employees} \times 0.75 + 500 \text{ Employees} \times 0.25 \\ &= 187.5 \text{ Employees} + 125 \text{ Employees} \\ &= 312.5 \text{ Employees per Week} \end{aligned}$$

The calculation of the number of employees should include **all** employees that perform work for compensation for an Employer including but not limited to:

- Employees on a full-time, part-time, temporary, or seasonal basis;
- Employees at all Employer locations regardless if located inside or outside the geographic boundaries of the City of Los Angeles;
- Employees of an Employer’s Subsidiary that identifies as a retail business;
- Employees of an Employer who operates a Franchise that identifies as a retail business and whose business size is over 15,000 square feet;

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- Executive, administrative, and professional employees exempted from overtime requirements and minimum wage coverage under federal and state law; California Industrial Welfare orders, and local ordinances; and
- Employees who work at a non-retail location such as a corporate office or headquarters.

This calculation will include employees who are not covered by the FWWO.

Any Person or business that employs a covered Employee is also a covered Employer. It is the responsibility of the Employer to determine if they must comply with the FWWO.

### ***Example – Multiple Locations Within the City***

*A grocery store has three locations within the City of Los Angeles. Location A has 150 employees, Location B has 100 employees, and Location C has 80 employees. Since the Employer is a retail business with a total of 330 employees, the 300-employee threshold is satisfied, and all locations would have to comply with the FWWO.*

### ***Example – Multiple Locations Inside and Outside the City***

*A clothing brand with a large online presence has three working locations: 1) a warehouse with 200 employees that is located outside of the City of Los Angeles, 2) a retail location with 50 employees within the City, and 3) a corporate headquarters with 75 employees also located within City boundaries. The clothing brand is considered a covered Employer as it is a retail business with 325 global employees. Any of its Employees that work in the City of Los Angeles, with the exception of those working at the corporate office, would be covered by the FWWO.*

### ***Example – Employees Outside of the City***

*A convenience store with 100 locations and 3,000 employees worldwide expands into the City of Los Angeles, opening one location that has 15 Employees. Since the Employer is a retail business with over 300 employees globally, it is a covered Employer and any Employees who work in the City of Los Angeles would be covered by the Ordinance. Any employee who only works at locations outside the City of Los Angeles would not be covered by the FWWO.*



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### ***Example – Franchises***

*A convenience store (franchisor) with 100 locations and 3,000 employees worldwide grants a franchise to a franchisee who opens a location in the City of Los Angeles with 15 employees). The City location of the franchisee occupies a 6,000 square foot storefront. Although the franchisor is a retail business that has over 300 employees globally, the franchisee’s location in the City occupies less than 15,000 square feet. Therefore, the franchisee’s convenience store would not have to comply with the FWWO and the employees who work at the franchisee’s City location would not be covered by the Ordinance.*

### ***Example – Subsidiaries***

*A car dealership located in the City of Los Angeles has 230 employees. The dealership also has a 60 percent interest in a tire store with 80 employees. The employees of the tire store, a Subsidiary of the car dealership, would be counted in the dealership’s total employees as it has a controlling interest in the tire store, a retail business. With 310 total employees, the dealership is a covered Employer which must comply with the FWWO. If the tire store is located in the City of Los Angeles, it would also need to comply with the FWWO.*

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### REGULATION #3: GOOD FAITH ESTIMATES

Good faith means a sincere intention to deal fairly and honestly with others. The **Good Faith Estimate** is a prediction of the hours and Shifts that could be included on an Employee's Work Schedule. It is intended to allow Employees to make a reasonable determination of the days and times they may be scheduled to work in order to plan their lives accordingly. The estimate should be reasonable and should have a factual basis, such as forecasts, prior hours worked by a similarly-situated Employee, or other relevant information.

The following are guidelines Employers may follow in providing a Good Faith Estimate to Employees. The estimate should include information such as:

- a. The estimated number of hours the Employee will be expected to work each week;
- b. The days of the week the Employee can expect to work;
- c. The times or Shifts the Employee can expect to work;
- d. The location(s) the Employee will be expected to work; and
- e. Whether the Employee can expect to work any On-Call Shifts.

The Good Faith Estimate shall indicate the date it was provided to the Employee. The Good Faith Estimate shall be provided at the time a job offer is made to a new Employee and within ten (10) calendar days of a request from a current Employee.

Although a Good Faith Estimate is not a binding contractual offer, if actual work hours substantially deviate from the estimate per the rules provided in the next section, Employers must have a legitimate, documented business reason that was unknown at the time of the estimate to substantiate the deviation. If the Employee requests a revised Good Faith Estimate, the Employer must provide a current estimate within ten (10) calendar days of the Employee's request.

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**Example 1**

*The example below is a Good Faith Estimate where an Employer estimates that an Employee will work 32 hours per week and indicates the windows of time the Employee may be scheduled to work these hours. The estimate indicates possible days of the week, Shift start and end times, locations, and whether the Employee can expect to be called for On-Call Shifts. Although an Employee’s actual Work Schedule may differ from this estimate, the estimate allows the Employee to reasonably determine when they may be scheduled to work.*

Effective Date(s) of this notice: <u>1/1/2023</u>							
Estimated number of hours per week: <u>32</u>							
Possible work day(s), time(s), and/or shift(s):							
	<b>Sunday</b>	<b>Monday</b>	<b>Tuesday</b>	<b>Wednesday</b>	<b>Thursday</b>	<b>Friday</b>	<b>Saturday</b>
<b>Start time:</b>		9:00 AM	9:00 AM	9:00 AM	9:00 AM	9:00 AM	
<b>End time:</b>		5:00 PM	5:00 PM	5:00 PM	5:00 PM	5:00 PM	
Possible work locations (if there is more than one location): <u>Location 1, Location 2</u>							
On-Call Shifts: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No							

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### **Example 2**

*The example below is a Good Faith Estimate that does not comply with the FWWO. The Employer estimates that an Employee will work 15 hours per week and indicates the windows of time the Employee may be scheduled to work these hours. The estimate indicates possible days of the week as all seven days, as well as Shift start and end times, locations, and whether the Employee can expect to be called for On-Call Shifts. In this example, the days and windows of time are too broad and an Employee would be unable to reasonably determine when they may be scheduled to work.*

Effective Date(s) of this notice: <u>1/1/2023</u>							
Estimated number of hours per week: <u>15</u>							
Possible work day(s), time(s), and/or shift(s):							
	<b>Sunday</b>	<b>Monday</b>	<b>Tuesday</b>	<b>Wednesday</b>	<b>Thursday</b>	<b>Friday</b>	<b>Saturday</b>
<b>Start time:</b>	9:00 AM	9:00 AM	9:00 AM	9:00 AM	9:00 AM	9:00 AM	9:00 AM
<b>End time:</b>	5:00 PM	5:00 PM	5:00 PM	5:00 PM	5:00 PM	5:00 PM	5:00 PM
Possible work locations (if there is more than one location): <u>N/A</u>							
On-Call Shifts: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No							

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### **3.1 DEFINITION OF SUBSTANTIALLY DEVIATE**

In the context of a Good Faith Estimate, “substantially deviate” means when any of the following scenarios occur:

- Six (6) Work Weeks out of twelve (12) consecutive Work Weeks in which the number of actual hours worked differs by twenty percent (20%) or more from the expected hours in the Good Faith Estimate, and the differences are not due to documented Employee-initiated or Employee-approved changes;
- Six (6) Work Weeks out of twelve (12) consecutive Work Weeks in which the actual days of work differ from what was indicated in the Good Faith Estimate at least once per week, and the differences are not due to documented Employee-initiated or Employee-approved changes;
- Six (6) Work Weeks out of twelve (12) consecutive Work Weeks in which the actual location of the Shift differs from what was indicated in the Good Faith Estimate at least once per week, and the differences are not due to documented Employee-initiated changes or Employee-approved changes; or
- Six (6) Work Weeks out of twelve (12) consecutive Work Weeks in which at least one actual Shift per week is outside of the potential Shifts indicated in the Good Faith Estimate; and the differences are not due to documented Employee-initiated or Employee-approved changes.

If an Employee’s Work Schedule changes for reasons outlined in LAMC Section 185.06.B, those changes will not be considered when determining whether an estimate substantially deviates from actual work hours.

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### **REGULATION #4: ADVANCE NOTICE OF WORK SCHEDULES**

At least 14 calendar days before the first day of the Work Period, the Employer must provide Written Notice of the Work Schedule to all Employees.

An Employer may satisfy this requirement by either posting the Work Schedule in a conspicuous and accessible physical location or transmitting it electronically or in another manner that would reasonably provide actual notice to Employees. An Employer may post or transmit Work Schedules for multiple Work Periods.

The **Work Schedule** shall be time-stamped with its date and time of posting. It must clearly indicate the start and end dates of the Work Period, the schedule of hours, days, times, and location that an Employee is scheduled to work, including On-Call Shifts. To the extent that the nature of the work does not require an Employee to report into a specific location owned or operated by their Employer, the Work Schedule does not need to indicate the location.

The requirement for Advance Notice of Work Schedules does not apply to Self-Scheduling Employees.

#### **4.1 CHANGES TO WORK SCHEDULES**

For Employer-initiated changes that occur less than 14 calendar days before the start of a Work Period, the Employee has the right to decline any changes to hours, Shifts, or work locations. If the Employee voluntarily accepts these changes, the consent must be In Writing. Additionally, the Employee may be owed Predictability Pay for such changes (*See Regulation #5: Predictability Pay*).

Note: If an Employer chooses to collect an Employee consent to Work Schedule changes that spans beyond one Shift or Work Period, such as when one Employee agrees to cover additional shifts during an extended vacation or leave for another Employee, the burden will be on the Employer to provide and retain documentation that the Employee: (i) was aware they had given consent for the extended period, (ii) understood when the consent period started and ended, and (iii) was able to and aware of how to revoke their consent. While an employee can consent to schedule changes, they cannot waive their right to Predictability Pay, if owed, under the FWWO. The consent period may not exceed one year. Such documentation must be retained by the Employer in accordance with the record keeping requirements of this law and *Regulation #9: Record Retention*.

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**REGULATION #5: PREDICTABILITY PAY**

Predictability Pay refers to the compensation paid to an Employee for changes made by an Employer to the Employee’s Work Schedule. This compensation is separate from any wages earned for work performed by that Employee.

Covered Employers may have to provide Predictability Pay for each change they make to a Work Schedule that occurs less than 14 calendar days before the start of a Work Period as follows:

**Predictability Pay Schedule**

<b>Employer-initiated Change</b>	<b>Predictability Pay</b>
Increase in hours that exceeds 15 minutes	One (1) hour at the Employee’s regular rate of pay
Change to the date, time, or location	One (1) hour at the Employee’s regular rate of pay for each change
Reduction of hours by at least 15 minutes	Hours not worked at one-half the Employee’s regular rate of pay
On-Call Shift, when the Employer does not call the Employee to perform work	Hours not worked at one-half the Employee’s regular rate of pay

**Regular rate of pay** should be calculated in the same manner as the regular rate of pay when calculating overtime premiums under the California Labor Code and applicable Industrial Welfare Commission Wage Orders.

Unless an exemption applies (see Section 5.1 below), Predictability Pay is required when the change is initiated by the Employer, even if the Employee consents to that change In Writing. An Employee may not voluntarily opt out of receiving Predictability Pay.

***Example – Increase in Hours***

*One week before an Employee’s Work Period begins, a covered Employer schedules an Employee for an additional Shift. The additional Shift does not result in the Employee having to work any overtime hours and is not the result of the absence of another Employee. The Employee voluntarily accepts the change and provides their consent In Writing. As this results in an increase in hours, the Employee should be compensated for all hours worked plus one (1) hour at the Employee’s regular rate of pay as Predictability Pay.*

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### ***Example – Change to the Date, Time, or Location***

*One week before an Employee's Work Period begins, a covered Employer reschedules an Employee's Shift from Monday with a start time of 8:00 AM to Tuesday with a start time of 12:00 PM. There is no change in the number of hours or the location of the Shift. The Employee voluntarily accepts the change and provides their consent In Writing. The Employee should be compensated with two (2) hours of Predictability Pay (one hour for the change to the day of the Shift and one hour for the change to the time of the Shift).*

### ***Example – Reduction of Hours***

*One week before an Employee's Work Period begins, a covered Employer cancels an Employee's four (4) hour Shift. The Employee's regular rate of pay is \$20.00/hour. The Employee should be compensated the four (4) hours at one-half of the Employee's regular rate of pay as Predictability Pay.*

#### Assumptions

*Number of hours reduced = 4 hours*

*Employee's regular rate of pay = \$20*

#### Calculation

*Predictability Pay = Number of hours reduced  $\times \frac{1}{2}$  (Employee's Regular Rate of Pay)*

$$= 4 \text{ hours} \times \frac{1}{2} (\$20)$$

$$= 4 \text{ hours} \times \$10$$

*Predictability Pay = \$40*



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### ***Example – Unfulfilled On-Call Shift***

*An Employee's Work Schedule includes an On-Call Shift scheduled for eight (8) hours on Tuesday. The Employee's regular rate of pay is \$25.00/hour. On the day of the Shift, the Employer informs the Employee they do not need to work their Shift that day. The Employee should be compensated for the eight (8) hours from the unfulfilled On-Call Shift at one-half the Employee's regular rate of pay as Predictability Pay.*

#### Assumptions

*Number of hours reduced = 8 hours*

*Employee's regular rate of pay = \$25*

#### Calculation

$$\text{Predictability Pay} = \text{Number of hours reduced} \times \frac{1}{2} (\text{Employee's regular rate of pay})$$

$$= 8 \text{ hours} \times \frac{1}{2} (\$25)$$

$$= 8 \text{ hours} \times \$12.50$$

$$\text{Predictability Pay} = \$100$$

### **5.1 PREDICTABILITY PAY EXEMPTIONS**

Under certain conditions, Employers do not need to provide Predictability Pay for changes made to a Work Schedule less than 14 days from the start of a Work Period. Exemptions include any of the following:

1. An Employee initiates the requested Work Schedule change.
2. An Employee accepts a schedule change initiated by an Employer due to an absence of another scheduled Employee. The Employer must communicate to the Employee that acceptance of the hours is voluntary and the Employee has a right to decline.
3. An Employee accepts additional hours offered before the Employer hires a new Employee, pursuant to LAMC Section 185.05 and as further detailed in *Regulation #7: Offering Additional Work Hours to Employees*.
4. An Employee's hours are reduced due to the Employee's violation of any existing law or of the Employer's lawful policies and procedures.
5. The Employer's operations are compromised pursuant to law or force majeure.
  - a. Force majeure refers to events that compromise the Employer's ability to conduct business and may arise out of fires, floods, earthquakes, epidemics, quarantine restrictions, other natural occurrences, strikes, freight embargoes, terrorist acts, insurrections or other civil disturbances, or other similar events to

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- those described above, but in each case the inability to conduct business must be beyond the control and without any fault or negligence of the Employer.
6. All extra hours worked must be paid at an overtime premium under California Labor Code Section 510.

When offering or accepting a schedule change that falls under a covered exception, the Employer shall communicate to the Employee that they will not receive Predictability Pay if they agree to the schedule change.

Any records regarding Predictability Pay, including payroll records, written consents to Work Schedule changes, and correspondence pertaining to any of the exemptions above, should be retained by the Employer in accordance with the record keeping requirements of this law and *Regulation #9: Record Retention*.

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### **REGULATION #6: REST BETWEEN SHIFTS**

The intent of the requirement for rest between shifts is to address the inadequate rest that results from working “clopening” shifts. This is when Employees are scheduled to work a closing Shift on one workday followed by an opening Shift the next workday.

Accordingly, a covered Employer may not require an Employee to work a Shift that starts less than ten (10) hours from the Employee’s last Shift that began on a previous workday. An Employee may voluntarily consent to work such a Shift, but the covered Employer must obtain that consent In Writing. In the event that consent is given and accepted, an Employer must provide an Employee premium pay at a rate of time and a half (1.5 times the Employee’s regular rate of pay) for the entire Shift following the insufficient rest period. Regular rate of pay should be calculated in the same manner described in *Regulation #5: Predictability Pay*.

For any hours of a Shift that result in an overtime premium under California Labor Code Section 510, the Employer does not also need to provide premium pay. Premium pay applies to the entire Shift and not partial Shifts, except for any hours an overtime premium supersedes premium pay.

A split shift, which refers to certain shifts that occur on the same workday is not qualified for the rest break premium under the FWWO. Employers should consult the California Labor Code for rules regarding Split Shifts.

#### ***Example 1***

*An Employee’s Shift on the previous day ended at 9 PM and their next day’s Shift begins at 6 AM. The Shifts are separated by a rest period of less than ten (10) hours. Therefore, the Employer must provide premium pay of 1.5 times the Employee’s regular rate of pay for the entire Shift that begins at 6 AM the next day (excluding any hours that must be paid an overtime premium).*

#### ***Example 2***

*An Employee is scheduled to work a morning Shift from 8 AM – 12 PM and then an evening Shift from 6 PM – 9 PM. Even though the Shifts are separated by a rest period of less than ten (10) hours, the Employer does not need to provide premium pay as both Shifts begin on the same workday.*

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### **REGULATION #7: OFFERING ADDITIONAL WORK HOURS TO EMPLOYEES**

Before hiring a new Employee or using a contractor, temporary service or staffing agency to perform work, a covered Employer shall first offer the work to current Employees if:

1. One or more of the current Employees is qualified to do the work as reasonably determined by the Employer; and
2. The additional work hours would not result in an overtime premium under California Labor Code Section 510.

**Current Employee** means any Employee who works at the work location where additional hours are available, regardless of whether the Employee currently works in the same position for which the additional hours are available. However, if it is a regular practice of the Employer to schedule Employees across multiple locations in the City, then all Employees at such locations shall be considered current Employees.

Employers shall exercise reasonable judgment and good faith when determining whether there are any current Employees that have the skills and experience to perform the work being offered. Additionally, current Employees should not be required to have experience or training above that expected of a new hire. For example, if a newly hired Employee would typically receive training to perform the additional work, the same training should be made available to a current Employee so that they can accept the additional work hours.

#### **7.1 PROCESS FOR OFFERING ADDITIONAL HOURS**

The Employer must provide Written Notice of the offer of additional work hours at least 72 hours prior to hiring or engaging any new Employee, contractor, temporary service or staffing agency to perform work. The notice must be provided to all current Employees, by either posting it in a conspicuous and accessible physical location or by transmitting it electronically or via other means that would reasonably provide actual notice to all current Employees.

The notice communicating the offer of additional work hours should contain the following information:

1. Shifts or days and times the Employee must be available to work;
2. Length of time the Employer anticipates requiring coverage of the additional hours;
3. Description of the position;
4. Required qualifications for the position and that training, if any, will be provided;

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5. The process by which Employees may notify the Employer of their acceptance of the offered hours. The acceptance of the offer must be In Writing;
6. Date and time by which the Employee(s) must accept or decline the offer.

Employees have 48 hours from the receipt of the notice to accept the offer for additional hours. At the expiration of the 48-hour period or if the Employer receives written confirmation from all current Employees that they are not accepting the offer, whichever occurs first, the Employer may immediately proceed with hiring or engaging a new Employee, contractor, temporary service or staffing agency for any remaining additional hours.

If an Employer chooses to accept an Employee consent where the Employee opts out of being offered additional hours for an extended period (i.e., beyond one Shift or Work Period), the burden will be on the Employer to provide and retain documentation that the Employee: (i) was aware they had opted out of additional hours for the extended period, (ii) understood when the opt out period started and ended, and (iii) was able to and aware of how to revoke their decision. The period covered may not exceed one year. Such documentation must be retained by the Employer in accordance with the record keeping requirements of this law and *Regulation #9: Record Retention*.

Predictability Pay is not required for any Shifts accepted through this process.

### ***Example***

*A drugstore in the City of Los Angeles notices an increase of traffic due to the opening of a new building next door. As such, the store decides it needs coverage for an additional 40 hours per week and decides to engage with a staffing agency to provide additional cashiers on a part-time basis. The drugstore is part of a national chain with multiple stores in the City of Los Angeles and Employees are often assigned to different store locations.*

*To comply with the FWWO, the store that would like to hire new Employees must advertise the availability of the additional work hours to all Employees at all locations in the City of Los Angeles at least 72-hours before a new Employee is hired to perform work. The store would then have to allow all current Employees at least 48-hours to respond. If no current Employees accept the hours or only some of the hours are accepted by the end of the 48-hour period, the store may hire additional staff to perform the work.*

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### 7.2 FAIR AND EQUITABLE DISTRIBUTION OF HOURS

If more current Employees accept the offer for additional hours than hours are available, the Employer shall award the hours in a fair and equitable way, including but not limited to any of the following methods:

- In the order the acceptances were received;
- In order of seniority; or
- Based on experience in relation to required qualifications.

Employers must consistently apply the methodology chosen and retain documentation justifying their distribution of hours pursuant to *Regulation #9: Record Retention*. The Employer must be prepared to provide such documentation to the OWS upon request.

The foregoing is not meant to supersede any methods of distribution that are part of a valid collective bargaining agreement.

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**REGULATION #8: NOTICE AND POSTING**

All covered Employers are required to post a notice published by the OWS annually informing Employees of their rights under the FWWO. The notice must be posted in a conspicuous and accessible place at any workplace or job site where an Employee works.

The notice must be posted in English and any language spoken by at least five (5) percent of the Employees at the workplace or job site.

Covered Employers are also required to provide this notice to all new Employees at the time of hiring.

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### **REGULATION #9: RECORD RETENTION**

Employers are required to maintain records demonstrating compliance with the FWWO for current and former employees, for a period of three (3) years. Any documents that would be also required to demonstrate compliance with the Minimum Wage Ordinance (MWO) must be maintained for a period of four (4) years.

The types of documents recommended for retention by the OWS are listed below:

- Employee Work Schedules, including any updates;
- Good Faith Estimates of hours provided to Employees and related correspondence including documentation for substantial deviations;
- Calculations of an Employer's total number of its employees;
- Correspondence between Employers and Employees regarding Work Schedule changes including requests, approvals and denials;
- Copies of written offers to Employees for additional work hours, written responses from Employees, and records documenting equitable distribution of hours;
- Written consents to work a Shift that is scheduled to start less than ten (10) hours from the Employee's last Shift;
- Payroll records; and
- Correspondence between Employers and Employees regarding a notice to cure alleged violations of the FWWO, and any actions taken.

The above list is not exhaustive. Ultimately, it is the Employer's responsibility to keep and maintain any records demonstrating compliance with the FWWO.

If an investigation is initiated by the OWS, these documents will be requested and must be provided by the Employer in an organized, complete manner, such as by Employee or by Work Period. Documents must also be maintained in a printable electronic format. Employers are encouraged to maintain a file for each Employee containing schedules and correspondence regarding schedule changes and offers of additional work to facilitate a timely response to requests for documents.

The Employer may also use these documents to prove compliance if challenged. Absent complete and accurate supporting documentation, the City will assume non-compliance with the FWWO's record-keeping requirements and for purposes of determining a violation of the FWWO.



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**REGULATION #10: NOTICE TO CURE**

An Employee or any other person who alleges a violation of the FWWO may file a complaint with the OWS.

Before the OWS can accept a complaint, covered Employers must be provided an opportunity to cure alleged violations. The Employee must provide the Employer with Written Notice of the provisions of the FWWO that are alleged to have been violated along with facts to support the alleged violations (“Notice to Cure”). Covered Employers have 15 calendar days from the receipt of a Notice to Cure to take action to cure the alleged violations.

A covered Employer must cure the alleged violation(s) and provide applicable restitution to the Employee or be in the process of doing so by the end of the 15-day cure period.

If the Employee believes the Employer has failed to cure a violation, they or any other person acting on their behalf, may file a complaint with the OWS.

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**REGULATION #11: ENFORCEMENT**

The enforcement of the FWWO is contained in the LAMC Section 188.