

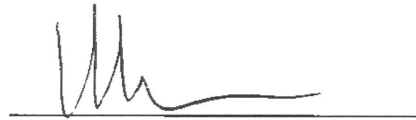
Report on public hearing held November 18<sup>th</sup>, 2019  
by the Managing Director Office's on behalf of the Mayor's Office of Labor Regarding  
Proposed Regulations Regarding Chapter 9-4600 of The Philadelphia Code:  
Fair Workweek Employment Standards  
With Final Regulations as Revised.

Dated: 1/24/20



Managing Director's Office

Dated: 1/23/20



Law Department

Lewis Rosman

### **Legal Authority**

In accordance with Chapter 9-4600, the Mayor has designated the Mayor's Office of Labor (herein referred to as "the Agency") to administer and enforce the ordinance.

### **Comment Period**

The City held an open comment period for the draft Fair Workweek regulations from October 4, 2019 through November 4, 2019, during which various stakeholders submitted written comments. On November 18, 2019, the City hosted a public hearing during which spoken comments were submitted. *The Agency appreciates the participation of those who submitted comments on these Regulations.*

Requests have been edited for clarity, not all comments or requests have received responses, and duplicate requests are only addressed once. Exhibit "A" to this report are the final regulations adopted by the Office of the Managing Director; exhibit "B" is a version of the final regulations showing all amendments made from the version originally promulgated; and exhibit "C" is the hearing transcripts (which includes all written comments.) Additionally, the Agency has created an FAQ which will be posted on the City's website.

### **Summary of Comments and Agency Response**

1. URBN Urban Outfitters Inc. Comments submitted by Jillian Antinore, Compliance Specialist.
  - a. Ms. Antinore encouraged the elimination of the revised Good Faith Estimate (GFE) requirement and/or changes to the definition of a "significant change."

#### **Agency Response**

The Agency will revise the definition of "Significant Change" in the regulations to read:

- *Six (6) workweeks out of twelve (12) consecutive workweeks* in which the number of actual hours worked differs by twenty percent or more from the good faith estimate during each of the three weeks, and the differences are not due to documented Employee-initiated changes;
- *Six (6) workweeks out of twelve (12) consecutive workweeks* in which the days of work differ from the good faith estimate at least once per week, and the differences are not due to documented Employee-initiated changes; or
- *Six (6) workweeks out of twelve (12) consecutive workweeks* in which the start or end times of at least one Shift per week differ from the good faith estimate by at least one hour; or, if Shifts have been identified, start and end times of Shifts differ by at least one hour from the range by which the Shift was identified; and the differences are not due to documented Employee-initiated changes.

2. Pennsylvania Retailers Association. Comments submitted by John Holub, Executive Director.

- a. Mr. Holub requested a six-month delay of final implementation, to allow Employers enough time to be compliant, including creating compliant Schedules and Good Faith Estimates (GFE).

Agency Response

The Agency will delay the implementation of the Fair Work Week until date until April 1, 2020.

- b. Mr. Holub requested changes be made to the definition of “Employee” in the regulations, to 1) state that scheduling requirements apply only to Employees who work at the physical point-of-sale Retail Establishment, and 2) exempt Employees responsible for customers’ health care needs (e.g. pharmacists or nurses) who work at a physical point-of-sale Retail Establishment.

Agency Response

The Agency will not be adopting the suggested changes as they would not be consistent with the intent of the Ordinance.

- c. Mr. Holub inquired if the GFE requirements apply only to Employees hired after the ordinance takes effect.

Agency Response

The Agency will revise the regulations to further clarify. Good Faith Estimates shall be required by July 1, 2020 for any Employees hired prior to April 1, 2020.

- d. Mr. Holub inquired if there are any exemptions to the GFE requirements.

Agency Response

The Agency will not be adopting any changes to the regulations as they would not be consistent with the intent of the Ordinance.

- e. Mr. Holub inquired if there was a typo in the GFE example #3.

Agency Response

There was a typo in the GFE example #3. The Agency will edit GFE example #3, second bullet point, to read “The subset of days the employee can expect *not* to work,” adding the word “not” to accurately describe the example Schedule provided.

- f. Mr. Holub proposed that Section 3.3. “Significant Change” be modified as follows (underline indicates addition, strikethrough indicates deletion):
  - “Three workweeks out of six consecutive workweeks in which the number of actual hours worked differs by ~~twenty percent~~ fifty percent or more from the good faith estimate during each of the three weeks, and the differences are not due to documented Employee-initiated changes;”
  - “Three workweeks out of six consecutive workweeks in which the days of work or days the Employee does not work differ from the good faith estimate at least once per week and the differences are not due to documented Employee-initiated changes”
  - “Three workweeks out of six consecutive workweeks in which the ~~start or end times of at least one shift per week differ from the good faith estimate by at least one hour; or, if shifts have been identified,~~ start and end times of shifts differ by at least one hour from the range of times or shifts that the Employee can typically expect to work, or times or shifts”

which the Employee will not be schedule to work identified in the good faith estimate by which the shift was identified; and the differences are not due to documented Employee-initiated changes."

Agency Response

The Agency will revise the definition of "Significant Change" in the regulations to read:

- *Six (6) workweeks out of twelve (12) consecutive workweeks* in which the number of actual hours worked differs by twenty percent or more from the good faith estimate during each of the three weeks, and the differences are not due to documented Employee-initiated changes;
- *Six (6) workweeks out of twelve (12) consecutive workweeks* in which the days of work differ from the good faith estimate at least once per week, and the differences are not due to documented Employee-initiated changes; or
- *Six (6) workweeks out of twelve (12) consecutive workweeks* in which the start or end times of at least one Shift per week differ from the good faith estimate by at least one hour; or, if Shifts have been identified, start and end times of Shifts differ by at least one hour from the range by which the Shift was identified; and the differences are not due to documented Employee-initiated changes.

- g. Mr. Holub inquired if disciplinary actions qualify under significant changes.

Agency Response

The Agency will add the following to the definition to reflect that the following does not qualify as a Significant Change: "Changes to an Employee's Schedules are due to the Employee being removed from the Schedule for Good Cause and the Employer has documented that nature of such Good Cause."

- h. Mr. Holub asked if the City would consider adopting a provision allowing Employees who believe their Schedule does not line up with their GFEs to request a revised GFE, citing Employer burden.

Agency Response

The Agency will not be adopting such a provision as they would not be consistent with the intent of the Ordinance.

- i. Mr. Holub asked the City to consider changing the definition of a Significant Change, in 3.3 (a), (b), and (c), from "three workweeks out of six consecutive workweeks" to six workweeks out of twelve consecutive workweeks.

Agency Response

The Agency will revise the definition of "Significant Change" in the regulations to read:

- *Six (6) workweeks out of twelve (12) consecutive workweeks* in which the number of actual hours worked differs by twenty percent or more from the good faith estimate during each of the three weeks, and the differences are not due to documented Employee-initiated changes;

- *Six (6) workweeks out of twelve (12) consecutive workweeks* in which the days of work differ from the good faith estimate at least once per week, and the differences are not due to documented Employee-initiated changes; or
  - *Six (6) workweeks out of twelve (12) consecutive workweeks* in which the start or end times of at least one Shift per week differ from the good faith estimate by at least one hour; or, if Shifts have been identified, start and end times of Shifts differ by at least one hour from the range by which the Shift was identified; and the differences are not due to documented Employee-initiated changes.
- j. Mr. Holub asked the City to consider changing the definition of a Significant Change, in 3.3 (c), for differences in start or end times of Shifts, from “differ from the good faith estimate by at least one hour” to three hours difference.

Agency Response

The Agency will not expand the Shift start and end time requirement as they would not be consistent with the intent of the Ordinance.

- k. Mr. Holub suggested clarification on whether both electronic and written Notice of Work Schedules is required.

Agency Response

The Agency will clarify the regulations to read that either electronic or written notice of Work Schedules comply with regulations, if all Employees have access to the notice on-site. This applies to both the original posted Schedule and any and all changes made after posting. Employers can still choose to use both written and electronic formats.

- l. Mr. Holub inquired about the exact date the City expects Employers to provide their first compliant Schedule to Employees, noting that January 1, 2020, the intended effective date, lands on a Wednesday.

Agency Response

The Agency will clarify the regulations to reflect that effective April 1, 2020, Employers are required to post the Posted Work Schedule at least ten (10) days before the first day of the new Schedule, and provides an example to aid in clarification.

- m. Mr. Holub inquired what Employee information an Employer is required to post in the workplace.

Agency Response

The Agency will clarify the regulations to reflect that Employers shall provide at least the Employees’ First Initial and full Last Name on Posted Work Schedules.

- n. Mr. Holub inquired whether the city would base Predictability Pay on an Employee’s “base hourly rate of pay” and not the “regular rate of pay.”

Agency Response

The Agency will change “regular rate of pay” to “rate of pay” in the regulations.

- o. Mr. Holub asked the City to set Predictability Pay for Tipped Employees at the hourly rate of \$7.25 / hour, the minimum hourly wage for non-Tipped Employees, for all Covered Employers.

Agency Response

The Agency will not be making changes to its standard for calculating Predictability Pay for Tipped Employees paid less than \$7.25 / hour, based on the SOC wages, as they would not be consistent with the intent of the Ordinance.

- p. Mr. Holub suggested the Agency create an irrebuttable presumption in scenarios where Employees have verbally agreed to work unscheduled hours and worked the Shift.

Agency Response

The Agency will not be changing the regulations to create an irrebuttable presumption standard as they would not be consistent with the intent of the Ordinance.

- q. Mr. Holub argued that the requirements should allow mass communication to include using the Employer's standard method of communication which is communicated to three or more Employees eligible to work the hours.

Agency Response

The Agency will not be adopting the suggested changes as they would not be consistent with the intent of the Ordinance.

- r. Mr. Holub argued that Employers should not have to determine the primary spoken language(s) of its Employees, citing legal and privacy concerns. Mr. Holub argued the Employers could comply with Section 9-4605(2)(a) of the ordinance by complying with any requests for translations.

Agency Response

The Agency will not make changes to the regulations on this point. Existing city law provides for this (see Chapter 9-4100 of the Philadelphia Code, entitled "Promoting Healthy Families and Workplaces").

- s. Mr. Holub inquired whether the City would require Employees' record requests of their Employer to be made in writing.

Agency Response

The Agency will make changes to the regulations to clarify that Employee's record requests of their Employer be made in writing.

- 3. Pennsylvania Restaurant & Lodging Association. Comments submitted by Melissa Bova, Vice President of Government Affairs.

- a. Ms. Bova argued that hotel departments such as Banquets, Banquet Culinary, Event Services, Engineering, and Security should be excluded from the definition of an Employee of a Covered Employer. Furthermore, Ms. Bova argues that the regulations should also exclude hotel-based Sales Employees working on events and group room sales.

Agency Response

The Agency will not be adopting the suggested changes as they would not be consistent with the intent of the Ordinance.

- b. Ms. Bova suggested changing the definition of Co-Employers set out in the regulations to read that if the franchisor is “exercising direction and control” over the franchisee’s Employees, they would be considered a Co-Employer.

Agency Response

The Agency will not be adopting the suggested changes as they would not be consistent with the intent of the Ordinance.

- c. Ms. Bova argued that the definition of a New Location should be changed to include Establishments operated by a Covered Employer for less than 12 months, instead of the 30 days of operation set forth by the regulations.

Agency Response

The Agency will not be adopting the suggested changes as they would not be consistent with the intent of the Ordinance.

- d. Ms. Bova requested an exemption from posting Employees’ names if they are the victim of domestic violence.

Agency Response

The Agency will allow victims of domestic violence to request in writing to be excluded from the Posted Work Schedule. Employers must retain these records for a period of two years to demonstrate compliance.

- e. Ms. Bova argued that if an Employee submits a request for Employer records under Section 9-4609(2), Employers should be able to submit information without listing the names of all Employees.

Agency Response

The Agency will clarify the regulations to reflect that the Employer may not amend or redact any records before turning them over to an Employee who has requested such records in writing under this law.

- f. Ms. Bova pointed out a typo in Section 9-4603(2)(g) of the ordinance itself, and recommended the City adopt a regulation that clarified this was a typo and should instead read “Section 9-4602(4)”.

Agency Response

The Agency will adopt a regulation to clarify that there was a typo in the ordinance, and that it should instead read “Section 9-4602(4)”.

- g. Ms. Bova pointed out a typo in the regulations referencing June 31<sup>st</sup>, which does not exist.

Agency Response

The Agency will change this to read June 30.

- h. Ms. Bova argues that the exemption to Predictability Pay outlined in Section 9-4603(2)(c)(.v), which reads “[s]evere weather conditions that disrupt transportation or pose a threat to employee safety”, should be expanded in the regulations to apply to situations in which a local or national severe weather event affects an Employer’s operations.

Agency Response

The Agency will not expand the exemptions outlined in the Ordinance as this would not be consistent with the intent of the Ordinance.

- i. Ms. Bova requested clarification of the regulations section “Exemptions from Predictability Pay” to reflect that Employers who post Schedules before the deadline can make changes to the Posted Work Schedules until 24 hours after the deadline for Advance Notice.

Agency Response

The Agency will add a section to make clear that the exemption period expires 24 hours after the deadline to post the new Schedule. Furthermore, the Agency will provide two examples under this section, to further aid in clarification for Employers.

- j. Ms. Bova argued that the Hotel Banquets exemption from Predictability Pay should instead read as follows (underline indicates addition):

Covered Employers are not required to pay Predictability Pay when a hotel banquet is schedule, cancelled, rescheduled, postponed, delayed, increased or decreased in expected attendance by 25%, or increased or decreased in expected duration, due to circumstances that are outside the Employer’s control, after the Employer provides the Posted Work Schedule.

Agency Response:

The Agency will not expand the exemptions outlined in the Ordinance as this would not be consistent with the intent of the Ordinance.

- k. Ms. Bova suggested adopting an exemption for Ticketed events to cover any Employer impacted when a Ticketed event is cancelled, scheduled, reschedules, postponed, delayed, increases in expected attendance by 20% or more, or increases in duration, due to circumstances outside the Employer’s control and that occur after the Employer provides the Posted Work Schedule, whether the Employees were scheduled to work on the premises or not.

Agency Response

The Agency will not expand the exemptions outlined in the Ordinance as this would not be consistent with the intent of the Ordinance.

- l. Ms. Bova suggested fines be reduced or eliminated if it is a first offense of a business. Further, it is requested that there be one (1) year of no penalties for Employers, to allow time for adjustments in and education of business practices required under the law.



#### Agency Response

The Agency will not be adopting the suggested changes. The Agency will use appropriate discretion in seeking fines, based on the particular facts and circumstances at issue.

#### 4. American Staffing Association. Comments submitted by Toby Malara, Government Affairs Counsel.

- a. Mr. Malara requested an addition of a “separate section [to the regulations] specifically applicable to [temporary staffing agencies]”, and suggested language to preface such a section that reads as follows: “Co-employment Obligation of Temporary Staffing Agencies that Assign Employees to Covered Employers: Notwithstanding any other provision of these regulations the following provisions apply to a temporary staffing agency as defined in [the definitions sections].”

#### Agency Response

The Agency added language to address temporary staffing: Where the length of time a temporary Employee works for one entity is at least 16 hours over a two-week period.

- b. Mr. Malara requested the addition of a subsection to the above proposed additional section that would read as follows:  
“Notice Requirement for Temporary Staffing Agencies: At the beginning of each distinct assignment with a Covered Employer, a temporary staffing firm shall provide the employee written notice of the employee’s work schedule for that assignment, including the days and hours to be worked each week.”

#### Agency Response

The Agency will not be adopting the suggested change as this would not be consistent with the intent of the Ordinance.

- c. Mr. Malara requested the addition of a subsection to the above proposed section that would read as follows:  
“Notice of Change in Work Schedule for Temporary Staffing Agencies: The advanced notice requirements set forth in [the “Advance Notice of Work Schedules” section of the regulations] shall apply only to changes in the work schedule of a temporary employee on assignments scheduled to last 30 days or more.”

#### Agency Response

The Agency will not be adopting the suggested change as this would not be consistent with the intent of the Ordinance.

- d. Mr. Malara requested the addition of a subsection to the above proposed section that would read as follows:  
“Application of [the ‘Offer of Work to Existing Employees’ and ‘Existing Employee’ sections of the regulations] do not apply to temporary staffing agencies or the employees those agencies assign to Covered Employers.”

#### Agency Response

The Agency will not be adopting the suggested change as this would not be consistent with the intent of the Ordinance.

- e. Mr. Malara requested an addition of a definition of “Temporary Staffing Agency” in the definitions section of the regulations, arguing that this definition is “based on a definition widely used by states, including the 2012 Pennsylvania Professional Employer Organization Act.” The requested addition would read as follows:

“A firm whose business consists of: (1) recruiting and hiring its own employees; (2) finding other organizations that need the services of those employees; (3) assigning those employees to perform work at or services for the other organizations to support or supplement the other organizations’ work forces, or to provide assistance in special work situations, including, but not limited to, employee absences, skill shortages, seasonal workloads or to perform special assignments or projects; and (4) customarily attempting to reassign the employees to other organizations when they finish each assignment.”

Agency Response

The Agency will not be adopting the suggested change as it does not believe it is a necessary addition.

- 5. Littler Mendelson PC. Comments submitted by Martha Keon, Partner.

- a. Ms. Keon expressed that the law firm is receiving questions about who is a Covered Employee under Section 9-4601(4), and whether Employees such as maintenance staff, engineers, and loss prevention Employees are covered by the law.

Agency Response

The Agency will clarify that Employees include delivery drivers, security, maintenance, and non-exempt pharmacy staff; but exclude administrative and professional hourly Employees such as those in human resources, payroll, and receptionist positions, and the trades; but not excluding hotel, restaurant or other retail front desk or front-of-house Employees who greet or provide service to customers.

- 6. Rita’s Italian Ice. Comments submitted by David Restituto, Rita’s Italian Ice Franchisee.

- a. Mr. Restituto requested an exemption to Predictability Pay be made for “weather-driven businesses.”

Agency Response

Such an exemption is not provided for in the ordinance.

- b. Mr. Restituto requested an exemption be added to the regulations for high school age Employees.

Agency Response

Such an exemption is not provided for in the ordinance.

7. One Pennsylvania. Comments submitted by Calvin Wongus.

- a. Mr. Wongus expressed strong support for Ordinance.

Agency Response

The Agency thanks Mr. Wongus for the testimony.

8. Littler Mendelson PC. Comments submitted by Eli Freedberg, Shareholder.

- a. Mr. Freedberg requested that the Agency revise the regulations to read that the Agency will apply the “test of federal courts in the Third Circuit utilized when analyzing whether a business has indirect influence over another company’s employees as a joint employer” under the Federal Fair Labor Standards Act.

Agency Response

The Agency will not be adopting the suggested change the Agency wants to retain flexibility of interpretation regarding these issues.

9. Unite Here Local 274. Comments submitted by Rosslyn Wuchinich, President.

- a. Ms. Wuchinich thanked the Mayor’s Office of Labor Relations for the process of incorporating feedback as we promulgated regulations and supported increased resources for the Office.

Agency Response

The Agency thanks Ms. Wuchinich for the testimony.

10. Comments submitted by Corean Hollaway, Employee at Warwick Hotel.

- a. Ms. Hollaway spoke to the issue of On-Call scheduling, managers under-scheduling Shifts, and Employees having to come in when called in or risk getting written up. Ms. Hollaway expressed the burden that places on Employees who are taking care of family members, such as children or the elderly and the economic impact of coming in to work when called-in while at the same time experiencing fees for missed appointments. Ms. Hollaway expressed adamant support that the ordinance’s impact will dramatically reduce the industry’s dependency on using On-Call Shift to schedule.

Agency Response

The Agency thanks Ms. Hollaway for the testimony and will clarify the regulations to reflect that Predictability Pay applies to the Employee not being called-in for On-Call Shifts.

11. Comments submitted by Monica Burks, restaurant server, Wyndham Hotel.

- a. Ms. Burks expressed support for the ordinance, and expressed the difficulties of managing one’s personal life without a stable Schedule, including meeting doctors’ appointments and having to pay appointment cancelation fees due to being scheduled to work unexpectedly. Ms. Burks also expressed support for strong penalties for violations of the ordinance.

Agency Response

The Agency thanks Ms. Burks for the testimony.

# Exhibit A

**Office of the Managing Director**  
Mayor's Office of Labor  
**REGULATIONS REGARDING CHAPTER 9-4600 OF THE PHILADELPHIA CODE:**  
**FAIR WORKWEEK EMPLOYMENT STANDARDS**

The following regulations regarding Chapter 9-4600 of The Philadelphia Code ("Fair Workweek Employment Standards") are hereby adopted:

**1.0 Scope.** These Regulations, promulgated by the Managing Director's Office pursuant to its authority under Section 8-407 of the Home Rule Charter, set forth additional definitions and directions pertaining to the Fair Workweek Employment Standards Ordinance (the "Ordinance"), Chapter 9-4600 of The Philadelphia Code.

**1.1 Delay in Implementation.** Implementation of Chapter 9-4600 of The Philadelphia Code shall begin on April 1, 2020. To be in compliance as of April 1, 2020, Covered Employers will need to provide their first Posted Work Schedule at least ten (10) days in advance of this date.

**a.** Good Faith Estimates shall be required by July 1, 2020, for any Employees hired prior to April 1, 2020.

**2.1 Definitions.** In addition to the definitions provided in § 9-4601, the following terms have the following meanings for the purposes of Chapter 9-4600.

**2.2 Agency.** The Office of Benefits and Wage Compliance, within the Mayor's Office of Labor.

**2.3 Employee.** As defined in § 9-4601(5), and further defined as an Employee of a Covered Employer who:

**a.** Is entitled to overtime pay under state and federal law;

**b.** Performs work involving the direct provision of retail, food or hospitality services to the public, including floor managers who directly oversee such services; Employees engaged in completing sales, such as a delivery driver; persons involved in security at a retail, food, or hospitality location, whose work involves at least occasional customer contact; persons involved in maintenance at a retail, food, or hospitality location whose work involves at least occasional responses to customer requests, and pharmacy and/or medical staff at a retail, food, or hospitality location; but excluding administrative and professional hourly Employees such as those in human resources, payroll, and receptionist positions, and the trades; but not excluding hotel, restaurant or other retail front desk or front-of-house Employees who greet or provide service to customers.

**2.4 Co-Employers.** More than one entity may be the "Employer" of an Employee, if Employment by one Employer is not completely disassociated from Employment by the other Employer. For example, an Employee may be employed by both the franchisee of a Chain entity, as well as by the Chain entity itself. Determining whether a co-employment exists will depend upon all of the facts in a particular case. A co-employment will generally be found where:

**a.** The Employee performs work that simultaneously benefits two or more Employers, or works for two or more Employers at different times during the workweek, such as pursuant to an arrangement

between the Employers, or one franchisee/Employer and the central office of the Chain entity, to interchange Employees among retail locations; or

- b. One Employer acts directly or indirectly in the interest of the other Employer or Employers in relation to the Employee; or
- c. Where the Employers are not completely disassociated with respect to the employment of a particular Employee and may be deemed to share control of the Employee, directly or indirectly, by reason of the fact that one Employer controls, is controlled by, or is under common control with the other Employer.
- d. Where the length of time a temporary employee employed by a temporary or staffing agency works at the location of a Covered Employer is at least 16 hours over a two-week period.

If the facts establish that an Employee is co-employed by two or more Employers, all of the co-Employers are responsible, both individually and jointly, for compliance with all of the provisions of the Ordinance with respect to the entire employment for the particular Work Week and pay period.

**2.5 New Location.** An establishment that (i) has been operated by a Covered Employer for less than 30 days; and (ii) had not previously been operated by such Covered Employer for at least 180 days prior to opening.

**3.0 Good Faith Estimates:** For purposes of section 9-4602, “Good faith” means a sincere intention to deal fairly with others. The good faith estimate is a reasonable, fact-based prediction; Employers may base it on forecasts, prior hours worked by a similarly-situated Employee(s), or other information. The good faith estimate shall include:

- a. The average number of work hours the Employee can expect to work each week over a typical 90-day period. The typical 90-day period is not simply an average taken from all hours worked in a year.
- b. A subset of days the Employee can expect to work, or a subset of days that the Employee will not be expected to work. The subset shall not include all days of the week;
  - i. An Employer may provide an alternating weekly Schedule, for a maximum of two weekly estimates so long as both average numbers of hours are for at least 32 hours per week. Each week may provide for different days the Employee can expect to work or not expect to work. If a Good Faith Estimate with multiple workweeks has been presented to the Employee (for example an A-Week and a B- Week), the Employer does not need to schedule the Employee to strictly alternate between weeks. However, when posting the Posted Work Schedule, the Employer shall note which specific week the Employee is being scheduled for.
- c. A subset of times or Shifts the Employee can expect to work, including start and end times. The subset of hours or Shifts shall be defined as not more than 50% greater than the average number of expected hours. The Employer shall not state the estimate as all work Shifts for which the Employer staffs its workplace.

- d. The average number of hours that the Employee will be expected to work. This number shall not be a range of hours; and
- e. Whether the Employee can expect to work any On-Call Shifts.

**3.1 Lack of good faith.** The Agency may infer a lack of good faith in the Good Faith Estimate from an Employer's inability to identify a factual basis for the estimate.

### **3.2 Changes to the Good Faith Estimate.**

- a. An Employer must revise the Good Faith Estimate if a significant change (described in ¶ 3.3 a-c hereof) to an Employee's Work Schedule for purposes of §9-4602(1) occurs. Revisions to the good faith estimate shall be provided to the Employee as promptly as possible.
- b. An Employer may provide an Employee with a seasonal or term-limited Good Faith Estimate.
  - (i) All the rules applicable to a Good Faith Estimate shall apply. The seasonal or term-limited estimate shall contain a clear end date. At the expiration of the termed or seasonal Good Faith Estimate the Employer may provide a new Good Faith Estimate to the Employee. If the Employer does not provide a new Good Faith Estimate upon the expiration of a seasonal or term-limited Good Faith Estimate, it shall be presumed the Good Faith Estimate that was most recently presented to the Employee prior to the seasonal or term-limited Good Faith Estimate is once again active.

## **Good Faith Estimate Example #1**

In this example, the Employer will present the Employee with a Schedule based on a subset of hours. Average Number of Hours: 25

Subset of Hours

Day	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Start	8 AM	N/A	11 AM	11AM	N/A	8AM	N/A
End	6P M		9 PM	9PM		1PM	
Scheduling Window	<b>10 hours</b>		<b>10 hours</b>	<b>10 hours</b>		<b>5 hours</b>	

On-Call Shifts required? Yes ☐ No ☒

In this example, the Good Faith Estimate is in compliance. The Employer has provided the following in accordance with the ordinance and regulations:

- Average number of hours the Employee can expect to work each week over a typical 90-day period. The average is provided as a number and not a range of hours.



- The subset of days the Employee can expect to work
- The subset of hours that the Employee can expect to be scheduled on those days.
- The scheduling window is a total of 35 hours, which is within 50% of the average number of hours the Employee will work. \*
- Whether or not the Employee can expect to work any On-Call Shifts.

\* Note:

To determine the total number of hours an Employer can use for the subset of hours in a good faith estimate the Employer must determine how many hours are 50% greater than the “Average Number of Hours.

As in this example the Average Number of Hours is 25.  $25 \times 50\% = 12.5$  hours. The subset of hours can at the most cover 37.5 hours a week ( $25 + 12.5$ ). In this example, the subset of hours covers 35 hours ( $10 + 10 + 10 + 5$ ) and therefore complies.

Based on the days and subset of hours identified in the Good Faith Estimate, the Employer has flexibility on the specific hours scheduled in the two-week posted schedule.

For example, this GFE identifies 8 AM – 1 PM on Saturday. If the Employee is then scheduled 8 AM – noon one week; 9 AM – 1 PM the next week; and 8 AM – 1 PM the following week, the Schedule is in compliance with the GFE.

Conversely, if the Employee was scheduled from 10 AM – 3 PM on a Saturday, that would not be in compliance and would count as an incidence of significant change from the Good Faith Estimate. Per Regulation 3.3 c., if the Employee was scheduled 10 AM – 3 PM six workweeks out of twelve consecutive workweeks, that would trigger a significant change from the Good Faith Estimate.

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## Good Faith Estimate Example #2

In this example, the Employer presents the Employee with a Good Faith Estimate based on a subset of hours. Here the GFE includes estimates for more than one week.

### Alternating Weekly Schedule

A-Week, Average Number of Hours:

36 Subset of Days and Hours:

A-Week

Day	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Start	8 AM	N/A	11 AM	11 AM	8 AM	8 AM	N/A
End	6 PM		9 PM	9 PM	6 PM	6 PM	
Scheduling Window	<b>10 hours</b>		<b>10 hours</b>	<b>10 hours</b>	<b>10 hours</b>	<b>10 hours</b>	

On-Call Shifts required? Yes ☐ No ☒

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B-Week, Average Number of Hours:

### 32 Subset of Days and Hours:

#### B-Week

Day	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Start	2 PM	2 PM	N/A	2 PM	12 PM	N/A	N/A
End	2 AM	2 AM		12 AM	12 AM		
Scheduling Window	<b>12 hours</b>	<b>12 hours</b>		<b>10 hours</b>	<b>12 hours</b>		

On-Call Shifts required? Yes ☐ No ☒

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In this example, the Good Faith Estimate is in compliance. The Employer has provided the following in accordance with the ordinance and regulations:

- Average number of hours the Employee can expect to work each week over a typical 90-day period. For both A-Weeks and B-Weeks the average is provided as a number and not a range of hours.
- The subset of days the Employee can expect to work on an A-Week and on a B-Week.
- The subset of hours that the Employee can expect to be scheduled on those days.
- The Average Number of Hours for both the A-week and B-week is at least 32 hours per week.
- The scheduling windows for A-Weeks and B-Weeks are within 50% of the average number of hours the Employee will work. (For A-Weeks, 50 is within 50% of 36; for B-Weeks, 46 is within 50% of 32.)\*
- Whether or not the Employee can expect to work any On-Call Shifts.

\*Note:

To determine the total number of hours an Employer can use for the subset of hours in a good faith estimate the Employer must determine how many hours are 50% greater than the “Average Number of Hours.

As in week A’s example the Average Number of Hours are 36.  $36 \times 50\% = 18$  hours. The subset of hours can at the most cover 54 hours a week ( $36 + 18$ ). In this example the subset of hours above covers 50 hours ( $10 + 10 + 10 + 10 + 10$ ) and therefore complies.

As in week B’s example the Average Number of Hours are 32.  $32 \times 50\% = 16$  hours. The subset of hours can at the most cover 48 hours a week ( $32 + 16$ ). In this example the subset of hours above covers 46 hours ( $12 + 12 + 10 + 12$ ) and therefore complies.

As indicated in Section 3.0 (b)(i), a Good Faith Estimate which includes estimates for more than one week is in compliance with the ordinance and regulations so long as the average number of hours is at least 32-hour per week. However, Employers should be aware that this is a more complicated GFE model. A GFE shall allow for no more than two possible workweeks.

If a GFE with multiple workweeks has been presented to the Employee, when posting the Posted Work Schedule, the Employer shall choose one specific workweek (in this example, the A-Week or the B-Week) as the Schedule the Employee will follow for a particular week.

For every Employee presented with a GFE that includes estimates for multiple workweeks, the Employer shall include a notation identifying which specific workweek the Employee is being scheduled for on the Posted Work Schedule.

## Good Faith Estimate Example #3

In this example, the Employer will present the Employee with a Schedule based on a subset of hours the Employee will *not* be scheduled.

Average Number of

Hours: 32 Subset of Hours

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
May be Scheduled for Shift?	Yes / No	Yes / No	Yes / No	Yes / No	Yes / No	Yes / No	Yes / No
5 AM	No	No			No	No	No
6 AM	No	No			No	No	No
7 AM	No	No			No	No	No
8 AM	No	No			No	No	No
9 AM	No	No			No	No	No
10 AM		No			No	No	No
11 AM		No			No	No	No
12 PM		No			No	No	No
1 PM		No			No	No	No
2 PM		No			No	No	No
3 PM		No	No		No	No	No
4 PM		No	No				No
5 PM		No	No	No			No
6 PM		No	No	No			No
7 PM		No	No	No			No
8 PM		No	No	No			No
9 PM		No	No	No			No
10 PM	No	No	No	No		No	No
11 PM	No	No	No	No		No	No
12 PM	No	No	No	No	No	No	No
Scheduling Window	<b>12 hours</b>	<b>None</b>	<b>10 hours</b>	<b>12 hours</b>	<b>8 hours</b>	<b>6 hours</b>	<b>None</b>

On-Call Shifts required? Yes ☐ No ☒

In this example, the Good Faith Estimate is in compliance. The Employer has provided the following in accordance with the ordinance and regulations:

- Average number of hours the Employee can expect to work each week over a typical 90-day period. The average is provided as a number and not a range of hours.

- The subset of days the Employee can expect *not to work*
- The subset of hours that the Employee can expect *not to be* scheduled on days they do work.
- The scheduling window is a total of 48 hours, which is within 50% of the average number of hours the Employee will work. \*
- Whether or not the Employee can expect to work any On-Call Shifts.

\* Note:

To determine the total number of hours an Employer can use for the subset of hours in a good faith estimate the Employer must determine how many hours are 50% greater than the “Average Number of Hours.

As in this example the Average Number of Hours are 32,  $32 \times 50\% = 16$  hours. The subset of hours can at the most cover 48 hours a week (32+16). In this example the subset of hours above covers 48 hours (12 + 10 + 12 + 8 + 6) and therefore complies.

Based on the days and subset of hours that the Employee will *not be* scheduled to work identified in the Good Faith Estimate, the Employer has flexibility on the specific hours the Employee will be scheduled for.

For example, under this GFE, on a Wednesday the Employee may be scheduled as early as 5 AM, but the Employee’s Shift would end no later than 3 pm. On a Saturday the Employee would be scheduled no earlier than 4PM, but the Employee’s Shift would end no later than 10 PM.

If on a Saturday, the Employee was scheduled earlier than 3 PM or later than 11 PM that would not be in compliance and would count as an incidence of significant change from the Good Faith Estimate. Per Regulation 3.3 c., if on a Saturday the Employee was scheduled earlier than 3 PM or later than 11 PM six workweeks out of twelve consecutive workweeks, that would trigger a significant change from the Good Faith Estimate.

Also note that this example also shows GFE where every hour the business is open is contemplated. This is contrasted with Example #1 and Example #2 which are less detailed in terms of business hours. Either approach is valid and would be in compliance.

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### 3.3. Significant Change.

#### Qualifies as Significant Change:

- a Six (6) workweeks out of twelve (12) consecutive workweeks in which the number of actual hours worked differs by twenty percent or more from the good faith estimate during each of the three weeks, and the differences are not due to documented Employee-initiated changes;
- b Six (6) workweeks out of twelve (12) consecutive workweeks in which the days of work differ from the good faith estimate at least once per week, and the differences are not due to documented Employee-initiated changes; or
- c Six (6) workweeks out of twelve (12) consecutive workweeks in which the start or end times of at

least one Shift per week differ from the good faith estimate by at least one hour; or, if Shifts have been identified, start and end times of Shifts differ by at least one hour from the range by which the Shift was identified; and the differences are not due to documented Employee-initiated changes.

**Does not qualify as a Significant Change:**

- a** Changes to an Employee's Schedule which are due to documented voluntary changes (see section 6.0(b) hereof) do not qualify as an incidence of divergence from the Good Faith Estimate when calculating whether a Significant Change has occurred.
- b** Changes to an Employee's Schedule which occur because the Covered Employer's operations cannot begin or continue (see section 6.0(d) hereof) do not qualify as an incidence of divergence from the Good Faith Estimate when calculating whether a Significant Change has occurred.
- c** Changes to an Employee's Schedule which are due to a documented Hotel Banquet exemption (see section 6.0(e) hereof) do not qualify as an incidence of divergence from the Good Faith Estimate when calculating whether a Significant Change has occurred.
- d** Changes to an Employee's Schedule which are due to a documented Ticketed Event exemption (see section 6.0(f) hereof) do not qualify as an incidence of change from the Good Faith Estimate when calculating whether a Significant Change has occurred.
- e** Changes to an Employee's Schedule are due to the Employee being removed from the Schedule for documented disciplinary reasons identified in a written policy provided by the Covered Employer to its Employees.

**3.4. Joint and Several Liability.** For any Employee who is co-employed by two or more Employers, including temporary services, staffing agencies, or franchisee-franchisor sharing arrangements, each Employer shall be individually and jointly responsible for providing a good faith estimate at the beginning of each distinct assignment for a Covered Employer. Such Employees shall be considered new Employees upon starting each distinct assignment for a Covered Employer(s).

**3.5 Training Period.** A Good Faith Estimate shall not be required during an Employee's training period. Training periods shall be based on reasonable business practice. In the event the Agency is called upon to investigate a complaint related to a training period, the Employer shall be prepared to document how the training period in question is based on reasonable business practice.

**3.6 New Locations.** The provisions of § 9-4602(1) and this ¶ 3.0 shall not apply with respect to Employees working exclusively at a New Location.

**4.0. Advance Notice of Work Schedules.** Pursuant to §9-4602 (4) the written notice of the Work Schedule shall be provided to all Employees in the workplace, by posting either electronically or in conspicuous physical location; at least ten (10) days before the first day of the new Schedule. (Effective January 1, 2021, the Schedule shall be posted at least 14 days in advance.) The Work Schedule shall be time-stamped with its date and time of posting.

**4.1. Names of all Employees.** The Posted Work Schedule shall include the names of all Employees who work at that workplace, whether or not they are scheduled to work that week. Thus, an Employee who is on vacation in the listed week, or has no work hours for some other reason, must still be listed on the Schedule, with an indication that no work hours have been assigned. To be in compliance, names shall include a minimum of first initial and full last name. Covered Employers may go beyond the minimum requirement and list full names for their employees.

Exception: If an employee who is a victim of domestic violence requests in writing that the Employee's name not be included in the Posted Work Schedule, an employer shall not include that employee's name. The Employer shall however retain records of such schedule for compliance purposes.

**4.2. Notice of Change to Work Schedule.** The Employer shall provide notice of any Employer-initiated change to the Work Schedule that occurs after the required advance notice of the Work Schedule (including during time when the Schedule is active), as promptly as possible after learning of the need for such change. Notice shall be provided by in-person conversation, telephone call, email, text message, or other accessible electronic or written format. In addition, the posted notice of the work Schedule shall be revised to reflect the change no later than 24 hours after the Employer makes the change.

**4.3. Employee's Right to Refuse.** An Employee may decline to work any additional hours or Shifts not included in the notice of Work Schedule posted pursuant to §9-4602(4) and ¶ 4.0 hereof. The Employee's voluntary consent to work such additional hours must be provided by Written Communication, including in physical or printable electronic format. The Employee's consent must relate to a specific Shift and cannot be a general or long-term statement of availability.

**4.4. Employee-Initiated Changes.** Changes to the Work Schedule that are initiated by the Employee after the required advance notice has been given are not subject to the notice requirements of §9-4602(5) and ¶ 4.2 hereof. Such changes include use of sick leave, other compensated or uncompensated time off, Shift trades with other Employees, and voluntary additions or subtractions of hours that are initiated by the Employee.

**5.0. Compensation Required for Changed Work Schedules.** For additional hours that the Employer does not intend to fill through hiring, the Employer is not required to observe the notice and distribution requirements of § 9-4605 but is required to pay Predictability Pay when an exception is not present.

Example 1. At 11 am, the manager receives a phone call from Maya, who is scheduled to work from 2 pm until 10 pm. Maya says that she won't be able to come in for the Shift. The manager calls Steven, who is not scheduled to work that day, and asks if Steven can fill the Shift. Steven responds that he can work from 5 pm until 10 pm that day. The manager then approaches Tina, who is currently working and whose Shift is scheduled to end at 2 pm, to ask if Tina can stay until Steven comes in at 5 pm. Tina agrees. The manager's activity does not violate section 9- 4605, Offer of Work to Existing Employees. However, since the Manager did not use mass communication, the Employer will be required to pay Predictability Pay to both Steven and Tina.

Example 2. The store manager receives notice from the corporate office of a company-wide, three-day sales event (that will occur in five days) that will require additional staff on the Schedule for those days. The store manager approaches Ben and Luke, two of the store's 25 Employees, and verbally offers them the opportunity to work additional hours during the sale. Ben and Luke accept all of the additional hours. The manager's activity does not violate section 9-4605, Offer of Work to Existing Employees; however, the Employer will be required to pay Predictability Pay.

Example 3. Same as Example 2, except that Ben and Luke decline the additional hours. The manager determines, without further inquiry, that the other 23 Employees at the site are not qualified for the position, so the manager hires temporary workers to work during the sales event. The Employer has violated section 9-4605, Offer of Work to Existing Employees, because the Employer did not provide notice of the available hours to all 25 existing Employee before the Employer decided to hire an external candidate. The manager is prohibited from making the determination of qualifications without first posting the hours to all Employees.

Example 4. The Employer requires all Employees to designate in writing their desired number of weekly work hours and the times and days they are available to work. The Employer explains how Employees can update this information if their preferences change. When additional hours become available, the Employer only offers hours pursuant to the preferences recorded by existing Employees. The Employer then hires contract workers to fill the remaining time slots. The Employer's activity does not violate section 9-4605, Offer of Work to Existing Employees.

**5.1 Predictability Pay.** For purposes of calculating Predictability Pay, the rate of pay for a Tipped Employee shall be determined as follows:

(a) If the Employee is paid at least \$7.25 / hour by the Employer, the rate of pay shall be the hourly amount paid to the Employee by the Employer.

(b) If the Employee is paid less than \$7.25 / hour by the Employer, the rate of pay shall be the numerical average of (1) the hourly wage for Standard Occupational Classification (SOC) Code 35-3011 "Bartenders," (2) the hourly wage for SOC 35-3031 "Waiters & Waitresses," and (3) the hourly wage for SOC 35-9011 "Dining Room & Cafeteria Attendants & Bartender Helpers," all as published for Philadelphia County by the Pennsylvania Department of Labor and Industry. This average shall be calculated and published annually by the Agency by no later than June 15 of each year, based on the most recently published data at the time of publication; however, the rate shall not be less than it was the previous year. The rate shall be effective from July 1 to the next June 30.

**When Hours are added and/or date or time or location of a work Shift is changed:**

Example 1. Dwayne's rate of pay is \$15.00. The Posted Work Schedule indicates that Dwayne is scheduled for the afternoon Shift on Wednesday at the North Philly location. On Monday, Dwayne is informed that he is needed at the West Philly location instead for his Wednesday afternoon Shift, however his total hours remain the same. Dwayne is owed one (1) hour of Predictability Pay calculated at his rate of pay since the location of his work Shift has changed from what

was posted in the Posted Work Schedule.

Example 2. Melissa works as a bar-back. Her rate of pay is \$8.50 an hour. The Posted Work Schedule indicates that she is scheduled for the Friday afternoon Shift. On Friday afternoon the workplace is busy and Melissa is asked to stay two additional hours. She accepts the additional hours and is owed Predictability Pay because the increase in hours was not due to one of the exemptions identified in §9-4603 (2). Since Melissa's rate of pay is higher than \$7.25, her Predictability Pay is based on her rate of \$8.50.

Example 3. Candace works as a bartender and is paid \$4 an hour. The Posted Work Schedule indicates that she is scheduled for the Monday afternoon Shift. On Sunday Candace learns that she has been reassigned to the Monday closing Shift and the Thursday afternoon Shift. Candace is owed one (1) hour of Predictability Pay for Monday since the time of her work Shift has changed, and one (1) hour of Predictability Pay for Thursday since her total hours have increased, from what was posted in the Posted Work Schedule. In this example, assume the Predictability Pay for the Tipped Employees in the current year is calculated at \$11 an hour\*. Candace is therefore entitled to \$11 for each incidence of Predictability Pay.

\*Reminder: See the Tipped Rate published by the Agency.

**When hours are removed from the Employee's Schedule because a Shift has been shortened or cancelled; including shortening or cancelling or not calling-in an Employee for an On-Call Shift:**

Example 1. The Posted Work Schedule indicates that Ericka is scheduled for the afternoon Shift on Wednesday. On Monday, Ericka learns the Shift was cancelled. The Shift was scheduled for 8 hours, and Ericka's rate of pay is \$12 an hour.

Ericka's Predictability Pay is calculated as follows:

$8 \text{ (hours)} \times \$12 \text{ (rate of pay)} = \$96$

$96 \div 2 \text{ (}\frac{1}{2} \text{ of what Ericka would have earned, had she worked as scheduled)} = \$48$

Predictability Pay = \$48

Example 2. Andrew works as a hotel housekeeping attendant and his rate of pay is \$15.00. The Posted Work Schedule indicates that Andrew is scheduled for 8 hours on Wednesday. On Wednesday, Andrew is cut after 5 hours. Since Andrew's rate of pay is \$15.00 an hour his Predictability Pay is based on his rate of pay.

Andrew's Predictability Pay is calculated as follows:

$3 \text{ (hours)} \times \$15 = \$45$

$\$45 \div 2 \text{ (}\frac{1}{2} \text{ of what Andrew would have earned, had he worked as scheduled)} = \$22.50$

Predictability Pay = \$22.50

Example 3. Rich works as a waiter and is paid \$2.83 an hour. The Posted Work Schedule indicates that Rich will work from 7 AM – 2 PM on Sunday. On Sunday, Rich is cut from the floor at 11:30 AM. In this example, assume the Predictability Pay for the current year is calculated at \$11 an hour\*.



Rich's Predictability Pay is calculated as follows:

$$2.5 \text{ (hours)} \times \$11 = \$27.50$$

$$\$27.50 \div 2 \text{ (}\frac{1}{2}\text{ of what Rich would have earned, had he worked as scheduled)} = \$13.75$$

$$\text{Predictability Pay} = \underline{\$13.75}$$

\*Reminder: See the Tipped Rate published by the Agency.

Example 4. Yessenia works as a retail clerk and is paid \$8.50 per hour. The Posted Work Schedule indicates that she is scheduled for 5 hours On-Call Shift on Monday. On Monday, Yessenia is not called in to work. Since Yessenia's rate of pay is \$8.50 her Predictability Pay is based on her rate of pay.

Yessenia's Predictability Pay is calculated as follows:

$$5 \text{ (hours)} \times \$8.50 = \$42.50$$

$$\$42.50 \div 2 \text{ (}\frac{1}{2}\text{ of what Yessenia would have earned, had she been called in)} = \$21.25$$

$$\text{Predictability Pay} = \underline{\$21.25}$$

**6.0. Exemptions from Predictability Pay.** There are several instances in the ordinance where a Covered Employer may claim an exemption from Predictability Pay.

- a. **24-hour window for initial changes.** Pursuant to §9-4603(2)(g), the Covered Employer has 24-hours to make changes to the Posted Work Schedule after it is initially posted. Changes made within this window are not subject to Predictability Pay. The final version of the Posted Work Schedule must be time-stamped with its final date and time to document that it was issued within the 24-hour window.
  - i. **Correction to the Ordinance.** In § 9-4603(2)(g) the Fair Workweek Employment Standards Ordinance states that there is an exemption to Predictability Pay where "Changes are made to the Posted Work Schedule within 24 hours after the advance notice required in §9-4602(3)." The code section referenced should be §9-4602(4)." The Regulations apply the exemption as intended.
  - ii. **Extra notice permissible.** Employers may extend the 24-hour period of exemption from the Fair Workweek Employment Standards Ordinance by posting their Posted Work Schedules earlier than required by the ordinance. The exemption period expires 24 hours after the deadline to post the new Schedule.

Example 1. Effective April 1, 2020, Employers are required to post the Posted Work Schedule at least ten (10) days before the first day of the new Schedule. For a Schedule that begins on April 1, 2020 if the Employer posts the Schedule at 8:00 AM on March 22, the Employer has until 8:00 AM on March 23 to make corrections and post a final Work Schedule without paying Predictability Pay.

If, for the same Schedule that begins on April 1, the Employer posts its Posted Work Schedule eleven (11) days in advance at 8:00 AM on March 21, the Employer would still have until 8:00 AM on March 23 to make corrections and post a final Work Schedule without paying

## Predictability Pay.

Example 2. Effective January 1, 2021, the Schedule shall be posted at least fourteen (14) days in advance. For a Schedule that begins on January 1, 2021, if the Employer posts the Schedule at noon on December 18, 2020, the Employer has until noon on December 19, 2020, to make corrections and post a final Work Schedule without paying Predictability Pay.

If for the same Schedule that begins on January 1, 2021 the Employer posts its Posted Work Schedule sixteen (16) days in advance at noon on December 16, the Employer would still have until noon on December 19 to make corrections and post a final Work Schedule without paying Predictability Pay.

**b. Voluntary Changes.** Covered Employers are not required to pay Predictability Pay when adding or subtracting hours and/or Shifts based on voluntary changes requested by the Employee. This exemption includes: voluntary additions or subtractions of hours that are initiated by the Employee, the use of sick leave, vacation leave, or other leave policies offered by the Employer, or a mutually agreed-upon Shift trade or coverage arrangement between Employees.

- i. Such requests shall be in writing to qualify for the exemption from Predictability Pay.
- ii. Employers should be aware that documentation of such requests should be recorded as soon as possible.

Example 1. On Thursday morning, Jillian calls out because of a flat tire. On Jillian's next Shift she provides written confirmation that the reduction of hours was voluntary. Jillian's Employer does not owe her Predictability Pay for the Shift she is missing, because the change was Employee initiated. The manager decides not to fill the Shift. Nothing else is required by the ordinance.

Example 2. Wayne is scheduled for Thursday night but wants to give up that Shift to attend a parent- teacher conference at his son's school. He contacts another Employee, Mariella, and she agrees to cover the Shift. Wayne and Mariella inform the manager of the change and document in writing that it is a mutually agreed-upon coverage agreement between two Employees. Since this is a mutually agreed-upon Shift trade or coverage arrangement between Employees there is no requirement for Predictability Pay. Nothing else is required by the ordinance.

Example 3. On a slow weekday night, the manager announces to Employees that they will take volunteers if anyone wants to be cut early. Rebecca and Fonda both volunteer to go home early and agree to record in writing that the reduction of hours is voluntary. The Employer does not owe Rebecca or Fonda any Predictability Pay for the reduction of hours because the reduction was voluntary.

Example 4. Same as above but no one volunteers. The manager cuts two Employees chosen randomly, Manny and Amanda. The Employer owes Manny and Amanda Predictability Pay.

**c. Employee Initiated Changes & Mass Communication of Additional Hours.** Pursuant to §9-4603(2)(e), when additional hours become available due to an Employee initiated change (e.g. calling in sick) an Employer is not required to pay Predictability Pay if mass communication is used to fill the

available hours.

- i. The communication shall make clear that accepting such hours is voluntary and that Employees have the right to decline such hours.
- ii. A mass Written Communication can be electronic or on paper, whichever is standard in the particular workplace, so long as it is genuinely and readily available to all Employees.

Example 1. On a Tuesday morning Nate calls out sick from his scheduled afternoon Shift. After Nate calls out sick, the Employer follows the mass communication protocol and issues a mass communication to the other staff informing them that Nate's Shift is available. Dana responds to the mass communication and volunteers to work Nate's Shift. The Employer does not owe Dana any Predictability Pay for the addition of hours because the addition was in response to an Employee-initiated change and in response to a mass communication that hours were available.

Example 2. Same as above, however this time the Employer does not mass communicate the open Shift and instead unilaterally assigns Jesse to cover Nate's Shift. The additional hours were not voluntary. The Employer owes Jesse Predictability Pay for the new hours he is required to work. The Employer may also owe Presumed Damages, pursuant to §9-4611(6).

- d. **The Covered Employer's Operations Cannot Begin or Continue.** Example of when an Employer's operation cannot begin or continue are: Closing of the Employer's operations due to a health or safety concern that involved a 911 call, a gas leak, flooded streets, violence at the place of business, pipe bursting inside the business, among other things.
- e. **Hotel Banquets.** Covered Employers are not required to pay Predictability Pay when a hotel banquet event is scheduled, due to circumstances that are outside the Employer's control, after the Employer provides the Posted Work Schedule.
  - i. Hotel banquet events qualifying under this exemption are catered events staffed by a hotel's banquet department staff. If a hotel does not have a banquet department, this exemption does not apply.
  - ii. A banquet is scheduled at the time that the customer provides a deposit, gives a credit card authorization, signs a contract, or reserves a space, whichever comes first, in connection with a specific date.
  - iii. Only hotel staff who are scheduled to work at the banquet, including kitchen staff, food prep, set-up, waiters, bartenders, and other staff associated with the event itself shall be included in the exemption from Predictability Pay.
- f. **Ticketed Events.** Covered Employers are not required to pay Predictability Pay when a Ticketed Event is cancelled, scheduled, rescheduled, postponed, delayed, increases in expected attendance by 20% or more, or increases in duration, due to circumstances that are outside the Employer's control and that occur after the Employer provides the Posted Work Schedule.
  - i. Ticketed Events qualifying under this exemption are events where tickets are available for sale to

the general public. Events which are generally understood to be family events, such as weddings, sweet sixteens, bridal showers, etc., are not exempted under this section. Events which are generally understood to be private events, such as company trainings, end-of-year parties, corporate retreats, etc., are not exempted under this section.

- ii. Ticketed Events such as concerts and sporting events shall be considered scheduled when the date and time of the event becomes known to the Employer. Ticketed Events that are hosted on behalf of a customer shall be considered scheduled at the time that the customer provides a deposit, gives a credit card authorization, signs a contract, or reserves a space, whichever comes first, in connection with a specific date.
- iii. This exemption for certain Ticketed Events applies to Schedule changes for Employees scheduled to work on the premises at which the Ticketed Event, as defined in section 9-4601(14), was scheduled to occur. Only staff who are scheduled to work at the Ticketed Event itself shall be included in the exemption from Predictability Pay. If the Employer intends to claim an exemption under this section, the Employer shall retain records to justify the exemption for a period of two years.
- iv. Events for which admission is free or the price is de minimis are not exempted under this section.

**7.0 Right to Rest between Work Shifts.** Pursuant to §9-4604, an Employer may not require an Employee to commence a Shift sooner than nine hours after the completion of a previous Shift. Commencement and completion shall be determined by the Employee's Posted Work Schedule.

- a. An Employee may voluntarily consent to work a Shift that commences sooner than nine hours after the completion of a previous Shift, but an Employer may not accept that consent unless it is in writing.
  - i. In the event that consent is given and accepted an Employer shall provide an Employee with \$40 compensatory pay for each such Shift worked.
  - ii. In the event that a Shift is required without consent and that Shift is worked, the Covered Employer shall provide the Employee with \$40 compensatory pay and the Employer may be liable for fines in accordance with this ordinance, pursuant to section 9-4611(6).

**8.0 Offer of Work to Existing Employees.** Pursuant to § 9-4605, this Section 8.0 sets forth the required prerequisites that an Employer must follow before hiring any additional Employee or Employees or contracting with any additional workers or staffing companies. An Employer who does not hire or contract with any new Employees to fill additional hours is not required to comply with this ¶ 8.0. See ¶ 5.0.

Example: If additional hours become available on a permanent basis because an Employee has resigned or because of increased sales activity, or if additional hours become available on a temporary basis because of a special promotion or because of seasonal fluctuations, these provisions must be followed before hiring or contracting with anyone who is not an existing Employee. This

example is not an exhaustive list.

**8.1 Existing Employee.** For purposes of this Section 8.0, an “existing Employee” includes any Employee who works at the workplace where additional hours are available, regardless whether the Employee currently works in the same position for which the additional hours are available; and regardless of the number of hours the Employee has been scheduled in previous weeks.

Exception: If it is a regular practice of the Employer to schedule Employees across multiple locations in the City, then all Employees at such locations they own and operate shall be considered “existing Employees.”

**8.2. Notice.** The Employer shall provide written notice of available work Shifts for at least 72 hours, unless a shorter period is necessary in order for the work to be timely performed. When an Employer has less than 72 hours’ notice to fill an open Shift, the Employer may offer an existing Employee the opportunity to work the Shift temporarily during the 72-hour notice period.

**8.3 When Predictability Pay applies to an Offer of Work.** If the Employer offers and the Employee accepts additional work hours that occur within the posting period defined in Section 9-4602(3) (Advance Notice of Work Schedule), the Employer will need to obtain written consent pursuant to section 9-4602(6); and the Employer will need to pay the worker the applicable Predictability Pay defined in section 9-4603(1)(a), unless an exception to the Predictability Pay is present.

**8.4 Notice and Posting of new work hours.** The notice communicating the offer of work must be in writing and posted in a conspicuous location in the workplace where notices to Employees are customarily posted. The notice must also be shared electronically if scheduling information is customarily made available to Employees in an electronic format.

The notice communicating the offer of work must contain the following information:

- a. Available work Shifts or days and times they must be available to work;
- b. Length of time the Employer anticipates requiring coverage of the additional hours;
- c. Description of the position;
- d. Required qualifications for the position;
- e. The process by which Employees may notify the Employer of their desire to work the offered hours;
- f. If the notice is being posted for less than 72 hours pursuant to rule 8.2, the notice shall contain that information.

**8.5 Distributing new work hours.** Existing Employees at the workplace where the additional hours are made available must be given priority in distributing additional hours provided that they are qualified to perform the work. If it is a regular practice of the Employer to schedule Employees across multiple locations in the City that the Employer owns and operates, and no qualified Employee where the additional hours are made available volunteers for the hours, then existing Employees at the Employer’s other locations in the City must be given priority before any outside hiring commences.

**8.6 Qualifications.** A decision to hire new Employees from an external applicant pool or subcontractors rather than allocating the work to existing Employees violates the ordinance when the circumstances indicate lack of good faith or an unreasonable exercise of judgment.

Example 1: An Employer posts an opportunity for additional hours with a notice that states that the position requires experience in both cashier and inventory. Two Employees express a desire to work the hours: Rudy regularly works in both cashier and inventory positions for this Employer, while Stefan works in a cashier position but worked in inventory in a previous job. The Employer assigns all additional hours to Rudy. This assignment reflects a reasonable, good faith judgment regarding qualifications

Example 2: An Employer posts an opportunity for additional hours with a notice that states that the position requires experience as a bartender. The only existing Employee who expresses a desire for the hours is Stefan, who works in a server position and has two years of bartending experience in a previous job. The manager rejects Stefan as unqualified and hires a new Employee, Maria, who has two years of bartending experience in a previous job. This action appears to violate the requirement to determine qualifications reasonably and in good faith, because Maria has similar qualifications as Stefan – two years of bartending experience from a previous job.

Example 3: An Employer posts an opportunity for additional hours with a notice that states that the position requires experience in both cashier and inventory. The only existing Employee who expresses a desire for the hours is Remi, who works in a cashier position and has two years of inventory experience in a previous job. The manager rejects Remi as unqualified and hires a new Employee, Paul, with three years of inventory experience. Paul is assigned to work exclusively as a cashier. This action appears to violate the requirement to determine qualifications reasonably and in good faith, because inventory experience is not relevant to the position.

Example 4: An Employer rejects an existing Employee, Evelyn, as not qualified for additional hours on the basis of poor performance; and the Employer instead arranges with a temp agency for a temporary worker. Evelyn's personnel file indicates no disciplinary issues, and performance reviews characterize her work as "good." The Employer's decision appears to violate the requirement to determine qualifications reasonably and in good faith, because there is no evidence of Evelyn's poor performance.

**8.7 Distributing additional hours.** The Employer may distribute all additional hours to one qualified Employee or distribute the hours among several qualified Employees. The Employer has discretion to distribute hours among qualified existing Employees subject to the limitations specified in section 9-4605(3)(b). An Employer is not required to assign available Shifts when it would require the Employer to pay overtime.

Example 1: An Employer posts an opportunity for two eight-hour Shifts, one on Monday and the other on Tuesday. Tricia expresses a desire to work the Monday Shift and Javier expresses a desire to work the Tuesday Shift. Both have the requisite qualifications but giving Tricia the Shift would put Tricia into overtime. The Employer must assign the Tuesday work to Javier and may hire a new Employee who is available for the Monday Shift.

**8.8 Hiring external staff.** If the conditions for hiring external staff are satisfied, the Employer must offer

those new Employees the Shifts and the jobs that were advertised in the notice to existing workers.

Example 1: The Employer posts an opportunity for hours from 8 pm to 12 am on Friday, Saturday, and Sunday nights. None of the existing Employees express a desire to work the additional hours. The Employer hires a new Employee and, during the first month of employment, assigns him to work 8 pm to 12 am on Friday, Saturday and Sunday. On occasion, the Employer also assigns the new Employee to fill Shifts during the day or on other evenings, to meet increased demand or fill in for absent Employees. The Employer has complied with the ordinance by hiring a new Employee to perform the work described in the notice.

Example 2: The Employer posts an opportunity for hours from 8 pm to 12 am on Friday, Saturday, and Sunday nights. None of the existing Employees express a desire to work the additional hours. The Employer hires a new Employee and, during the first month of employment, assigns her to Shifts between the hours of 9 am and 7 pm. The Employer has not complied with the ordinance because the hours in the notice do not match the hours actually assigned to the Employee and the Employee is assigned hours that were not previously offered to existing Employees.

Example 3: The Employer posts an opportunity for hours from 8 pm to 12 am on Friday, Saturday, and Sunday nights. None of the existing Employees express a desire to work the additional hours. The Employer hires three new Employees: Rob, Danielle and Madison. The Employer assigns Rob to work 8 pm to 12 am on Friday, Saturday and Sunday. The Employer assigns Madison and Danielle to Shifts between the hours of 9 am and 7 pm. The hiring of Madison and Danielle does not comply with the ordinance because they are not performing the work described in the notice and are working hours that were not previously offered to existing Employees.

**8.9 Postings in Primary Language of Employees.** Pursuant to section 9-4605(2)(a), Employers shall post all “notice(s) of available work Shifts” to existing Employees in English and any other language that is the primary language of at least 5% of their existing Employees.

- a. Employers may also post “notice(s) of available work Shifts” in a language spoken by less than 5 % of existing Employees.
- b. If a Covered Employer receives a request for a specific language from an existing Employee the Employer shall honor that request.
- c. The Agency shall accept as a valid posting a translation done by an official translation service, documents translated by an existing Employee who is fluent and literate in the language in question, or any free translation service publicly available online.

**8.10 New Locations.** The provisions of § 9-4605 and this ¶ 8.0 shall not apply with respect to the hiring of new Employees at a New Location.

**9.0 Employer Records.** Each Employer shall maintain for at least two years for each Employee a record of his or her name, hours worked, pay rate, initial Posted Work Schedule and all subsequent changes to that Schedule, consent to work hours where such consent is required by the ordinance, and documentation of the time and method of offering additional hours of work to existing staff. The records shall not be amended or redacted in any way.

**9.1 Employee record request.** When an Employee requests records under section 9-4609(2), the Employer shall provide the records electronically (in a format that is commonly used) at no cost to the Employee. If the Employee requests hard copies, the Employer may charge the Employee no more than its actual cost to produce the records. The records shall not be amended or redacted in any way.



- a. The Employer shall have thirty days to comply with the request from an Employee. The 30-day response period starts when the request is made.
- b. The requests shall be made in writing. The 30-day response period begins when a request is received in writing.
- c. In the event the Employer deems the request to be overly burdensome or harassing, the Employer may notify the Agency, at which time the Agency will determine if the Employee is or is not entitled to the information.
- i. The Employer must make this request of the Agency within two-weeks of receiving the Employee request.

**10.0 Presumed Damages. The damages are as follows for violations of section 9-4602 and 9-4605:**

- a. For a written estimate under section 9-4602(1) that is incomplete or lacks a good faith basis, \$200 per impacted Employee.
- b. For an Employer's failure to provide a written Work Schedule as required by section 9-4602(3) or to post the Work Schedule as required by section 9-4602(4), \$50 per impacted Employee for each pay period in which the violation occurs or continues.
- c. For an Employer's failure to promptly notify the Employee of changes to the Posted Work Schedule as required by section 9-4602(5), \$25 per impacted Employee for each pay period in which the violation occurs or continues.
- d. For an Employer's failure to obtain written consent for added work hours as required by section 9-4602(6), \$100 per impacted Employee for each pay period in which the violation occurs or continues.
- e. For an Employer's failure to provide written notice of available work hours as required by section 9-4605(2), \$50 per impacted Employee for each pay period in which the violation occurs or continues.
- f. For an Employer's failure to provide written notice of its policy for distributing work hours as required by section 9-4605(6), \$50 per impacted Employee for each pay period in which the violation occurs or continues.
- g. For an Employer's failure to award available work hours as required by section 9-4605(4), \$1,000 per impacted Employee for each pay period in which the violation occurs or continues.

The Agency reserves the right to impose triple damages for Employers found to be repeat offenders.

**10.1. New Locations.** Presumed damages shall not be available with respect to violations relating to Employees at a New Location, except with respect to ¶ 10.0(b).

**11.0 Fines and Penalties.** Agency's power to impose penalties and fines for violation of this Chapter shall be effective upon publication of the appropriate regulations in a prominent location on the City's Website. Until such time, the Agency shall refer to the Law Department any requests for fines, penalties or other remedial action. Remedies may include reinstatement and full restitution to the Employee for lost wages and benefits, including Predictability Pay and Presumed Damages as required by this Chapter.

# Exhibit B

**Office of the Managing Director**  
Mayor's Office of Labor  
REGULATIONS REGARDING CHAPTER 9-4600 OF THE PHILADELPHIA CODE:  
FAIR WORKWEEK EMPLOYMENT STANDARDS

The following regulations regarding Chapter 9-4600 of The Philadelphia Code ("Fair Workweek Employment Standards") are hereby adopted:

**1.0 Scope.** These Regulations, promulgated by the Managing Director's Office pursuant to its authority under Section 8-407 of the Home Rule Charter, set forth additional definitions and directions pertaining to the Fair Workweek Employment Standards Ordinance (the "Ordinance"), Chapter 9-4600 of The Philadelphia Code.

**1.1 Delay in Implementation.** Implementation of Chapter 9-4600 of The Philadelphia Code shall begin on April 1, 2020. To be in compliance as of April 1, 2020, Covered Employers will need to provide their first Posted Work Schedule at least ten (10) days in advance of this date.

**a.** Good Faith Estimates shall be required by July 1, 2020, for any Employees hired prior to April 1, 2020.

**2.02.1 Definitions.** In addition to the definitions provided in § 9-4601, the following terms have the following meanings for the purposes of Chapter 9-4600.

**2.12.2 Agency.** The Office of Benefits and Wage Compliance, within the Mayor's Office of Labor.

**2.22.3 Employee.** As defined in § 9-4601(5), and further defined as an ~~employee~~Employee of a Covered Employer who:

- a.** Is entitled to overtime pay under state and federal law;
- b.** Performs work involving the direct provision of retail, food or hospitality services to the public, including floor managers who directly oversee such services ~~and employees;~~ Employees engaged in completing sales, such as a delivery driver; persons involved in security at a retail, food, or hospitality location, whose work involves at least occasional customer contact; persons involved in maintenance at a retail, food, or hospitality location whose work involves at least occasional responses to customer requests, and pharmacy and/or medical staff at a retail, food, or hospitality location; but excluding administrative and professional hourly ~~employees~~Employees such as those in human resources, payroll, and receptionist positions, and the trades; but not excluding hotel, restaurant or other retail front desk or front-of-house ~~employees~~Employees who greet or provide service to customers.

**2.32.4 Co-Employers.** More than one entity may be the "~~employer~~Employer" of an ~~employee~~Employee, if ~~employment~~Employment by one ~~employer~~Employer is not completely disassociated from ~~employment~~Employment by the other ~~employer~~Employer. For example, an ~~employee~~Employee may be employed by both the franchisee of a ~~chain~~Chain entity, as well as by the ~~chain~~Chain entity itself. Determining whether a co-employment exists will depend upon all of the facts in a particular case. A co-employment will generally be found where:

- a. The ~~employee~~Employee performs work that simultaneously benefits two or more ~~employers~~Employers, or works for two or more ~~employers~~Employers at different times during the workweek, such as pursuant to an arrangement between the ~~employers~~Employers, or one franchisee/~~employer~~Employer and the central office of the ~~chain~~Chain entity, to interchange ~~employees~~Employees among retail locations; or
- b. One ~~employer~~Employer acts directly or indirectly in the interest of the other ~~employer~~Employer or ~~employers~~Employers in relation to the ~~employee~~Employee; or
- c. Where the ~~employers~~Employers are not completely disassociated with respect to the employment of a particular ~~employee~~Employee and may be deemed to share control of the ~~employee~~Employee, directly or indirectly, by reason of the fact that one ~~employer~~Employer controls, is controlled by, or is under common control with the other ~~employer~~Employer.
- d. Where the length of time a temporary employee employed by a temporary or staffing agency works at the location of a Covered Employer is at least 16 hours over a two-week period.

If the facts establish that an ~~employee~~Employee is co-employed by two or more ~~employers~~Employers, all of the co- ~~employers~~Employers are responsible, both individually and jointly, for compliance with all of the provisions of the Ordinance with respect to the entire employment for the particular ~~work week~~Work Week and pay period.

**2.42.5 New Location.** An establishment that (i) has been operated by a Covered Employer for less than 30 days; and (ii) had not previously been operated by such Covered Employer for at least 180 days prior to opening.

**30 Good Faith Estimates:** For purposes of section 9-4602, “Good faith” means a sincere intention to deal fairly with others. The good faith estimate is a reasonable, fact-based prediction; ~~employers~~Employers may base it on forecasts, prior hours worked by a similarly-situated ~~employee~~Employee(s), or other information. The good faith estimate shall include:

- a. The average number of work hours the ~~employee~~Employee can expect to work each week over a typical 90-day period. The typical 90-day period is not simply an average taken from all hours worked in a year.
- b. A subset of days the ~~employee~~Employee can expect to work, or a subset of days that the ~~employee~~Employee will not be expected to work. The subset shall not include all days of the week;
  - i. An ~~employer~~Employer may provide an alternating weekly ~~schedule~~Schedule, for a maximum of two weekly estimates so long as both average numbers of hours are for at least 32 hours per week. Each week may provide for different days the ~~employee~~Employee can expect to work or not expect to work. If a Good Faith Estimate with multiple workweeks has been presented to the ~~employee~~Employee (for example an A-Week and a B- Week), the ~~employer~~Employer does not need to schedule the ~~employee~~Employee to strictly alternate between weeks. However, when posting the Posted Work Schedule, the ~~employer~~Employer shall note which specific week the ~~employee~~Employee is being scheduled for.

- c A subset of times or ~~shifts~~Shifts the ~~employee~~Employee can expect to work, including start and end times. The subset of hours or ~~shifts~~Shifts shall be defined as not more than 50% greater than the average number of expected hours. The ~~employer~~Employer shall not state the estimate as all work ~~shifts~~Shifts for which the ~~employer~~Employer staffs its workplace.
- d The average number of hours that the ~~employee~~Employee will be expected to work. This number shall not be a range of hours; and
- e Whether the ~~employee~~Employee can expect to work any ~~on-call shifts~~On-Call Shifts.

**31 Lack of good faith.** The ~~agency~~Agency may infer a lack of good faith in the Good Faith Estimate from an ~~employer's~~Employer's inability to identify a factual basis for the estimate.

### 32 Changes to the Good Faith Estimate.

- a An Employer must revise the Good Faith Estimate if a significant change (described in ¶ 3.3 a-c hereof) to an ~~employee's work schedule~~Employee's Work Schedule for purposes of §9-4602(1) occurs. Revisions to the good faith estimate shall be provided to the ~~employee~~Employee as promptly as possible.
- b An Employer may provide an ~~employee~~Employee with a seasonal or term-limited Good Faith Estimate.
  - (i) All the rules applicable to a Good Faith Estimate shall apply. The seasonal or term-limited estimate shall contain a clear end date. At the expiration of the termed or seasonal Good Faith Estimate the ~~employer~~Employer may provide a new Good Faith Estimate to the ~~employee~~Employee. If the ~~employer~~Employer does not provide a new Good Faith Estimate upon the expiration of a seasonal or term-limited Good Faith Estimate, it shall be presumed the Good Faith Estimate that was most recently presented to the ~~employee~~Employee prior to the seasonal or term-limited Good Faith Estimate is once again active.

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## Good Faith Estimate Example #1

In this example, the ~~employer~~Employer will present the ~~employee~~Employee with a ~~schedule~~Schedule based on a subset of hours.

Average Number of Hours: 25

Subset of Hours

Day	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Start	8 AM	N/A	11 AM	11AM	N/A	8AM	N/A
End	6P M		9 PM	9PM		1PM	
Scheduling Window	<b>10 hours</b>		<b>10 hours</b>	<b>10 hours</b>		<b>5 hours</b>	

On-Call ~~shifts~~Shifts required? Yes ☐ No ☒

In this example, the Good Faith Estimate is in compliance. The ~~employee~~Employer has provided the following in accordance with the ordinance and regulations:

- Average number of hours the ~~employee~~Employee can expect to work each week over a typical 90-day period. The average is provided as a number and not a range of hours.
- The subset of days the ~~employee~~Employee can expect to work
- The subset of hours that the ~~employee~~Employee can expect to be scheduled on those days.
- The scheduling window is a total of 35 hours, which is within 50% of the average number of hours the ~~employee~~Employee will work. \*
- Whether or not the ~~employee~~Employee can expect to work any ~~on-call shifts~~On-Call Shifts.

\* Note:

To determine the total number of hours an ~~employee~~Employer can use for the subset of hours in a good faith estimate the ~~employee~~Employer must determine how many hours are 50% greater than the “Average Number of Hours.

As in this example the Average Number of Hours is 25.  $25 \times 50\% = 12.5$  hours. The subset of hours can at the most cover 37.5 hours a week ( $25 + 12.5$ ). In this example, the subset of hours covers 35 hours ( $10 + 10 + 10 + 5$ ) and therefore complies.

Based on the days and subset of hours identified in the Good Faith Estimate, the ~~employee~~Employer has flexibility on the specific hours scheduled in the two-week posted schedule.

For example, this GFE identifies 8 AM – 1 PM on Saturday. If the ~~employee~~Employee is then scheduled 8 AM – noon one week; 9 AM – 1 PM the next week; and 8 AM – 1 PM the following week, the ~~schedule~~Schedule is in compliance with the GFE.

Conversely, if the ~~employee~~Employee was scheduled from 10 AM – 3 PM on a Saturday, that would not be in compliance and would count as an incidence of significant change from the Good Faith Estimate. Per Regulation 33 c., if the ~~employee~~Employee was scheduled 10 AM – 3 PM three workweeks out of six consecutive workweeks, that would trigger a significant change from the Good Faith Estimate.

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## Good Faith Estimate Example #2

In this example, the ~~employee~~Employer presents the ~~employee~~Employee with a Good Faith Estimate based on a subset of hours. Here the GFE includes estimates for more than one week.

### Alternating Weekly Schedule

A-Week, Average Number of Hours: 36

Subset of Days and Hours:

A-Week

Day	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Start	8 AM	N/A	11 AM	11 AM	8 AM	8 AM	N/A
End	6 PM		9 PM	9 PM	6 PM	6 PM	
Scheduling Window	10 hours		10 hours	10 hours	10 hours	10 hours	

On-Call ~~shifts~~Shifts required? Yes ☐ No ☒

B-Week, Average Number of Hours: 32

Subset of Days and Hours:

B-Week

Day	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Start	2 PM	2 PM	N/A	2 PM	12 PM	N/A	N/A
End	2 AM	2 AM		12 AM	12 AM		
Scheduling Window	12 hours	12 hours		10 hours	12 hours		

On-Call ~~shifts~~Shifts required? Yes ☐ No ☒

In this example, the Good Faith Estimate is in compliance. The ~~employee~~Employer has provided the following in accordance with the ordinance and regulations:

- Average number of hours the ~~employee~~Employee can expect to work each week over a typical 90-day period. For both A-Weeks and B-Weeks the average is provided as a number and not a range of hours.
- The subset of days the ~~employee~~Employee can expect to work on an A-Week and on a B-Week.
- The subset of hours that the ~~employee~~Employee can expect to be scheduled on those days.
- The Average Number of Hours for both the A-week and B-week is at least 32 hours per week.
- The scheduling windows for A-Weeks and B-Weeks are within 50% of the average number of hours the ~~employee~~Employee will work. (For A-Weeks, 50 is within 50% of 36; for B-Weeks, 46 is within 50% of 32.)\*
- Whether or not the ~~employee~~Employee can expect to work any ~~on-call shifts~~On-Call Shifts.

\*Note:

To determine the total number of hours an ~~employee~~Employer can use for the subset of hours in a good faith estimate the ~~employee~~Employer must determine how many hours are 50% greater than the “Average Number of Hours.

As in week A’s example the Average Number of Hours are 36.  $36 * 50\% = 18$  hours. The subset of hours can at the most cover 54 hours a week ( $36 + 18$ ). In this example the subset of hours above covers 50 hours ( $10 + 10 + 10 + 10 + 10$ ) and therefore complies.

As in week B’s example the Average Number of Hours are 32.  $32 * 50\% = 16$  hours. The subset of hours can at the most cover 48 hours a week ( $32 + 16$ ). In this example the subset of hours above covers 46 hours ( $12 + 12 + 10 + 12$ ) and therefore complies.

As indicated in Section 3.0 (b)(i), a Good Faith Estimate which includes estimates for more than one week is in compliance with the ordinance and regulations so long as the average number of hours is at least 32-hour per week. However, ~~employers~~Employers should be aware that this is a more complicated GFE model. A GFE shall allow for no more than two possible workweeks.

If a GFE with multiple workweeks has been presented to the ~~employee~~Employee, when posting the Posted Work Schedule, the ~~employee~~Employer shall choose one specific workweek (in this example, the A-Week or the B-Week) as the ~~schedule~~Schedule the ~~employee~~Employee will follow for a particular week.

For every ~~employee~~Employee presented with a GFE that includes estimates for multiple workweeks, the ~~employee~~Employer shall include a notation identifying which specific workweek the ~~employee~~Employee is



being scheduled for on the Posted Work Schedule.

### Good Faith Estimate Example #3

In this example, the ~~employer~~Employer will present the ~~employee~~Employee with a ~~schedule~~Schedule based on a subset of hours ~~they~~the Employee will *not* be scheduled.

Average Number of Hours: 32

Subset of Hours

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
May be Scheduled for Shift?	Yes / No	Yes / No	Yes / No	Yes / No	Yes / No	Yes / No	Yes / No
5 AM	No	No			No	No	No
6 AM	No	No			No	No	No
7 AM	No	No			No	No	No
8 AM	No	No			No	No	No
9 AM	No	No			No	No	No
10 AM		No			No	No	No
11 AM		No			No	No	No
12 PM		No			No	No	No
1 PM		No			No	No	No
2 PM		No			No	No	No
3 PM		No	No		No	No	No
4 PM		No	No				No
5 PM		No	No	No			No
6 PM		No	No	No			No
7 PM		No	No	No			No
8 PM		No	No	No			No
9 PM		No	No	No			No
10 PM	No	No	No	No		No	No
11 PM	No	No	No	No		No	No
12 PM	No	No	No	No	No	No	No
Scheduling Window	12 hours	None	10 hours	12 hours	8 hours	6 hours	None

On-Call ~~shifts~~Shifts required? Yes ☐ No ☒

In this example, the Good Faith Estimate is in compliance. The ~~employer~~Employer has provided the following in accordance with the ordinance and regulations:

- Average number of hours the ~~employee~~Employee can expect to work each week over a typical 90-day period. The average is provided as a number and not a range of hours.
- The subset of days the ~~employee~~Employee can expect *not* to work
- The subset of hours that the ~~employee~~Employee can expect *not to be* scheduled on ~~those~~ days they do work.
- The scheduling window is a total of 48 hours, which is within 50% of the average number of hours the ~~employee~~Employee will work. \*

- Whether or not the ~~employee~~Employee can expect to work any ~~on-call shifts~~On-Call Shifts.

\* Note:

To determine the total number of hours an ~~employer~~Employer can use for the subset of hours in a good faith estimate the ~~employer~~Employer must determine how many hours are 50% greater than the “Average Number of Hours.

As in this example the Average Number of Hours are 32,  $32 \times 50\% = 16$  hours. The subset of hours can at the most cover 48 hours a week ( $32 + 16$ ). In this example the subset of hours above covers 48 hours ( $-12 + 10 + 12 + 8 + 6$ ) and therefore complies.

Based on the days and subset of hours that the ~~employee~~Employee will *not be* scheduled to work identified in the Good Faith Estimate, the ~~employer~~Employer has flexibility on the specific hours the ~~employee~~Employee will be scheduled for.

For example, under this GFE, on a Wednesday the ~~employee~~Employee may be scheduled as early as 5 AM, but the ~~employee's shift~~Employee's Shift would end no later than 3 pm. On a Saturday the ~~employee~~Employee would be scheduled no earlier than 4PM, but the ~~employee's shift~~Employee's Shift would end no later than 10 PM.

If on a Saturday, the ~~employee~~Employee was scheduled earlier than 3 PM or later than 11 PM that would not be in compliance and would count as an incidence of significant change from the Good Faith Estimate. Per Regulation 3.3 c., if on a Saturday the ~~employee~~Employee was scheduled earlier than 3 PM or later than 11 PM three workweeks out of six consecutive workweeks, that would trigger a significant change from the Good Faith Estimate.

Also note that this example also shows GFE where every hour the business is open is contemplated. This is contrasted with Example #1 and Example #2 which are less detailed in terms of business hours. Either approach is valid and would be in compliance.

### 3.3. Significant Change.

#### Qualifies as Significant Change:

- ~~Three~~Six (6) workweeks out of ~~six~~twelve (12) consecutive workweeks in which the number of actual hours worked differs by twenty percent or more from the good faith estimate during each of the three weeks, and the differences are not due to documented ~~employee~~Employee-initiated changes;
- ~~Three~~Six (6) workweeks out of ~~six~~twelve (12) consecutive workweeks in which the days of work differ from the good faith estimate at least once per week, and the differences are not due to documented ~~employee~~Employee-initiated changes; or
- ~~Three~~Six (6) workweeks out of ~~six~~twelve (12) consecutive *workweeks* in which the start or end times of at least one ~~shift~~Shift per week differ from the good faith estimate by at least one hour; or, if ~~shifts~~Shifts have been identified, start and end times of ~~shifts~~Shifts differ by at least one hour from the range by which the ~~shift~~Shift was identified; and the differences are not due to documented ~~employee~~Employee-initiated changes.

#### Does not qualify as a Significant Change:

- Changes to an ~~employee's schedule~~Employee's Schedule which are due to documented voluntary

changes (see section 6.0(b) hereof) do not qualify as an incidence of divergence from the Good Faith Estimate when calculating whether a Significant Change has occurred.

- b. Changes to an ~~employee's schedule~~Employee's Schedule which occur because the Covered Employer's operations cannot begin or continue (see section 6.0(d) hereof) do not qualify as an incidence of divergence from the Good Faith Estimate when calculating whether a Significant Change has occurred.
- c. Changes to an ~~employee's schedule~~Employee's Schedule which are due to a documented Hotel Banquet exemption (see section 6.0(e) hereof) do not qualify as an incidence of divergence from the Good Faith Estimate when calculating whether a Significant Change has occurred.
- d. Changes to an ~~employee's schedule~~Employee's Schedule which are due to a documented Ticketed Event exemption (see section 6.0(f) hereof) do not qualify as an incidence of change from the Good Faith Estimate when calculating whether a Significant Change has occurred.
- e. Changes to an Employee's Schedule are due to the Employee being removed from the Schedule for documented disciplinary reasons identified in a written policy provided by the Covered Employer to its Employees.

**3.4. Joint and Several Liability.** For any ~~employee~~Employee who is co-employed by two or more ~~employers~~Employers, including temporary services, staffing agencies, or franchisee-franchisor sharing arrangements, each ~~employer~~Employer shall be individually and jointly responsible for providing a good faith estimate at the beginning of each distinct assignment for a ~~covered employer~~Covered Employer. Such ~~employees~~Employees shall be considered new ~~employees~~Employees upon starting each distinct assignment for a ~~covered employer~~Covered Employer(s).

**3.5 Training Period.** A Good Faith Estimate shall not be required during an ~~employee's~~Employee's training period. Training periods shall be based on reasonable business practice. In the event the Agency is called upon to investigate a complaint related to a training period, the Employer shall be prepared to document how the training period in question is based on reasonable business practice.

**3.6 New Locations.** The provisions of § 9-4602(1) and this ¶ 3.0 shall not apply with respect to ~~employees~~Employees working exclusively at a New Location.

**4.0. Advance Notice of Work Schedules.** Pursuant to §9-4602 (4) the written notice of the ~~work schedule~~Work Schedule shall be provided to all ~~employees~~Employees in the workplace, by posting either electronically or in a conspicuous and accessible physical location, as well as in electronic format if that is a customary method of notice in the workplace; at least ten (10) days before the first day of the new ~~schedule~~Schedule. (Effective January 1, 2021, the ~~schedule~~Schedule shall be posted at least 14 days in advance.) The ~~work schedule~~Work Schedule shall be time-stamped with its date and time of posting.

**4.1. Names of all ~~employees~~Employees.** The ~~posted schedule~~Posted Work Schedule shall include the names of all ~~employees~~Employees who work at that workplace, whether or not they are scheduled to work that week. Thus, an ~~employee~~Employee who is on vacation in the listed week, or has no work hours for some other reason, must still be listed on the ~~schedule~~Schedule, with an indication that no work hours have

been assigned. To be in compliance, names shall include a minimum of first initial and full last name. Covered Employers may go beyond the minimum requirement and list full names for their employees.

Exception: If an employee who is a victim of domestic violence requests in writing that the Employee's name not be included in the Posted Work Schedule, an employer shall not include that employee's name. The Employer shall however retain records of such schedule for compliance purposes.

**4.2. Notice of Change to Work Schedule.** The ~~employer~~Employer shall provide notice of any ~~employer~~Employer-initiated change to the ~~work-schedule~~ Work Schedule that occurs after the required advance notice of the ~~work-schedule~~Work Schedule (including during time when the ~~schedule~~Schedule is active), as promptly as possible after learning of the need for such change. Notice shall be provided by in-person conversation, telephone call, email, text message, or other accessible electronic or written format. In addition, the posted notice of the work ~~schedule~~Schedule shall be revised to reflect the change no later than 24 hours after the ~~employer~~Employer makes the change.

**4.3. Employee's Right to Refuse.** An ~~employee~~Employee may decline to work any additional hours or ~~shifts~~Shifts not included in the notice of ~~work-schedule~~Work Schedule posted pursuant to §9-4602(4) and ¶ 4.0 hereof. The ~~employee's~~Employee's voluntary consent to work such additional hours must be provided by ~~written communication~~Written Communication, including in physical or printable electronic format. The ~~employee's~~Employee's consent must relate to a specific ~~shift~~Shift and cannot be a general or long-term statement of availability.

**4.4. Employee-Initiated Changes.** Changes to the ~~work-schedule~~Work Schedule that are initiated by the ~~employee~~Employee after the required advance notice has been given are not subject to the notice requirements of §9-4602(5) and ¶ 4.2 hereof. Such changes include use of sick leave, other compensated or uncompensated time off, ~~shift~~Shift trades with other ~~employees~~Employees, and voluntary additions or subtractions of hours that are initiated by the ~~employee~~Employee.

**5.0. Compensation Required for Changed Work Schedules.** For additional hours that the ~~employer~~Employer does not intend to fill through hiring, the ~~employer~~Employer is not required to observe the notice and distribution requirements of § 9-4605 but is required to pay ~~predictability pay~~Predictability Pay when an exception is not present.

Example 1. At 11 am, the manager receives a phone call from Maya, ~~whose shift~~who is scheduled to work from 2 pm until 10 pm. Maya says that she won't be able to come in for the ~~shift~~Shift. The manager calls Steven, who is not scheduled to work that day, and asks if Steven can fill the ~~shift~~Shift. Steven responds that he can work from 5 pm until 10 pm that day. The manager then approaches Tina, who is currently working and whose ~~shift~~Shift is scheduled to end at 2 pm, to ask if Tina can stay until Steven comes in at 5 pm. Tina agrees. The manager's activity does not violate section 9- 4605, Offer of Work to Existing Employees. However, since the Manager did not use mass communication, the ~~employer~~Employer will be required to pay Predictability Pay to both Steven and Tina.

Example 2. The store manager receives notice from the corporate office of a company-wide, three-day sales event (that will occur in five days) that will require additional staff on the

~~schedule~~Schedule for those days. The store manager approaches Ben and Luke, two of the store's 25 ~~employees~~Employees, and verbally offers them the opportunity to work additional hours during the sale. Ben and Luke accept all of the additional hours. The manager's activity does not violate section 9-4605, Offer of Work to Existing Employees; however, the ~~employer~~Employer will be required to pay Predictability Pay.

Example 3. Same as Example 2, except that Ben and Luke decline the additional hours. The manager determines, without further inquiry, that the other 23 ~~employees~~Employees at the site are not qualified for the position, so the manager hires temporary workers to work during the sales event. The ~~employer~~Employer has violated section 9-4605, Offer of Work to Existing Employees, because the ~~employer~~Employer did not provide notice of the available hours to all 25 existing ~~employee~~Employee before the ~~employer~~Employer decided to hire an external candidate. The manager is prohibited from making the determination of qualifications without first posting the hours to all ~~employees~~Employees.

Example 4. The ~~employer~~Employer requires all ~~employees~~Employees to designate in writing their desired number of weekly work hours and the times and days they are available to work. The ~~employer~~Employer explains how ~~employees~~Employees can update this information if their preferences change. When additional hours become available, the ~~employer~~Employer only offers hours pursuant to the preferences recorded by existing ~~employees~~Employees. The ~~employer~~Employer then hires contract workers to fill the remaining time slots. The ~~employer's~~Employer's activity does not violate section 9-4605, Offer of Work to Existing Employees.

**5.1 Predictability ~~pay~~Pay.** For purposes of calculating ~~predictability pay~~Predictability Pay, the ~~regular~~ rate of pay for a Tipped Employee shall be determined as follows:

(a) If the ~~employee~~Employee is paid at least \$7.25 / hour by the ~~employer~~Employer, the ~~regular~~ rate of pay shall be the hourly amount paid to the ~~employee~~Employee by the ~~employer~~Employer.

(b) If the ~~employee~~Employee is paid less than \$7.25 / hour by the ~~employer~~Employer, the ~~regular~~ rate of pay shall be the numerical average of (1) the hourly wage for Standard Occupational Classification (SOC) Code 35- 3011 "Bartenders," (2) the hourly wage for SOC 35-3031 "Waiters & Waitresses," and (3) the hourly wage for SOC 35-9011 "Dining Room & Cafeteria Attendants & Bartender Helpers," all as published for Philadelphia County by the Pennsylvania Department of Labor and Industry. This average shall be calculated and published annually by the Agency by no later than June 15 of each year, based on the most recently published data at the time of publication; however, the rate shall not be less than it was the previous year. The rate shall be effective from July 1 to the next June ~~31~~30.

**When Hours are added and/or date or time ~~of~~for location of a work ~~shift~~Shift is ~~change~~changed:**

Example 1. Dwayne's ~~regular~~ rate of pay is \$15.00. The Posted Work Schedule indicates that Dwayne is scheduled for the afternoon ~~shift~~Shift on Wednesday at the North Philly location. On Monday, Dwayne is informed that he is needed at the West Philly location instead for his Wednesday afternoon ~~shift~~Shift, however his total hours remain the same. Dwayne is owed one (1) hour of Predictability Pay calculated at his ~~regular~~ rate of pay since the location of his work ~~shift~~Shift

has changed from what was posted in the Posted Work Schedule.

Example 2. Melissa works as a bar-back-~~her regular~~. Her rate of pay is \$8.50 an hour. The Posted Work Schedule indicates that she is scheduled for the Friday afternoon ~~shift~~Shift. On Friday afternoon the workplace is busy and Melissa is asked to stay two additional hours. She accepts the additional hours and is owed Predictability Pay because the increase in hours was not due to one of the exemptions identified in §9-4603 (2). Since Melissa's ~~regular~~ rate of pay is higher than \$7.25, her ~~predictability pay~~Predictability Pay is based on her ~~regular~~ rate of \$8.50.

Example 3. Candace works as a bartender and is paid \$4 an hour. The Posted Work Schedule indicates that she is scheduled for the Monday afternoon ~~shift~~Shift. On Sunday Candace learns that she has been reassigned to the Monday closing ~~shift~~Shift and the Thursday afternoon ~~shift~~Shift. Candace is owed one (1) hour of Predictability Pay for Monday since the time of her work ~~shift~~Shift has changed, and one (1) hour of Predictability Pay for Thursday since her total hours have increased, from what was posted in the Posted Work Schedule. In this example, assume the ~~predictability pay~~Predictability Pay for the ~~tipped employees~~Tipped Employees in the current year is calculated at \$11 an hour\*. Candace is therefore entitled to \$11 for each incidence of Predictability Pay.

\*Reminder: See the Tipped Rate published by the Agency.

**When hours are removed from the-~~employee's schedule~~-Employee's Schedule because a ~~shift~~Shift has been shortened or cancelled; including shortening or cancelling ~~an on-call shift~~or not calling-in an Employee for an On-Call Shift:**

Example 1. The Posted Work Schedule indicates that Ericka is scheduled for the afternoon ~~shift~~Shift on Wednesday. On Monday, Ericka learns the ~~shift~~Shift was cancelled. The ~~shift~~Shift was scheduled for 8 hours, and Ericka's ~~regular~~ rate of pay is \$12 an hour.

Ericka's Predictability Pay is calculated as follows:

8 (hours) x \$12 (~~regular~~ rate of pay) = \$96

$96 \div 2$  (½ of what Ericka would have earned, had she worked as scheduled) = \$48

Predictability Pay = \$48

Example 2. Andrew works as a hotel housekeeping attendant and his ~~regular~~ rate of pay is \$15.00. The Posted Work Schedule indicates that Andrew is scheduled for 8 hours on Wednesday. On Wednesday, Andrew is cut after 5 hours. Since Andrew's ~~regular~~ rate of pay is \$15.00 an hour his ~~predictability pay~~Predictability Pay is based on his ~~regular~~ rate of pay.

Andrew's Predictability Pay is calculated as follows:

3 (hours) x \$15 = \$45

$\$45 \div 2$  (½ of what Andrew would have earned, had he worked as scheduled) = \$22.50

Predictability Pay= \$22.50

Example 3. Rich works as a waiter and is paid \$2.83 an hour. The Posted Work Schedule indicates that Rich will work from 7 AM – 2 PM on Sunday. On Sunday, Rich is cut from the floor at 11:30 AM. In this example, assume the ~~predictability pay~~Predictability Pay for the current year is



calculated at \$11 an hour\*.

Rich's Predictability Pay is calculated as follows:

$2.5 \text{ (hours)} \times \$11 = \$27.50$

$\$27.50 \div 2 \text{ (}\frac{1}{2} \text{ of what Rich would have earned, had he worked as scheduled)} = \$13.75$

Predictability Pay= \$13.75

\*Reminder: See the Tipped Rate published by the Agency.

Example 4. Yessenia works as a retail clerk and is paid \$8.50 per hour. The Posted Work Schedule indicates that she is scheduled for 5 hours On-Call Shift on Monday. On Monday, Yessenia is not called in to work. Since Yessenia's rate of pay is \$8.50 her Predictability Pay is based on her rate of pay.

Yessenia's Predictability Pay is calculated as follows:

$5 \text{ (hours)} \times \$8.50 = \$42.50$

$\$42.50 \div 2 \text{ (}\frac{1}{2} \text{ of what Yessenia would have earned, had she been called in)} = \$21.25$

Predictability Pay= \$21.25

**6.0. Exemptions from Predictability Pay.** There are several instances in the ordinance where a Covered Employer may claim an exemption from Predictability Pay.

- a. **24-hour window for initial changes.** Pursuant to §9-4603(2)(g), the Covered Employer has 24-hours to make changes to the Posted Work Schedule after it is initially posted. Changes made within this window are not subject to Predictability Pay. The final version of the Posted Work Schedule must be time-stamped with its final date and time to document that it was issued within the 24-hour window.
  - i. **Correction to the Ordinance.** In § 9-4603(2)(g) the Fair Workweek Employment Standards Ordinance states that there is an exemption to Predictability Pay where "Changes are made to the Posted Work Schedule within 24 hours after the advance notice required in §9-4602(3)." The code section referenced should be §9-4602(4)." The Regulations apply the exemption as intended.
  - ii. **Extra notice permissible.** Employers may extend the 24-hour period of exemption from the Fair Workweek Employment Standards Ordinance by posting their Posted Work Schedules earlier than required by the ordinance. The exemption period expires 24 hours after the deadline to post the new Schedule.

Example 1. Effective April 1, 2020, Employers are required to post the Posted Work Schedule at least ten (10) days before the first day of the new Schedule. For a Schedule that begins on April 1, 2020 if the Employer posts the Schedule at 8:00 AM on March 22, the Employer has until 8:00 AM on March 23 to make corrections and post a final Work Schedule without paying Predictability Pay.

If, for the same Schedule that begins on April 1, the Employer posts its Posted Work Schedule eleven (11) days in advance at 8:00 AM on March 21, the Employer would still have until 8:00 AM on March 23 to make corrections and post a final Work Schedule without paying

## Predictability Pay.

Example 2. Effective January 1, 2021, the Schedule shall be posted at least fourteen (14) days in advance. For a Schedule that begins on January 1, 2021, if the Employer posts the Schedule at noon on December 18, 2020, the Employer has until noon on December 19, 2020, to make corrections and post a final Work Schedule without paying Predictability Pay.

If for the same Schedule that begins on January 1, 2021 the Employer posts its Posted Work Schedule sixteen (16) days in advance at noon on December 16, the Employer would still have until noon on December 19 to make corrections and post a final Work Schedule without paying Predictability Pay.

- b. Voluntary Changes.** Covered Employers are not required to pay Predictability Pay when adding or subtracting hours and/or ~~shifts~~Shifts based on voluntary changes requested by the ~~employee~~Employee. This exemption includes: voluntary additions or subtractions of hours that are initiated by the Employee, the use of sick leave, vacation leave, or other leave policies offered by the Employer, or a mutually agreed-upon Shift trade or coverage arrangement between Employees. ~~includes: voluntary additions or subtractions of hours that are initiated by the employee, the use of sick leave, vacation leave, or other leave policies offered by the employer, or a mutually agreed-upon shift trade or coverage arrangement between employees.~~
- i. Such requests shall be in writing to qualify for the exemption from Predictability Pay.
  - ii. Employers should be aware that documentation of such requests should be recorded as soon as possible.

Example 1. On Thursday morning, Jillian calls out because of a flat tire. On Jillian's next ~~shift~~Shift she provides written confirmation that the reduction of hours was voluntary. Jillian's ~~employer~~Employer does not owe her Predictability Pay for the ~~shift~~Shift she is missing, because the change was ~~employee~~Employee initiated. The manager decides not to fill the ~~shift~~Shift. Nothing else is required by the ordinance.

Example 2. Wayne is scheduled for Thursday night but wants to give up that ~~shift~~Shift to attend a parent-teacher conference at his son's school. He contacts another ~~employee~~Employee, Mariella, and she agrees to cover the ~~shift~~Shift. Wayne and Mariella inform the manager of the change and document in writing that it is a mutually agreed-upon coverage agreement between two ~~employees~~Employees. Since this is a mutually agreed-upon ~~shift~~Shift trade or coverage arrangement between ~~employees~~Employees there is no requirement for Predictability Pay. Nothing else is required by the ordinance.

Example 3. On a slow weekday night, the manager announces to ~~employees~~Employees that they will take volunteers if anyone wants to be cut early. Rebecca and Fonda both volunteer to go home early and agree to record in writing that the reduction of hours is voluntary. The ~~employer~~Employer does not owe Rebecca or Fonda any Predictability Pay for the reduction of hours because the reduction was voluntary.



Example 4. Same as above but no one volunteers. The manager cuts two ~~employees~~Employees chosen randomly, Manny and Amanda. The ~~employer~~Employer owes Manny and Amanda Predictability Pay.

- c. **Employee Initiated Changes & Mass Communication of Additional Hours.** Pursuant to §9-4603(2)(e), when additional hours become available due to an ~~employee~~Employee initiated change (e.g. calling in sick) an ~~employer~~Employer is not required to pay Predictability Pay if mass communication is used to fill the available hours.
  - i. The communication shall make clear that accepting such hours is voluntary and that ~~employees~~Employees have the right to decline such hours.
  - ii. A mass ~~written communication~~Written Communication can be electronic or on paper, whichever is standard in the particular workplace, so long as it is genuinely and readily available to all ~~employees~~Employees.

Example 1. On a Tuesday morning Nate calls out sick from his scheduled afternoon ~~shift~~Shift. After Nate calls out sick, the ~~employer~~Employer follows the mass communication protocol and issues a mass communication to the other staff informing them that Nate's ~~shift~~Shift is available. Dana responds to the mass communication and volunteers to work Nate's ~~shift~~Shift. The ~~employer~~Employer does not owe Dana any Predictability Pay for the addition of hours because the addition was in response- to an ~~employee~~Employee-initiated change and in response to a mass communication that hours were available.

Example 2. Same as above, however this time the ~~employer~~Employer does not mass communicate the open ~~shift~~Shift and instead unilaterally assigns Jesse to cover Nate's ~~shift~~Shift. The additional hours were not voluntary. The ~~employer~~Employer owes Jesse Predictability Pay for the new hours he is required to work. They ~~employer~~Employer may also owe Presumed Damages, pursuant to §9-4611(6).

- d. **The Covered Employer's Operations Cannot Begin or Continue.** Example of when an Employer's operation cannot begin or continue are: Closing of the ~~employer's~~Employer's operations due to a health or safety concern that involved a 911 call, a gas leak, flooded streets, violence at the place of business, pipe bursting inside the business, among other things.
- e. **Hotel Banquets.** Covered Employers are not required to pay Predictability Pay when a hotel banquet event is scheduled, due to circumstances that are outside the ~~employer's~~Employer's control, after the ~~employer~~Employer provides the Posted Work Schedule.
  - i. Hotel banquet events qualifying under this exemption are catered events staffed by a hotel's banquet department staff. If a hotel does not have a banquet department, this exemption does not apply.
  - ii. A banquet is scheduled at the time that the customer provides a deposit, gives a credit card authorization, signs a contract, or reserves a space, whichever comes first, in connection with a specific date.

iii. Only hotel staff who are scheduled to work at the banquet, including kitchen staff, food prep, set-up, waiters, bartenders, and other staff associated with the event itself shall be included in the exemption from Predictability Pay.

f. **Ticketed Events.** Covered Employers are not required to pay Predictability Pay when a ~~ticketed event~~Ticketed Event is cancelled, scheduled, rescheduled, postponed, delayed, increases in expected attendance by 20% or more, or increases in duration, due to circumstances that are outside the ~~employer's~~Employer's control and that occur after the ~~employer~~Employer provides the Posted Work Schedule.

i. Ticketed ~~events~~Events qualifying under this exemption are events where tickets are available for sale to the general public. Events which are generally understood to be family events, such as weddings, sweet sixteens, bridal showers, etc., are not exempted under this section. Events which are generally understood to be private events, such as company trainings, end-of-year parties, corporate retreats, etc., are not exempted under this section.

ii. Ticketed ~~events~~Events such as concerts and sporting events shall be considered scheduled when the date and time of the event becomes known to the ~~employer~~Employer. Ticketed ~~events~~Events that are hosted on behalf of a customer shall be considered scheduled at the time that the customer provides a deposit, gives a credit card authorization, signs a contract, or reserves a space, whichever comes first, in connection with a specific date.

iii. This exemption for certain ~~ticketed events~~Ticketed Events applies to ~~schedule~~Schedule changes for ~~employees~~Employees scheduled to work on the premises at which the ~~ticketed event~~Ticketed Event, as defined in section 9-4601(14), was scheduled to occur. Only staff who are scheduled to work at the ~~ticketed event~~Ticketed Event itself shall be included in the exemption from Predictability Pay. If the ~~employer~~Employer intends to claim an exemption under this section, the ~~employer~~Employer shall retain records to justify the exemption for a period of two years.

iv. Events for which admission is free or the price is de minimis are not exempted under this section.

**7.0 Right to Rest between Work Shifts.** Pursuant to §9-4604, an ~~employer~~Employer may not require an ~~employee~~Employee to commence a ~~shift~~Shift sooner than nine hours after the completion of a previous ~~shift~~Shift. Commencement and completion shall be determined by the ~~employee's posted work schedule~~Employee's Posted Work Schedule.

a. An ~~employee~~Employee may voluntarily consent to work a ~~shift~~Shift that commences sooner than nine hours after the completion of a previous ~~shift~~Shift, but an ~~employer~~Employer may not accept that consent unless it is in writing.

i. In the event that consent is given and accepted an ~~employer~~Employer shall provide an ~~employee~~Employee with \$40 compensatory pay for each such ~~shift~~Shift worked.

ii. In the event that a ~~shift~~Shift is required without consent and that ~~shift~~Shift is worked, the Covered Employer shall provide the ~~employee~~Employee with \$40 compensatory pay and the

~~employer~~Employer may be liable for fines in accordance with this ordinance, pursuant to section 9-4611(6).

**8.0 Offer of Work to Existing Employees.** Pursuant to § 9-4605, this Section 8.0 sets forth the required prerequisites that an ~~employer~~Employer must follow before hiring any additional ~~employee~~Employee or ~~employees~~Employees or contracting with any additional workers or staffing companies. An ~~employer~~Employer who does not hire or contract with any new ~~employees~~Employees to fill additional hours is not required to comply with this ¶ 8.0. See ¶ 5.0.

Example: If additional hours become available on a permanent basis because an ~~employee~~Employee has resigned or because of increased sales activity, or if additional hours become available on a temporary basis because of a special promotion or because of seasonal fluctuations, these provisions must be followed before hiring or contracting with anyone who is not an existing ~~employee~~Employee. This example is not an exhaustive list.

**8.1 Existing Employee.** For purposes of this Section 8.0, an “existing ~~employee~~Employee” includes any ~~employee~~Employee who works at the workplace where additional hours are available, regardless whether the ~~employee~~Employee currently works in the same position for which the additional hours are available; and regardless of the number of hours the ~~employee~~Employee has been scheduled in previous weeks.

Exception: If it is a regular practice of the ~~employer~~Employer to schedule ~~employees~~Employees across multiple locations in the City, then all ~~employees~~Employees at such locations they own and operate shall be considered “existing ~~employees~~Employees.”

**8.2. Notice.** The ~~employer~~Employer shall provide written notice of available work ~~shifts~~Shifts for at least 72 hours, unless a shorter period is necessary in order for the work to be timely performed. When an ~~employer~~Employer has less than 72 hours’ notice to fill an open ~~shift~~Shift, the ~~employer~~Employer may offer an existing ~~employee~~Employee the opportunity to work the ~~shift~~Shift temporarily during the 72-hour notice period.

**8. 3 When Predictability Pay applies to an Offer of Work.** If the ~~employer~~Employer offers and the ~~employee~~Employee accepts additional work hours that occur within the posting period defined in Section 9-4602(3) (Advance Notice of Work Schedule), the ~~employer~~Employer will need to obtain written consent pursuant to section 9-4602(6); and the ~~employer~~Employer will need to pay the worker the applicable Predictability Pay defined in section 9-4603(1)(a), unless an exception to the Predictability Pay is present.

**8.4 Notice and Posting of new work hours.** The notice communicating the offer of work must be in writing and posted in a conspicuous location in the workplace where notices to ~~employees~~Employees are customarily posted. The notice must also be shared electronically if scheduling information is customarily made available to ~~employees~~Employees in an electronic format.

The notice communicating the offer of work must contain the following information:

- a. Available work ~~shifts~~Shifts or days and times they must be available to work;
- b. Length of time the ~~employer~~Employer anticipates requiring coverage of the additional hours;
- c. Description of the position;

- d. Required qualifications for the position;
- e. The process by which ~~employees~~Employees may notify the ~~employer~~Employer of their desire to work the offered hours;
- f. If the notice is being posted for less than 72 hours pursuant to rule 8.2, the notice shall contain that information.

**8.5 Distributing new work hours.** Existing ~~employees~~Employees at the workplace where the additional hours are made available must be given priority in distributing additional hours provided that they are qualified to perform the work. If it is a regular practice of the ~~employer~~Employer to schedule ~~employees~~Employees across multiple locations in the City that the ~~employer~~Employer owns and operates, and no qualified ~~employee~~Employee where the additional hours are made available volunteers for the hours, then existing ~~employees~~Employees at the ~~employer's~~Employer's other locations in the City must be given priority before any outside hiring commences.

**8.6 Qualifications.** A decision to hire new ~~employees~~Employees from an external applicant pool or subcontractors rather than allocating the work to existing ~~employees~~Employees violates the ordinance when the circumstances indicate lack of good faith or an unreasonable exercise of judgment.

Example 1: An ~~employer~~Employer posts an opportunity for additional hours with a notice that states that the position requires experience in both cashier and inventory. Two ~~employees~~Employees express a desire to work the hours: Rudy regularly works in both cashier and inventory positions for this ~~employer~~Employer, while Stefan works in a cashier position but worked in inventory in a previous job. The ~~employer~~Employer assigns all additional hours to Rudy. This assignment reflects a reasonable, good faith judgment regarding qualifications.

Example 2: An ~~employer~~Employer posts an opportunity for additional hours with a notice that states that the position requires experience as a bartender. The only existing ~~employee~~Employee who expresses a desire for the hours is Stefan, who works in a server position and has two years of bartending experience in a previous job. The manager rejects Stefan as unqualified and hires a new ~~employee~~Employee, Maria, who has two years of bartending experience in a previous job. This action appears to violate the requirement to determine qualifications reasonably and in good faith, because Maria has similar qualifications as Stefan – two years of bartending experience from a previous job.

Example 3: An ~~employer~~Employer posts an opportunity for additional hours with a notice that states that the position requires experience in both cashier and inventory. The only existing ~~employee~~Employee who expresses a desire for the hours is Remi, who works in a cashier position and has two years of inventory experience in a previous job. The manager rejects Remi as unqualified and hires a new ~~employee~~Employee, Paul, with three years of inventory experience. Paul is assigned to work exclusively as a cashier. This action appears to violate the requirement to determine qualifications reasonably and in good faith, because inventory experience is not relevant to the position.

Example 4: An ~~employer~~Employer rejects an existing ~~employee~~Employee, Evelyn, as not qualified for additional hours on the basis of poor performance; and the ~~employer~~Employer instead arranges with a temp agency for a temporary worker. Evelyn's personnel file indicates no disciplinary

issues, and performance reviews characterize her work as “good.” The ~~employer’s~~Employer’s decision appears to violate the requirement to determine qualifications reasonably and in good faith, because there is no evidence of Evelyn’s poor performance.

**8.7 Distributing additional hours.** The ~~employer~~Employer may distribute all additional hours to one qualified ~~employee~~Employee or distribute the hours among several qualified ~~employees~~Employees. The ~~employer~~Employer has discretion to distribute hours among qualified existing ~~employees~~Employees subject to the limitations specified in section 9-4605(3)(b). An ~~employer~~Employer is not required to assign available ~~shifts~~Shifts when it would require the ~~employer~~Employer to pay overtime.

Example 1: An ~~employer~~Employer posts an opportunity for two eight-hour ~~shifts~~Shifts, one on Monday and the other on Tuesday. Tricia expresses a desire to work the Monday ~~shift~~Shift and Javier expresses a desire to work the Tuesday ~~shift~~Shift. Both have the requisite qualifications but giving Tricia the ~~shift~~Shift would put Tricia ~~in to~~into overtime. The ~~employer~~Employer must assign the Tuesday work to Javier and may hire a new ~~employee~~Employee who is available for the Monday ~~shift~~Shift.

**8.8 Hiring external staff.** If the conditions for hiring external staff are satisfied, the ~~employer~~Employer must offer those new ~~employees~~Employees the ~~shifts~~Shifts and the jobs that were advertised in the notice to existing workers.

Example 1: The ~~employer~~Employer posts an opportunity for hours from 8 pm to 12 am on Friday, Saturday, and Sunday nights. None of the existing ~~employees~~Employees express a desire to work the additional -hours. The ~~employer~~Employer hires a new ~~employee~~Employee and, during the first month of employment, assigns him to work 8 pm to 12 am on Friday, Saturday and Sunday. On occasion, the ~~employer~~Employer also assigns the new ~~employee~~Employee to fill ~~shifts~~Shifts during the day or on other evenings, to meet increased demand or fill in for absent ~~employees~~Employees. The ~~employer~~Employer has complied with the ordinance by hiring a new ~~employee~~Employee to perform the work described in the notice.

Example 2: The ~~employer~~Employer posts an opportunity for hours from 8 pm to 12 am on Friday, Saturday, and Sunday nights. None of the existing ~~employees~~Employees express a desire to work the additional -hours. The ~~employer~~Employer hires a new ~~employee~~Employee and, during the first month of employment, assigns her to ~~shifts~~Shifts between the hours of 9 am and 7 pm. The ~~employer~~Employer has not complied with the ordinance because the hours in the notice do not match the hours actually assigned to the ~~employee~~Employee and the ~~employee~~Employee is assigned hours that were not previously offered to existing ~~employees~~Employees.

Example 3: The ~~employer~~Employer posts an opportunity for hours from 8 pm to 12 am on Friday, Saturday, and Sunday nights. None of the existing ~~employees~~Employees express a desire to work the additional hours. The ~~employer~~Employer hires three new ~~employees~~Employees: Rob, Danielle and Madison. The ~~employer~~Employer assigns Rob to work 8 pm to 12 am on Friday, Saturday and Sunday. The ~~employer~~Employer assigns Madison and Danielle to ~~shifts~~Shifts between the hours of 9 am and 7 pm. The hiring of Madison and Danielle does not comply with



the ordinance because they are not performing the work described in the notice and are working hours that were not previously offered to existing ~~employees~~Employees.

**8.9 Postings in Primary Language of Employees.** Pursuant to section 9-4605(2)(a), Employers shall post all “notice(s) of available work ~~shifts~~Shifts” to existing Employees in English and any other language that is the primary language of at least 5% of their existing ~~employees~~Employees.

- a. Employers may also post “notice(s) of available work ~~shifts~~Shifts” in a language spoken by less than 5 % of existing ~~employees~~Employees.
- b. If a ~~covered employer~~Covered Employer receives a request for a specific language from an existing-~~employee~~Employee, the ~~employer~~Employer shall honor that request.
- c. The ~~agency~~Agency shall accept as a valid posting a translation done by an official translation service, documents translated by an existing ~~employee~~Employee who is fluent and literate in the language in question, or any free translation service publicly available online.

**8.10. New Locations.** The provisions of § 9-4605 and this ¶ 8.0 shall not apply with respect to the hiring of new ~~employees~~Employees at a New Location.

**9.0 Employer Records.** Each ~~employer~~Employer shall maintain for at least two years for each ~~employee~~Employee a record of his or her name, hours worked, pay rate, initial ~~posted schedule~~Posted Work Schedule and all subsequent changes to that ~~schedule~~Schedule, consent to work hours where such consent is required by the ordinance, and documentation of the time and method of offering additional hours of work to existing staff. The records shall not be amended or redacted in any way.

**9.1 Employee record request.** When an ~~employee~~Employee requests records under section ~~49~~49-4609(2), the ~~employer~~Employer shall provide the records electronically (in a format that is commonly used) at no cost to the ~~employee~~Employee. If the ~~employee~~Employee requests hard copies, the ~~employer~~Employer may charge the ~~employee~~Employee no more than its actual cost to produce the records. The records shall not be amended or redacted in any way.

- a. The ~~employer~~Employer shall have thirty days to comply with the request from an ~~employee~~Employee. The 30-day response period starts when the request is made.
- b. The ~~employer may require that such~~ requests shall be made in writing. ~~If the employer has established a policy requiring that requests be in writing, the~~The 30-day response period begins when a request is received in writing.
- c. In the event the ~~employer~~Employer deems the request to be overly burdensome or harassing, the Employer may notify the ~~agency~~Agency, at which time the ~~agency~~Agency will determine if the ~~employee~~Employee is or is not entitled to the information.
  - i. The ~~employer~~Employer must make this request of the ~~agency~~Agency within two-weeks of receiving the ~~employee~~Employee request.

**10.0 Presumed Damages** ~~Are.~~ The damages are as follows for violations of section 9-4602 and 9-4605:

- a. For a written estimate under section 9-4602(1) that is incomplete or lacks a good faith basis, \$200 per impacted ~~employee~~Employee.
- b. For an ~~employer's~~Employer's failure to provide a written ~~work schedule~~Work Schedule as required by section 9-4602(3) or to post the ~~work schedule~~Work Schedule as required by section 9-4602(4), \$50 per impacted ~~employee~~Employee for each pay period in which the violation occurs or continues.
- c. For an ~~employer's~~Employer's failure to promptly notify the ~~employee~~Employee of changes to the ~~posted work schedule~~Posted Work Schedule as required by section 9-4602(5), \$25 per impacted ~~employee~~Employee for each pay period in which the violation occurs or continues.
- d. For an ~~employer's~~Employer's failure to obtain written consent for added work hours as required by section 9- 4602(6), \$100 per impacted ~~employee~~Employee for each pay period in which the violation occurs or continues.
- e. For an ~~employer's~~Employer's failure to provide written notice of available work hours as required by section 9- 4605(2), \$50 per impacted ~~employee~~Employee for each pay period in which the violation occurs or continues.
- f. For an ~~employer's~~Employer's failure to provide written notice of its policy for distributing work hours as required by section 9-4605(6), \$50 per impacted ~~employee~~Employee for each pay period in which the violation occurs or continues.
- g. For an ~~employer's~~Employer's failure to award available work hours as required by section 9-4605(4), \$1,000 per impacted ~~employee~~Employee for each pay period in which the violation occurs or continues.

The Agency reserves the right to impose triple damages for ~~employers~~Employers found to be repeat offenders.

**10.1. New Locations.** Presumed damages shall not be available with respect to violations relating to ~~employees~~Employees at a New Location, except with respect to ¶ 10.0(b).

**11.0 Fines and Penalties.** Agency's power to impose penalties and fines for violation of this Chapter shall be effective upon publication of the appropriate regulations in a prominent location on the City's Website. Until such time, the Agency shall refer to the Law Department any requests for fines, penalties or other remedial action. Remedies may include reinstatement and full restitution to the ~~employee~~Employee for lost wages and benefits, including Predictability Pay and Presumed Damages as required by this Chapter.

# Exhibit C



Mayor's Office of Labor Fair Workweek Regulations Hearing  
November 13, 2019

MAYOR'S OFFICE OF LABOR  
FAIR WORKWEEK REGULATIONS HEARING

- - -

HELD ON: November 13, 2019

PANEL MEMBERS: STEPHANIE MARSH  
MANNY CITRON  
AMANDA SHIMKO  
RICHIE FEDER, ESQ.

REPORTED BY: Angela M. King, RPR

- - -

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1 (At this time, the Hearing commenced at  
2 approximately 4:06 p.m.)

3 - - -

4 MS. MARSH: Good afternoon. My name is  
5 Stephanie Marsh. I'm the Deputy Director in the  
6 Managing Director's Office in Legislation.

7 As you all know, Bill No. 180649-A,  
8 which amends the Code Title IX -- Regulation of  
9 businesses, trades and professions by adding a  
10 new chapter to require certain covered employers  
11 to provide fair workweek employment standards  
12 for certain employees -- was passed by City  
13 Council on December 6, 2018 and signed by Mayor  
14 Kenney on December 20, 2018.

15 The legislation authorized the agency to  
16 establish a working group consisting of Members  
17 of the Administration, City Council and a group  
18 of effected stakeholder organizations to provide  
19 advice regarding implementation of this chapter,  
20 including regulations promulgated under this  
21 charter and to assist in the preparation of  
22 reports. Section 8-407 of the Philadelphia Home  
23 Rule Charter sets forth the process by which  
24 regulations of City agencies are issued and  
25 become law.

1           On October 4, 2019, regulations of the  
2   Managing Director's Office regarding fair  
3   workweek employment standards pursuant to  
4   Chapter 9-4600 of The Philadelphia Code were  
5   filed by the Managing Director's Office with the  
6   Department of Records. Within 30 days of that  
7   date, a public hearing was requested in writing  
8   to allow comments regarding the proposed  
9   regulation. Since members of the public will be  
10   the ones who will be affected by the  
11   regulations, it prompts the requirement of an  
12   opportunity to be heard in a public forum. It  
13   also provides employers an opportunity to  
14   comment on how the ordinance will impact  
15   operations and seek clarification if need be.

16           Manny, would you --

17           MR. CITRON: Sure.

18           MS. MARSH: -- want to put on the record  
19   your name and title?

20           MR. CITRON: Yeah. Let's do name and  
21   title for the Members of the Panel.

22           So, Manny Citron. I am Chief of the  
23   Staff of the Mayor's Office of Labor.

24           MS. SHIMKO: Amanda Shimko, Manager of  
25   the Office of Benefits and Wage Compliance.

1 MR. FEDER: I am Richie Feder, the City  
2 Law Department here as advisors to the Panel.

3 MR. CITRON: Thank you.

4 What I was -- I would like to say also  
5 before we start, we have received comments from  
6 number of concerned parties. I see that Littler  
7 is in the audience and has signed up to speak.  
8 They are one of the people who have sent in  
9 comments, additional comments for the record.

10 The American Staffing Association has  
11 submitted comments. The Pennsylvania Retailers  
12 Association, the Pennsylvania Restaurant and  
13 Lodging Association and Urban Outfitters have  
14 also submitted comments. And we will include  
15 them in our review and the report that we issue  
16 at the end of this -- after this hearing is  
17 done.

18 MS. MARSH: So, let's begin.

19 MR. CITRON: Would the first person on  
20 the sign up sheet, who you are --

21 MR. FEDER: Martha Kim?

22 MS. MARSH: From Littler Mendelson.

23 MR. FEDER: Martha Keon, excuse me.

24 (Approaches podium.)

25 MS. KEON: Good afternoon.

1 MS. MARSH: Afternoon.

2 MS. KEON: I am Martha Keon with Littler  
3 Mendelson. Our law firm represents management  
4 and employment law and legal law matters  
5 nationwide. We represent a wide variety of  
6 employers, including large and small and  
7 including those who operate in the City of  
8 Philadelphia.

9 I've been engaged in counseling many  
10 employers on how to comply with the forthcoming  
11 ordinance. And we have gotten a lot of  
12 significant questions with respect to the good  
13 faith estimate. My understanding is that there  
14 is some thought that the good faith estimate, as  
15 required under Section 46021 as it's written in  
16 the ordinance applies upon hiring, so to new  
17 employees. And that is clear in the language of  
18 the ordinance. And it, also, is clear in the  
19 language of the proposed regulations.

20 I am understanding that there is some  
21 thought to apply this good faith estimate  
22 requirement to all employees as of January 1,  
23 2020. This would be an incredible burden for  
24 employers who are caught unawares because it's  
25 not obvious at all from the ordinance itself,

1 regardless of what the regulations provide. And  
2 the regulations can exceed the bounds of the  
3 ordinance. So, regulations are supposed to  
4 carry forth the ordinance but not create  
5 additional duties that are not within scope of  
6 the ordinance.

7           So, we would submit that good faith  
8 estimate should only apply to newly hired  
9 employees after January 1, 2020. This is  
10 especially important because many of our clients  
11 and covered employers have seasonal-type  
12 businesses. And the holiday season is really  
13 still ongoing as of January 1, 2020. It's going  
14 to be extremely burdensome as companies are  
15 trying to -- this is their time to make money.  
16 You know, they are often in the red until well  
17 into the fall. And for them to have to devote  
18 resources to making such a significant change to  
19 all of their employees, especially when they are  
20 going to be staffing down after the first of the  
21 year, you know, due to the expected seasonal  
22 rush, which was communicated to the employees  
23 they hire. You know, many employees understand  
24 they are hired seasonally.

25           So, we would like the regulations to

1 clarify or the interpretation of the regulations  
2 from the City to be very clear that the good  
3 faith estimate only apply to newly hired  
4 employees after January 1, 2020.

5 One other issue that is connected to  
6 that is that the effective date as set by City  
7 Council is a very difficult time of year for  
8 many of our clients. Now, I know that's written  
9 into the ordinance. And ordinarily, that  
10 wouldn't be something that would be changed by  
11 regulation. But I think that probably the  
12 written comments you've already received and  
13 going to hear here today, January 1 is a very  
14 difficult time to implement many of the  
15 significant changes, especially when the  
16 regulations were all recently issued.

17 So, many clients that I'm talking to are  
18 asking me is there going to be any consideration  
19 given to postponing the effective date of the  
20 ordinance so that everybody who is really  
21 working diligently to comply, can do so in an  
22 orderly, cost-effective and effective manner.

23 One other area in which I'm getting a  
24 lot of questions are, is the area of who is a  
25 covered employee under Section 9-46014. We've

1 got a lot of covered employers who have  
2 maintenance staff, engineers. And loss  
3 prevention is loss prevention employees. And  
4 such employees typically, you know, are not  
5 scheduled unpredictably. But the regulations  
6 have not clarified how employees like this are  
7 going to be handled. And there is a concern  
8 that while the City has been very responsive at  
9 the Mayor's Office in asking questions, you  
10 know, as I've been conveying from my clients.  
11 In the end, this ordinance is not only going to  
12 be enforced by the City; it's also going to be  
13 enforced by actions by the Plaintiffs' Bar. And  
14 we're concerned that employees who are trying to  
15 comply may be caught up in ambiguities.

16 And so, some more specificity with  
17 respect to who are covered employees in  
18 regulations before they are finalized would be  
19 very helpful.

20 There is one typo I believe in Section  
21 4604, the regulations carrying out The Right to  
22 Rest period. As written in the ordinance in  
23 4604, that applies to a nine-hour right to rest  
24 after a prior day shift or after an overnight  
25 shift. The proposed regulation applies it more



1 broadly than that to any prior shift. And my  
2 understanding from my communications with the  
3 Mayor's Office is that this ordinance does not  
4 reach back-to-back shifts during the workweek  
5 and during the day. It really is applied --  
6 it's meant to protect people to get a good  
7 night's sleep.

8 So, we would ask that the regulations be  
9 clarified to track the language of the  
10 ordinance.

11 MR. FEDER: Which section of the  
12 regulation are you referring to?

13 MS. KEON: The ordinance Section is  
14 4604. And The Right to Rest between work shifts  
15 is Regulation 7.0.

16 MR. FEDER: Thank you.

17 MS. KEON: So, 7.0 refers to completion  
18 of a previous shift. And that's too broad.  
19 That exceeds the scope of the ordinance. So, we  
20 would ask that that be clarified.

21 MR. CITRON: I see what you're saying.

22 MS. KEON: Thank you.

23 In addition, my understanding is that  
24 with respect to the --

25 MR. CITRON: Excuse me, my five-minute

1 timer just went off.

2 MS. KEON: I will wrap it up.

3 My understanding is that the requirement  
4 to post within ten to fourteen days in advance.  
5 Now that we're -- January 1 and have the ten-day  
6 requirement, if an employer chooses to post  
7 early, fourteen days in a coming year, we ask  
8 that the regulations be clarified that they can  
9 change -- make schedule changes without  
10 predictability pay up to the ninth day because  
11 they are giving more than -- more notice than is  
12 required under the ordinance. But the way the  
13 regulations and the ordinance are written, it's  
14 not clear that you will get that extra time to  
15 make changes with that predictability pay.

16 MR. CITRON: Can you work us through  
17 that one more time?

18 MS. KEON: Yes.

19 So, the predictability pay is triggered  
20 by changes to the posted work schedule. The  
21 posted work schedule is required to be posted  
22 for the coming year ten days in advance. If an  
23 employer posts fourteen days in advance and  
24 wants to make some changes, rather than being  
25 able to make that change through the ninth day,

1 they -- can they make changes between the  
2 thirteenth, fourteenth, twelfth, all those days?

3 MR. CITRON: So, your question is for  
4 the first year? Because years afterwards, it  
5 would be fourteen days into the change --

6 MS. KEON: Correct.

7 MR. CITRON: Thank you. We will  
8 consider that.

9 MS. KEON: Terrific.

10 And then in addition, we ask that the --  
11 are the comments that have been submitted by the  
12 commentators going to be made public on the City's  
13 website or elsewhere in the public record?

14 MR. CITRON: In previous -- in prior  
15 reports from hearings, those have been included  
16 as attachments or -- yeah, attachments is the  
17 word I am looking for, or exhibits.

18 MS. KEON: To the public record?

19 MR. CITRON: To the public record.

20 MS. KEON: Very good. Thank you very  
21 much.

22 MS. MARSH: Next on the list is David  
23 Restituto, Rita's Italian Ice.

24 (Approaches podium.)

25 MR. RESTITUTO: Franchisee, yes.

1 Hello. Good afternoon.

2 MR. CITRON: Good afternoon.

3 MR. RESTITUTO: So from my  
4 understanding, I guess this is a forum that we  
5 can come and express our operational issues that  
6 we are going to have. So, I came down here to  
7 express some concerns for not only myself but  
8 for some other franchisees in the Philadelphia  
9 market, specifically related to Rita's Italian  
10 Ice.

11 So having been in business for over 30  
12 years with several franchises, including  
13 Checkers Drive-In restaurants, Meineke Car Care  
14 Centers, Rita's Italian Ice and also now the  
15 founder of Factory Donuts in Philadelphia, we  
16 had operated Rita's for sixteen years as a  
17 franchisee and still a current franchisee with  
18 Rita's, having operated nine stores throughout  
19 the Philadelphia region.

20 This is going to greatly affect my long  
21 term, I guess, outlook with Rita's Italian Ice.  
22 It is a severe weather-driven business. I'm  
23 sure everybody in this room at some point has  
24 visited a Rita's Italian Ice. And we open up in  
25 February every year, not on the first day of

1 spring but actually in February. And it's hard  
2 enough to schedule one week in advance for our  
3 staff. Because, unfortunately, the weather  
4 people don't know what the weather is going to  
5 be like in February, March and April and May.  
6 June, July and August, obviously, it gets a  
7 little bit easier. Hopefully, the sun is out.  
8 It's 90 degrees every day, so it makes  
9 scheduling a lot easier for us.

10 This is going to hinder our business  
11 model severely to the point where if there is no  
12 exemption added to the regulation for  
13 weather-driven businesses, I have told my wife  
14 and the CEO of Rita's that I will most likely be  
15 selling my locations in the near future. We  
16 will not be -- unfortunately, we cannot put four  
17 people on a schedule or more as we normally do  
18 on heavy days where it's going to be very busy.  
19 And the lines -- if you've been to a Rita's, can  
20 get pretty long on some nice days.

21 So, for the major components of a  
22 business, especially in a QSR industry, our  
23 percentage of rent are percentage of labor and  
24 food costs. And the only way we can control  
25 percentage of labor in our businesses in Rita's

1 is by almost being able to predict the weather  
2 as franchisee owners and scheduling  
3 appropriately. When it snows out in February  
4 and we have to call people, unfortunately, out  
5 because nobody is coming to Rita's, you know, at  
6 that time, and we have to pay those individuals.  
7 Unfortunately, the way this law is written, is  
8 obviously something that I can't foresee us  
9 doing and being in business and being able to  
10 make money doing this.

11 The second part of that is our labor  
12 force will be cut. You know, we talked about it  
13 for this year. And we will only have two people  
14 on the schedule at all times because we cannot  
15 afford to have four people on schedule and it  
16 rain out unexpectedly and then be able to pay  
17 those individuals if we do \$150 in a day. So,  
18 it would be great if we can schedule two weeks  
19 out. Would make my job easier, my general  
20 manager's job easier for us. But that is just  
21 going to be something, like I said, as an  
22 individual and business owner, that is going to  
23 be next to impossible.

24 Being an owner of an auto repair center,  
25 that's not an issue. You know your business

1 model day in and day out. The weather has no  
2 effect on it. Being Factory Donuts, the weather  
3 doesn't really have an effect on us unless it's  
4 going to snow. But when you are in a  
5 weather-driven business such as an Italian  
6 ice/frozen dessert business that has customers  
7 lined up outside and having to try to schedule  
8 two weeks in advance is going to be something  
9 that I can't even put my arms around.

10 So, I just went through this. Like I  
11 said, and some things that I'm looking at is,  
12 you know, high school kids. We employ a lot of  
13 high school kids. That's who comes to Rita's.  
14 And particularly, may be their first or second  
15 job. And you know, if we're putting everybody  
16 into one category and classifying it as that, as  
17 I believe that's the way it's written right now,  
18 again, I just think that might be a mistake.  
19 Just because as, again, these kids are not going  
20 to get the opportunity now to be able to work in  
21 an environment where we only employ ten to  
22 fifteen individuals per store. You know, that's  
23 not going to be able to happen. It's actually  
24 going to be detrimental for the younger  
25 generation, to be quite frank with you.

1           Other than that, I don't know, you know,  
2   how far along or, I guess, already passed and  
3   signed into, I guess, into bill. And my  
4   question -- I don't know if you can answer  
5   questions. Hearing some testimony and going  
6   through this, are there any possibilities of  
7   exemptions that could exist between now and the  
8   time that the law takes effect?

9           MR. CITRON: I don't think we -- I don't  
10   think we're able to answer that question now.

11           Again, the ordinance is as written. But  
12   thank you for your comments. We do take them to  
13   heart. We will put them into consideration.

14           MR. RESTITUTO: Okay. All right. Well,  
15   thank you guys for your time and hearing my -- I  
16   guess, my comments. And hopefully, for the  
17   future, again, it should be a give and take. I  
18   just don't understand the one fits all shoe.  
19   Just doesn't appear to work in some instances.

20           Thank you, guys.

21           MR. CITRON: Thank you.

22           MS. MARSH: The next witness is Calvin  
23   Wongus from One Pennsylvania.

24           (Approaches podium.)

25           MR. WONGUS: Hello, how you doing?



1 I'm Calvin.

2 MS. MARSH: State your name for the  
3 record, please.

4 MR. WONGUS: My name is Calvin Wongus.  
5 I'm a resident of Philadelphia and a member of  
6 One Pennsylvania. And I also use to work for  
7 One Pennsylvania.

8 I have done a lot of organizing and a  
9 lot of different things. I have worked for the  
10 most part in industries throughout my years.  
11 Most recent was retail. I worked for Family  
12 Dollar. And you know, it was -- like, it was  
13 the most difficult experience I had had in any  
14 retail business or any business I've been in.

15 You know, you don't know what it's like.  
16 A lot of people don't know what it's like when,  
17 you know, like, first month working, you meet  
18 with your manager, your general manager, you  
19 know, your regional manager and they tell you  
20 that, you know, LP wants their money back. And  
21 I used to work for Family Dollar. So, that's  
22 the first meeting I had. That was the first  
23 weeks I had in an industry I had just stepped  
24 foot into.

25 I had just lost my home. You know, I

1    went through a lot of things.  And you know,  
2    it's first thing my job was threatened, straight  
3    hands on.  Anybody within six months of hiring  
4    was going to be fired if we didn't get \$223  
5    back.  And I don't know how I am supposed to do  
6    that.

7               MR. CITRON:  Can you clarify?  What does  
8    that mean when you were told that "LP wants  
9    their money back?"

10              MR. WONGUS:  Loss Prevention.

11              MR. CITRON:  Oh.

12              MR. WONGUS:  Loss Prevention wants their  
13    money back.  And we were actually blamed, we  
14    were told that we were stealing from the store,  
15    as well.  So, it was really mind boggling when  
16    you are told that.

17              A lot of people don't know what it's  
18    like when you get your schedule Saturday and  
19    then, you know, Monday it's changed.  It's  
20    different then what you expected.  And now you  
21    have to not only budget your time, you have to  
22    budget exactly, you know, how much money is  
23    going to what.  And that's a lot for people like  
24    me.  Low income.

25              And a lot of people don't know what it's

1    like when, you know, you're left on a truck day  
2    which is inventory day when you have, like, 3000  
3    pieces which is 3000 boxes of miscellaneous  
4    pieces that the store ordered. You don't even  
5    get a note or a heads up. You are notified that  
6    day what you are getting. And then you are by  
7    yourself. Your manager just shows up there.  
8    Your general manager just shows up there once  
9    every week, which is exactly on inventory day.  
10   Tells you after just firing employee, if anybody  
11   who leaves on inventory day, anybody who calls  
12   out, anybody, you are fired. That's it.

13           That's a lot for people like me. I grew  
14   up, you know -- you know, with six brothers and  
15   a sister. So, it was a lot for me. It was a  
16   lot for my mom. My mom also worked for Dollar  
17   Tree which owns Family Dollar. And that --  
18   those are the people who told us that they  
19   needed their money back.

20           And it's ridiculous when you don't  
21   notice how much industry is so much part of your  
22   life. And as you continue growing up, you  
23   realize why you don't have enough money for the  
24   things. A lot of people don't understand, I  
25   didn't have money growing up. I live in a

1 beautiful neighborhoods. I lived in amazing  
2 places. I have known people. I have lived in  
3 terrible neighborhoods. I do now.

4 It's ridiculous the things I have to  
5 deal with, the cost of rent, the cost of living.  
6 It doesn't match my pay. And then I am getting  
7 told that I am stealing. I'm getting accused of  
8 things that aren't proven. So, it's a lot when  
9 people have to deal with things like that.

10 And we are very excited. Like, a lot of  
11 us at One Pennsylvania are very excited about  
12 Fair Workweek because I have seen what a lot of  
13 people have to go through. I didn't need to go  
14 through those things if I had the proper  
15 protections in place to make sure that not only  
16 I was able to get proper scheduling to be able  
17 to afford the things that I did, because I was  
18 not even able to afford to go to my own  
19 grandmother's funeral, her wake. That's how --  
20 that's why I was -- that's how bad schedule was.

21 And when you can't afford something and  
22 you have to choose between a family member  
23 that's dead and yourself, like, that's a lot.  
24 And then you come to work the next day and you  
25 are supposed to talk to people. Because I deal

1 with customer service a lot, I am supposed to  
2 deal with people's attitudes. I'm supposed to  
3 deal with all people personalties.

4 So, we are excited about this Fair  
5 Workweek and excited about the things we have to  
6 deal with. And like, I don't have that angst of  
7 preplanning my week feeling like it's going to  
8 go up in smoke and flames at any second. All I  
9 have to do is hear a word from my manager. And  
10 it's a lot.

11 I was even told that I wasn't even able  
12 to take off a day when I have an abscess in my  
13 jaw. I still have not had it removed. That's  
14 how bad scheduling is. And that's why we are  
15 excited. And that's why we appreciate anybody  
16 who supports the Fair Workweek. That's why we  
17 appreciate anybody who definitely makes sure  
18 this happens and this regulation goes into  
19 effect as is.

20 And we appreciate that One PA has been a  
21 part of the round table, that the Mayor's Office  
22 of Labor and Regulation convened over the past  
23 six months for ruling and making a process. We  
24 are grateful to the Labor Relations Office for  
25 its support in convening this table. Though no

1 one got exactly what they wanted, all parties  
2 were listened to and treated with respect as we  
3 discuss this complex law and its regulations.

4 We want to thank the staff of office for  
5 being so attentive and responsive throughout  
6 this process. One Pennsylvania strongly  
7 supports this stable schedule for retail/fast  
8 food and hospitality workers.

9 We call on all City Councilmembers and  
10 the Mayor to increase funding to the Office of  
11 Labor Relations. This is critical, so that  
12 workers protections are enforced in the City  
13 including paid sick leave, fair workweek and  
14 wage staff. This will make a major difference  
15 in our lives, a lot of people's lives in  
16 Philadelphia. And a lot of people are, like,  
17 getting displaced.

18 So definitely, makes a difference. I  
19 appreciate you guys for your time.

20 MS. MARSH: Thank you.

21 Next witness is Eli Freedberg.

22 Is there someone who has come in who has  
23 not signed the sign-up sheet that wants to  
24 testify?

25 (Approaches podium.)

1           MR. FREEDBERG: Good afternoon. My name  
2 is Eli Freedberg. I'm a shareholder with the  
3 law firm of Littler Mendelson. Thank you for  
4 providing me the opportunity to provide comments  
5 and to respectfully suggest proposed revisions  
6 to the regulations regarding Philadelphia's Fair  
7 Workweek Employment Standards Law.

8           My firm advises many companies across  
9 the United States with respect to various  
10 jurisdictions, fair workweek laws. We also  
11 represent many businesses that will be  
12 considered "covered employers" under  
13 Philadelphia's Fair Workweek Law. I am here  
14 today to provide some comments on behalf of a  
15 business that believes it is not covered under  
16 the fair workweek law, but would like some  
17 clarification in the regulations because of an  
18 ambiguity within the proposed regulations.

19           My client is a company that provides  
20 support to various businesses. My client does  
21 not actively run the day-to-day operations of  
22 any of these businesses; rather, it provides  
23 human resources and managerial functions to  
24 dozens of establishments that are located in  
25 Philadelphia and across the country.

1           Importantly, none of these  
2     establishments my client provides services to  
3     would constitute a "covered employer" under the  
4     law because none of those businesses have 30  
5     standalone locations worldwide and do business  
6     under the same trade name or are characterized  
7     by standardized options for decor, marketing,  
8     packaging, products and services.

9           Nevertheless, it's unclear whether the  
10    Fair Workweek Law is intended to cover my client  
11    because -- and the source of my client's concern  
12    can be traced to the definition section in the  
13    law, specifically, Section 94-6014 provides a  
14    covered employer retail establishment,  
15    hospitality establishment, food services  
16    establishment that employs 251 employees and has  
17    30 more locations worldwide and it includes  
18    chain restaurants and franchises associated with  
19    the franchise or network or network of  
20    franchises and employ more than 250 employees in  
21    the aggregate.

22           My client does not itself operate retail  
23    hospitality or fast food establishments, but its  
24    contracting parties might and sometimes do.  
25    Nevertheless, using this definition of that, it



1 would appear pretty conclusively that my client  
2 doesn't operate in any of those type of  
3 establishments, and it's not a covered employer  
4 under the law. Unfortunately, the law also  
5 contains a definition for the term "employer".  
6 And because covered employer and employer is  
7 part of the word covered employer, and the  
8 definitions are different, that is the cause of  
9 concern.

10           Employers are defined as any individual,  
11 partnership, association or corporation or  
12 business trust or any person or group of persons  
13 that employs another person, including any such  
14 entity or person being directly or indirectly in  
15 the interest of the employer and directly or  
16 indirectly is one of the main causes of concern  
17 for my client in relation to that employee.

18           And it further goes on to say that an  
19 employer can be more than one entity. More than  
20 one entity can be an employer if employment by  
21 one employer is not completely disassociated  
22 from employment by the other employers. So, the  
23 directly and indirectly and the not completely  
24 disassociated are the reasons for the concern  
25 and that create ambiguity. In drafting the

1 proposed regulations, perhaps to resolve this  
2 ambiguity, there are some provisions -- I don't  
3 know if I need to read them into the record.  
4 It's right there.

5 But unfortunate clarification in the  
6 regulation still uses ambiguous terms such as  
7 not as completely disassociated, which is the  
8 term used in the statute itself and also uses  
9 the term acts directly or indirectly in the  
10 interest of the other employer. Which again, is  
11 the same phrasing used in the statute.

12 So in order to clarify this ambiguity,  
13 my client respectfully requests that they  
14 Mayor's Office revise the proposed regulations  
15 to add language that the City of Philadelphia  
16 will apply to the test of federal courts in the  
17 Third Circuit utilized when analyzing whether a  
18 business has indirect influence over another  
19 company's employees as a joint employer for the  
20 joint purposes of a fairly -- the Federal Fair  
21 Labor Standards Act. We believe that applying  
22 this test is appropriate because the language  
23 used in both the Philadelphia Fair Workweek Law  
24 and its proposed regulations is nearly identical  
25 to the language used in the Fair Labor Standards

1 Act Joint Employment Regulation. Which, for the  
2 record, is 29 CFR Section 791.2A.

3 Because a proposed regulation language  
4 tracks language at FLA's regulations, we should  
5 be able to look to case law interpreting the  
6 federal regulations. Case law would be, again  
7 for the record, it's the case called In Re:  
8 Enterprise Rental Car Wage and Employment  
9 Practices Litigation. The citation is 683 F  
10 3462. It's Third Circuit case from 2012.

11 In that case, the Third Circuit Court  
12 held a joint employment status turns on the  
13 degree of control over essential terms and  
14 conditions of employment. Whether the alleged  
15 employer has exercised a third hire or fire  
16 employees, whether it controls authority to  
17 promulgate work rules and assignments and set  
18 conditions of employment including compensation  
19 benefits and hours worked, whether the so-called  
20 joint employer has day-to-day supervision and  
21 exercises employee discipline decisions, and  
22 whether the joint -- so-called joint employer  
23 has control of employee records.

24 Courts in Pennsylvania have repeatedly  
25 upheld the standard for analyzing joint

1 employment issues. For example, the Third  
2 Circuit in a case called Sebastian V Free K, the  
3 citation is 717 Federal Appendix 113. Recently  
4 adopted and case is 2017 -- adopted that joint  
5 employer task.

6 So as the purpose of the regulations  
7 should clarify ambiguities, I think we have  
8 indicated one. This is an issue that I think is  
9 not only important to my client, which it  
10 obviously is, but it would seem temp agencies,  
11 for example, would have same concerns.  
12 Franchise owners would have the same concerns.

13 So for clarity sake, we would be --

14 MR. CITRON: Thank you. Your comments  
15 here are more or less the comments you  
16 submitted?

17 MR. FREEDBERG: Yes.

18 MR. CITRON: I will share that. You  
19 know, we took your comments and we shared that  
20 with our Law Department. You got us thinking.

21 MR. FREEDBERG: We appreciate that.  
22 Thank you very much.

23 MR. FEDER: Could you just clarify, is  
24 your client, the clients you are looking to  
25 help, in similar positions to the client -- to

1 the parties in the Enterprise Rent A Car case?

2 MR. FREEDBERG: Well, similar situated  
3 in that they are exercising similar functions,  
4 human resources, legal, other operational  
5 issues. So, yeah. I mean, in that sense, yes.

6 MR. FEDER: Okay.

7 MR. FREEDBERG: It's not -- it's  
8 obviously not Enterprise Rental Car.

9 MR. FEDER: I understand.

10 MR. FREEDBERG: But they do exercise  
11 similar use of control.

12 MR. CITRON: Thank you for  
13 clarification.

14 MR. FREEDBERG: Or lack of control, I  
15 should say.

16 MR. FEDER: Thank you.

17 MS. MARSH: Rosslyn Wuchinich?

18 MR. CITRON: You will need to correct  
19 your last name for the record.

20 (Approaches podium.)

21 MS. WUCHINICH: Hi. Good afternoon.

22 My name is Rosslyn Wuchinich, the  
23 President of Unite Here Local 274, the  
24 Hospitality Workers Union in Philadelphia.

25 Philadelphia's Fair Workweek Ordinance

1 will provide stability to over a hundred  
2 thousand service industry workers. These  
3 regulations represent the culmination of a very  
4 productive dialogue that brought together  
5 diverse group of both worker advocates and  
6 industry employers.

7 I would like to thank the Mayor's Office  
8 of Labor Relations for convening what was a  
9 deliberative, inclusive and months' long process  
10 in which stakeholders were able to express  
11 concerns and collaborate to find workable  
12 solutions that will ensure the fair and smooth  
13 implementation of this important new law.

14 The Mayor's Office of Labor Relations  
15 successfully incorporated input from both  
16 employers and worker organizations who  
17 understand the details of scheduling practices  
18 as they exist currently, and as they will under  
19 the law. While no single stakeholder including  
20 us got everything we wanted in these  
21 regulations, I believe that the final product  
22 does represent a fair and reasonable compromise  
23 between the many interested parties who provided  
24 feedback throughout this process.

25 I do want to thank Manny Citron and

1 Amanda Shimko and Rich Lazer for the hard work  
2 in guiding the process and also express support  
3 for increased resources to the Office of Labor  
4 Relations. We believe that really the work of  
5 implementation of this law is only beginning  
6 right now. And the law is complex. It's going  
7 to require significant outreach and education to  
8 employees and to employers to ensure it's  
9 ongoing success.

10 Our union at Local 274 is proud to have  
11 been part of this effort. Thanks.

12 MR. CITRON: Thank you.

13 MS. MARSH: Next is Corean Hollaway?

14 (Approaches podium.)

15 MS. MARSH: State your name.

16 MS. HOLLOWAY: Corean Holloway.

17 I work for the Warwick, 17th and Locust.  
18 And I was there for 33 years. And I wanted to  
19 talk about the on call and the scheduling.

20 Like, we really going through a hard  
21 time at the Warwick. What the manager do and  
22 the direct -- the manager and housekeeping, he  
23 put people on the schedule and then he will put  
24 maybe, like, three or four or five people on  
25 call. Although he know he going to call them in

1 that week because the hotel is 100 percent or  
2 90 percent busy, but he still put people on  
3 call.

4 And what's the problem is, you have  
5 people with children. We have a lady there that  
6 take care of her mother. And what happens when  
7 you put people on call like that and you call  
8 them in, they have to come in. If they don't  
9 come in, they get a writeup. Although you know  
10 you need them, you put the schedule up on  
11 Wednesdays.

12 So when -- I always review the schedule  
13 before the schedule go up. But when I look at  
14 the schedule, I always say, God, you  
15 under-schedule. You need, like, three more  
16 people. You need four people. So, he said, oh,  
17 it coming from the GM. So, the GM telling me to  
18 do this.

19 So example last week -- last week  
20 example is from -- our schedule start on Sunday.  
21 From Sunday to Saturday, every day he called  
22 three and four people in every day. And I mean,  
23 if they don't come in, they going to get a  
24 writeup. So all I'm saying with the Fair Week  
25 Program, we wouldn't have to worry about that.



1 If they need the people, they will put them on  
2 schedule.

3 We have had one young lady, she was on  
4 her way to work maybe about a month ago. And we  
5 started at eight o'clock. And coming in, she  
6 got a phone call that her sister just passed.  
7 Now, she didn't know -- her sister wasn't sick.  
8 She just passed away. So, she got the phone  
9 call on the trolley. So when she got there, the  
10 manager said, well, you -- if you don't work, we  
11 going to have to give you points. So, she said,  
12 well, I'm too upset. Her sister was 25 years  
13 old.

14 She said, I'm so upset right now, I  
15 can't work today. He said, well, you go home,  
16 you going to get points. So, she had to go.  
17 She went home. So, what they done was -- you  
18 get three days if someone dies. What they done  
19 was, they say, okay, we give you another day.  
20 But the day your sister die and you went home,  
21 we have to give you a point.

22 So, this is what we live at the Warwick.  
23 The on call, the way they do the scheduling,  
24 they under schedule three and four people every  
25 day. And they call people in, like, you really

1 don't have a life. And so, now you calling me  
2 in so now I got to find somebody to keep my  
3 baby. And sometimes I might not take the kid to  
4 the daycare because I don't have enough money  
5 coming in to pay for that day. So, now I'm  
6 going to have to find a babysitter.

7 And so, it gets so unfair. And so, the  
8 people at the Warwick and people at other places  
9 that I talked to, they are very excited about  
10 the fair week. You know, thank God for it. I  
11 am very happy about it.

12 And so, I just wanted to say that I feel  
13 like people that work in workplaces that doing  
14 all kind of labor work, I feel like they -- they  
15 have a right to have where they schedule, where  
16 they will know they schedule from day-to-day.  
17 And -- you know, I feel like I feel. You know,  
18 I'm happy about the Fair Workweek.

19 MR. CITRON: Thank you.

20 MS. MARSH: Thank you.

21 MR. CITRON: Thank for your comments.

22 MS. MARSH: Monica Burks.

23 (Approaches podium.)

24 MS. BURKS: Good afternoon.

25 My name is Monica Burks. And I am a

1 restaurant server. I work at the Wyndham Hotel.  
2 I have worked in the industry for 18 years. I  
3 feel strongly that the Fair Workweek Law  
4 provides important benefits for restaurant and  
5 hotel workers. We often don't get enough notice  
6 of our schedules. Having short notice of  
7 changes in schedules makes it very hard to plan  
8 your life.

9 For example, I have -- I am usually off  
10 on the weekends, sometimes I'm off on Monday and  
11 Tuesday. This particular day, I was off on  
12 Monday and Tuesday. And they change -- our  
13 workweek starts on Saturday. The schedule  
14 doesn't go up until Tuesday. So usually, the  
15 week prior that I am working on, I can go and  
16 look and see before I'm off that week.

17 It had me off on Monday and Tuesday. I  
18 said, great, I can make my doctor appointments,  
19 go. When I came back to work that Wednesday and  
20 I checked the schedule, it had me off on  
21 Wednesday and Thursday. So as you know,  
22 sometimes when you take -- when you make  
23 doctor's appointments and if you miss it or you  
24 have to reschedule it, they charge you \$25, some  
25 50.

1           So, it -- you know, it's almost like my  
2   schedule at work, it melds together with my  
3   personal life. So you know, I feel with the  
4   Fair Workweek Bill, this would help me be able  
5   to take care of what I have to do outside of  
6   work and be able to be a viable person inside  
7   work because it -- you know, a lot of times, I  
8   just, you know, I get really upset and  
9   frustrated because it's nothing -- it should be  
10  something that we can plan our days with.

11           I am in full support of the workweek --  
12  Fair Workweek Bill. And I believe that the  
13  regulations on the Fair Workweek Bill needs to  
14  be -- it should be a strong penalty if they  
15  don't hold -- uphold their bargain. If we are  
16  upholding our bargain to come to work and be  
17  there when you need us to be, then it's only  
18  fair.

19           And I'm excited about this bill. And I  
20  hope that everything goes through and we benefit  
21  from it. Thank you.

22           MS. MARSH: Thank you.

23           MR. CITRON: Thank you.

24           MS. MARSH: Is there anyone else who  
25  wants to testify and give comments and ask

1 questions? No?

2 MR. CITRON: That is end of the people  
3 who have signed up and come up to give comments.  
4 We do have additional time on the schedule. We  
5 are scheduled to 5:30. If there is anyone who  
6 started comments that wants to provide a little  
7 more, you are also welcome at this time to come  
8 back up to the mic.

9 Okay. Seeing none --

10 MR. FEDER: May I make one quick?

11 MR. CITRON: Of course.

12 MR. FEDER: Just two quick comments from  
13 the Law Department's perspective.

14 Number one, I have done many of these  
15 hearings. It's gratifying. We rarely get  
16 anybody to tell us what a good job we are doing.  
17 I appreciate the people spoke kindly of the  
18 regulation.

19 And number two, I want to make sure  
20 those people who made substantive critiques, I  
21 have advised the panel this is not a place for a  
22 give and take. But I want to assure that the  
23 panel is going to take into consideration all of  
24 your very thoughtful concerns. And you should  
25 not take from the silence up here, any lack of

1 consideration. And it will be a lot of  
2 consideration to all the comments.

3 MS. MARSH: Thank you for participating  
4 in this Public Hearing today. And we will take,  
5 as Richie just said, your comments under  
6 advisement. And we will issue a report shortly.

7 Thank you, everyone. Have a good night.

8 (At this time, the Public Hearing  
9 adjourned at 4:51 p.m.)

C E R T I F I C A T I O N

I, hereby certify that the proceedings and evidence noted are contained fully and accurately in the stenographic notes taken by me in the foregoing matter, and that this is a correct transcript of the same.

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ANGELA M. KING, RPR,  
Court Reporter, Notary Public

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# American Staffing Association

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## VIA ELECTRONIC SUBMISSION

Nov. 1, 2019

Managing Director's Office  
City of Philadelphia  
1401 John F. Kennedy Blvd.  
Suite 1430  
Philadelphia, PA 19102

Re: Proposed Regulations Regarding Chapter 9-4600 of the Philadelphia Code: Fair Workweek  
Employment Standards

To Whom it May Concern:

These comments are submitted on behalf of the American Staffing Association (ASA) regarding the above-referenced proposed rules. ASA is a trade association that represents temporary and contract staffing agencies in Philadelphia and throughout the United States. The temporary staffing industry plays a critical role in Philadelphia's economy and contributes significantly to the city's economic vitality and growth.

Our comments focus on the proposed rules' applicability to staffing agency temporary workers. Section 9-4601 (4) of the Philadelphia Fair Workweek ordinance states that a covered employer is, "For purposes of this Chapter, limited to an Employer that is: A Retail Establishment, a Hospitality Establishment or a Food Services Establishment as defined in this Section, that employs 250 or more employees and has 30 or more locations worldwide regardless of where those employees perform work, including but not limited to chain establishments or franchises associated with a franchisor or network of franchises that employ more than 250 employees in aggregate."

Based on this definition, temporary staffing agencies are not Covered Employers because they are not retail, hospitality, or food services establishments as defined. However, when they send employees to augment the work force of such establishments, they are treated as co-employers with responsibility for complying with certain aspects of the rules.

Due to the complex nature of these rules and the unique operational constraints faced by temporary staffing agencies, we believe it would be helpful for the regulations to include a separate section specifically applicable to such agencies. To that end, we have set forth below a proposed new ¶ 2.3.1 describing the co-employer obligations of temporary staffing agencies and a new ¶ 2.4 that defines those agencies.

**2.3.1 Co-employment Obligations of Temporary Staffing Agencies that Assign Employees to Covered Employers:** Notwithstanding any other provision of these regulations, the following provisions apply to a temporary staffing agency as defined in ¶ 2.4.

- a. Notice Requirement for Temporary Staffing Agencies:** At the beginning of each distinct assignment with a Covered Employer, a temporary staffing firm shall provide the employee written notice of the employee's work schedule for that assignment, including the days and hours to be worked each week.

*[ASA Explanation: ¶ 3.4 of the proposed regulations would require temporary staffing agencies to provide temporary workers assigned to covered employers with a good faith estimate of work schedules at the beginning of each distinct assignment with a Covered Employer. In practice, however, once a temporary employee is offered a specific job assignment, such agencies can provide the employee their actual schedule, not merely an estimate. Proposed ¶ 2.3.1. a. reflects this. ¶ 3.4. of the proposed rules should therefore be amended accordingly.]*

- b. Notice of Change in Work Schedule for Temporary Staffing Agencies:** The advanced notice requirements set forth in ¶ 4.0 of these rules shall apply only to changes in the work schedule of a temporary employee on assignments scheduled to last 30 days or more.

*[ASA Explanation: ¶ 4.0 of the proposed rules requires employers to provide employees with 10 days written notice of any changes in work schedule. Such notice would not be practical or necessary in the case of temporary agency employees assigned to short-term jobs.*

*Temporary assignments often begin, change, and end unpredictably. Staffing agency clients often demand service on short notice due to unexpected exigencies—e.g., to fill in for sick or absent employees, or to respond to sudden changes in business demand. In such cases, work schedules can change, and assignments can end, abruptly, based on factors beyond the agency's control. Providing advanced notice in such circumstances is practically impossible; and penalizing agencies for failure to do so would severely dampen job opportunities for the many temporary workers who rely on them for additional income.*

*To address this, proposed ¶ 2.3.1. b. clarifies that advanced notice of changes in work schedule apply only to temporary assignments scheduled to last 30 days or more.]*

- c. Application of §§ 8.0 and 8.1– Offer of Work to Existing Employees:** §§ 8.0 and 8.1 of these rules do not apply to temporary staffing agencies or the employees those agencies assign to Covered Employers.

*[ASA Explanation: ¶ 8.0 and 8.1 of the proposed rules implement §9-4605 of the ordinance, which provides that, "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, subject to the terms and conditions of this Section, offer work shifts to existing employees." The clear import is that the requirement to offer additional work applies*



*only to Covered Employers and their existing employees, and not to a temporary staffing agency or the employees it assigns to the Covered Employer. Proposed ¶ 2.3.1. c. clarifies this.]*

#### **2.4. Temporary Staffing Agency—Definition.**

A firm whose business consists of: (1) recruiting and hiring its own employees; (2) finding other organizations that need the services of those employees; (3) assigning those employees to perform work at or services for the other organizations to support or supplement the other organizations' work forces, or to provide assistance in special work situations, including, but not limited to, employee absences, skill shortages, seasonal workloads or to perform special assignments or projects; and (4) customarily attempting to reassign the employees to other organizations when they finish each assignment.

*[ASA Explanation: The definition of temporary staffing agency in proposed ¶ 2.4 is based on a definition widely used by states, including the 2012 Pennsylvania Professional Employer Organization Act. Section 102-Act of Jul. 5, 2012, P.L. 946, No. 102 Cl. 77]*

#### **Conclusion:**

ASA supports the goals of the Fair Workweek Employment Standards ordinance. Our comment letter proposes modest, but important, changes in the proposed rules that recognize the unique operating characteristics of temporary staffing agencies. Our changes will allow the policy goals of the ordinance to be fully met without impeding staffing agencies' ability to continue offering valuable temporary jobs to Philadelphia employees, and to fill the short-term work needs of their clients.

Thank you for your consideration.

Very truly yours,

AMERICAN STAFFING ASSOCIATION



Toby Malara

Government Affairs Counsel



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November 1, 2019

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**VIA E-MAIL REGULATIONS@PHILA.GOV**

Manny Citron  
City of Philadelphia, Managing Director's Office  
1401 John F Kennedy Blvd #1430  
Philadelphia, PA 19102

Re: Request for Hearing Concerning Regulations Regarding Chapter 9-4600 of the  
Philadelphia Code: Fair Workweek Employment Standards

To Whom It May Concern:

This firm represents a company that provides operational assistance to some retail establishments within the city of Philadelphia. This client has retained us to request a hearing pursuant to Section 8-407(c) of the Philadelphia Code to clarify the definition of the phrase "Co-Employer" as used in Chapter 9-4600 of the Philadelphia Code: Fair Workweek Employment Standards (the "Fair Workweek Law") and the proposed regulations that the Mayor's Office recently promulgated ("Proposed Regulations") in furtherance of the Fair Workweek Law. In requesting this hearing and submitting these comments, our client certainly understands and is sympathetic to the public policy behind the Fair Workweek Law and the Proposed Regulations; however, the Fair Workweek Law is ambiguous and it is not clear whether our client, and similar management companies, are covered employers under the law. Accordingly, our client respectfully request a hearing or a clarification of the Proposed Regulations to spell out the type of employers the law is intended to cover.

By way of background, our client does not actively run the day-to-day operations of any retail establishment. Rather, our client provides certain human resources and managerial functions to dozens of unique stores in Philadelphia and across the United States. Importantly, none of the establishments that our client provides services to would constitute "chains" or "covered employers" as defined in the Fair Workweek Law because none of these businesses have thirty standalone locations worldwide and none have thirty locations that "do business under the same trade name [] that are characterized by standardized options for decor, marketing, packaging, products and services." This background is important because although we do not believe our client is a covered employer under the Fair Workweek Law, we do recognize that there is some ambiguity and we request that the Mayor's Office add a provision to the Proposed Regulations that clarifies that an employer that provides centralized management services is not a co-employer pursuant to the Fair Workweek Law or the Proposed Regulations. Alternatively, the proposed regulations should explicitly adopt the Third Circuit's joint employer test as elucidated in *In re Enter. Rent-A-Car Wage & Hour Empl. Practices Litig.*, 683 F.3d 462, 470 (3d

Cir. 2012) to determine whether a management company is going to be considered a "co-employer" for the purposes of the Fair Workweek Law.

The source of the ambiguity in the Fair Workweek Law can be traced to the definitions section, specifically:

1. Section 9-4601(4), which provides that a "Covered Employer" is a "**Retail Establishment, a Hospitality Establishment or a Food Services Establishment** as defined in this Section, **that employs 250 or more employees** and has **30 or more locations worldwide** regardless of where those employees perform work, including but not limited **to chain establishments** or franchises associated with a franchisor or network of franchises that employ more than 250 employees in aggregate."
2. Section 9-4601(3), which provides that a "Chain" is a "set of establishments that do business under the same trade name and that are characterized by standardized options for decor, marketing, packaging, products and services, regardless of the type of ownership of each individual establishment. This Chapter shall not apply to establishments which offer individual products under an individual license agreement but which otherwise do not meet this definition."

Using this definition, it seems clear that our client is not a "Covered Employer" pursuant to the Fair Workweek Law since our client is not, in and of itself a "retail establishment, a hospitality establishment or a food service establishment." Indeed, management companies that provides human resources, legal and other services to retail establishments, hospitality establishments or food service establishments do not appear to be covered. Nevertheless, our client is concerned because the Fair Workweek Law also defines the term "Employer" as "Any individual, partnership, association, corporation or business trust or any person or group of persons, or a successor thereof, that employs another person, including any such entity or person acting directly or indirectly in the interest of the employer in relation to the employee. More than one entity may be the "employer" if employment by one employer is not completely disassociated from employment by the other employer." Likewise, in fleshing out joint employment, the Mayor's Office included in the Regulations a definition of "Co-Employers." Regulation 2.3 provides that "Co-employment" (and joint and several liability) will generally be found if based upon all the facts:

- a. The employee performs work that simultaneously benefits two or more employers, or works for two or more employers at different times during the workweek, such as pursuant to an arrangement between the employers, or one franchisee/employer and the central office of the chain entity, to interchange employees among retail locations; or
- b. One employer acts directly or indirectly in the interest of the other employer or employers in relation to the employee; or

c. Where the employers are not completely disassociated with respect to the employment of a particular employee and may be deemed to share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer.

The term “not completely disassociated from employment by the other employee” is vague and ambiguous and is the source of our client’s concern and the reason why our client respectfully requests a hearing to clarify its meaning.

In order to eliminate any ambiguity over the types of employers who are subject to the Fair Workweek Law, our client respectfully requests that the Mayor’s Office revise the Proposed Regulations to add language that the City of Philadelphia will apply the test that federal courts in the Third Circuit utilize when analyzing whether a business that has indirect influence over another company’s employee is a “joint employer” for the purposes of the federal Fair Labor Standards Act (“FLSA”). Applying this test is appropriate because the language used in both the Fair Workweek Law and the Proposed Regulations is nearly identical to the language used in the FLSA’s joint employment regulation, 29 C.F.R. §791.2(a) (addressing the need to count together all hours worked for two different employers during the same workweek if “employment by one employer is not completely disassociated from employment by the other employer.”). Because Proposed Regulation 2.3 tracks the language in the FLSA’s regulations, we should be able to look to case law interpreting 29 CFR 791.2. The Third Circuit interpreted 29 C.F.R. §791.2(b) (2)-(3) (which, again, mirrors Reg. 2.3 (b)-(c)) in the context of a parent-subsidary relationship) in *In re Enter. Rent-A-Car Wage & Hour Empl. Practices Litig.*, 683 F.3d 462, 470 (3d Cir. 2012). In that case the Third Circuit court held that joint employment status turns on the degree of control over the essential terms and conditions of employment -- whether the alleged employer has or exercises: (1) authority to hire and fire employees; (2) authority to promulgate work rules and assignments, and set conditions of employment including compensation, benefits and hours; (3) day-to-day supervision, including employee discipline; (4) control of employee records; or other similar factors. Courts in Pennsylvania have repeatedly upheld this standard for analyzing joint employment issues. For example, the Third Circuit, in *Sebastian v. Frickel*, 717 Fed. Appx. 113, 117, (3d Cir. 2017) recently applied the *In re Enter. Rent-A-Car* joint employer test and held that while a subsidiary may have received benefits from the parent company, the parent company was not a joint employer because the parent company lacked sufficient day-to-day control over the operations of the subsidiary.

The Mayor’s Office should amend the Proposed Regulations to make clear that it will interpret the term employer in the same manner that the Third circuit has and that it will apply the same test to determine whether an employer and employee relationship exists, especially between parent companies and affiliates.<sup>1</sup>

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<sup>1</sup> It should be noted that the definition of employer in the Pennsylvania Minimum Wage Act (“PMWA”) is identical to the FLSA’s definition and thus has been interpreted the same.

Manny Citron  
November 1, 2019  
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## **CONCLUSION**

We thank you for your time and consideration in reviewing our concerns and for the opportunity to present our comments and concerns. These issues are of extreme importance to our client and we welcome any opportunity to work with the Mayor's Office in developing workable and equitable solutions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Eli Z. Freedberg', with a long horizontal flourish extending to the right.

Eli Z. Freedberg





November 1, 2019

***Submitted via email***

Mr. Brian Abernathy  
Office of the Managing Director  
City Hall  
Philadelphia, PA 19107

Dear Mr. Abernathy:

On behalf of the Pennsylvania Retailers Association, I write to provide comments on the proposed regulations to implement the “Fair Workweek Employment Standards” law. Retail is a dynamic industry where flexibility is key to both serving today’s consumer and meeting the needs of employees. We hope our feedback will assist your office as you seek to balance the new law’s protections with the needs of retail employees and retail employers.

The Pennsylvania Retailers Association was founded in 1932 and is the only trade association throughout the Commonwealth who represents the retail industry. As the voice of retail, our membership consists of both large, multistate and small independent retailers. In the City of Philadelphia, there are more than 31,000 retail establishments employing over 500,000 workers. Retail generates \$6 billion in total tax revenue for the city annually.

We share the city of Philadelphia’s goal to create a competitive and dynamic economy in Philadelphia so that businesses thrive and create new job opportunities. Today’s consumers shop for their services and products through multiple channels and expect availability on their terms. Employees seek flexible work schedules that are tailored to the needs of their lives—including school, family obligations and other interests. This is the world in which a Philadelphia store owner or restaurateur must compete. Flexibility is key to remaining competitive to customers’ demands and employee expectations.

In our comments that follow, we have posed several specific questions for the City to consider as it seeks to provide clarity to employers striving to implement the law and employees regarding their rights.

**Implementation Delay**

Due to the complexity of these regulations and the forthcoming January 1, 2020 effective date, we respectfully request a six-month delay of final implementation. By the time final regulations are issued, the first compliant schedules and Good Faith Estimates (GFE) will be nearly due. Even in

normal circumstances, this would not be enough time to build systems and train for compliance, but this is occurring during the height of the busiest quarter for retail. Retailers across the city are already in the process of gearing up for the holiday season. Hundreds of new and temporary employees are being recruited and trained for this season. Adapting training practices and policies to address the final regulations—particularly, the challenges with GFEs noted below—will be disruptive to employees and managers. The regulations expand the statutory requirements of the ordinance and as stated above, will take some time to adapt to the realities of the workplace. We believe a six-month delay is warranted under the circumstances.

- *Can the City provide a six-month delay for employers to implement the new requirements, in order to avoid costly litigation from private rights of action, while they are working to come into compliance?* Businesses will be working diligently to comply with the new law and its regulations but will need time to adapt and test these new systems so that employees' rights are protected. Providing a delay will allow the city and employers to work together to understand and troubleshoot compliance challenges without litigation and enforcement drawing resources and attention away from effective implementation. Both San Francisco and Seattle provided six-month delays when they were adopting their respective new regulations.

Continued below are our specific concerns and questions regarding the proposed regulations. To assist in your review, we have organized our feedback by section.

## **2.2 Employee**

The definition of “employee” in the ordinance and regulations is unclear. The ordinance refers to employees who work “at or for” a covered retail establishment and then later restricts the application to only employees who work “at” the retail establishment (See Sec. 9-4601 (5) Employee.) It also defines “retail establishment” as “the fixed point-of-sale location of a retail business,” again restricting the scope to employees who work at the physical location (See Sec. 9-4601 (11) Retail Establishments). The regulations add further confusion with the reference to “employees engaged in completing sales.” While this phrase is describing floor managers, its use implies that employees who provide delivery, installation or repair services— who by their nature respond to unpredictable, emergency or time-sensitive requests from the consumer – may be covered by the ordinance. We request that the regulations reflect the intent of the ordinance and clarify that the scheduling requirements apply only to employees who work at the physical point-of-sale retail establishment.

Additionally, the definition of “employee” should be further limited to those individuals who work in the retail setting. Employees in roles that may be critical to ensuring customers' health care should be exempted from the final definition. For example, pharmacists, medical technicians or professionals such as registered nurses, nurse practitioners, or physicians' assistants that perform those roles while working at a physical point-of-sale retail establishment. Due to the importance of their roles to the community and the specialization required to perform their function, we ask that the city exempt them from the definition.

- *Does the definition of “employee” and the associated scheduling requirements cover only employees who work at the physical fixed point-of-sale retail establishment? We believe the regulations should explicitly exclude employees who work for the covered employer outside of the physical retail establishment, including employees who spend all or most of their time providing delivery, installation, and/or repair services outside of the fixed point-of-sale location and who may only incidentally work within the City boundaries.*
- *Will the definition of employee be clarified to exclude employees working in the retail setting that specifically provide medical or other healthcare services, such as pharmacists, nurses and technicians?*

### 3.0 Good Faith Estimates (GFE)

The retail employee population includes individuals who work a variety of schedules to meet their commitments outside of work. In retail, employees are needed at all hours – early morning, late night, and weekends. For that reason, retailers build schedules based on the availability of its employees. The draft regulations create inflexibility in the ability to issue a new GFE when schedule needs change, whether due to business needs or to other employees changing their own availability.

The Pennsylvania Retailers Association received more feedback from its members on this aspect of the regulations than any other because it would be very difficult to operationalize and will make compliance nearly impossible. The requirements for the estimate are very specific and read more as a **requirement** to stay within the expected schedule, (i.e. “[...] which shall continue throughout the duration of employment”), rather than a **good-faith estimate**. The draft regulations functionally require a 90-day set schedule, which is not the intent reflected in the plain language of the ordinance, nor was such intent disclosed during the legislative process. Using the GFE to functionally mandate permanently set schedules is unique among current scheduling laws around the United States.

Retailers are eager to accommodate individual employees and strive to work around their stated preferences. Therefore, they have developed scheduling systems to balance the needs of employees with the hours a business requires staffing to serve the customer and perform the work. The City’s regulations will be harmful to business operations as well as negatively impact the morale of employees and the number of hours they are able to work. The City has further compounded the significance of this broad interpretation by attaching a \$200 penalty per employee (see Section 10 (a)).

Although the ordinance gives employers the option to provide a GFE listing the hours and days an associate will not work (see Sec. 9-4602(1)(c)), the regulations as currently drafted appear to go beyond the ordinance and require a GFE listing the span of hours and days the associate can expect to work. By adding the restriction that retailers cannot include all days of the week, and through the examples provided, we believe the City is expanding the scope of the ordinance to require “set schedules.” Retailers allow their employees to tell them of their schedule availability and then the retailer works around the employee’s availability. This aspect of the regulation will significantly disrupt what has been a flexible benefit for employees who work in retail.



The regulations require employers to issue a new GFE every time an employee changes their availability. The regulations contemplate an employer issuing a new GFE any time a “significant change” to an employee’s GFE occurs, but when an employee voluntarily changes their own availability, without a new GFE, that “significant change” will occur. This includes the rules in 8.0 – Offer of Work to Existing Employees. Employees may change their availability at any time to meet their needs outside of work – indeed, some do so weekly. Those employees would need a new GFE each week, creating a huge burden on the employer, thus penalizing employers for liberal policies that allow employees the flexibility they need to change their schedules to tend to activities outside their job.

For large retailers, employing thousands of Philadelphians, it will be extremely challenging to maintain compliance with this section of the law given the tracking burden and necessary updates to the GFE, as changes could occur weekly. There is no simple automated way to track the changes even in the most advanced scheduling software.

At a high level, the examples provided by the City reflect just how complicated providing a compliant GFE will be – a lot of paperwork for what should be a simple undertaking. The compliance burden imposed by the regulations – especially with regard to the GFE – are significant. Many employers will find that they need significant additional human resources hours in order to comply with the legislation. Those resources will come out of the same store payroll budget as regular hourly employees, resulting in a net decrease in hours for those employees the ordinance purports to help. It also sets up a system that assumes a “lack of good faith,” which will trigger violations and penalties will compound.

- *Do the GFE requirements apply only to employees hired after the ordinance takes effect (See Sec. 9-4602 (1): “Upon hiring an employee, a Covered Employer shall provide such employee with a written, good faith estimate of the employee’s work schedule)?* We believe that the regulations should reflect the text of the ordinance and require GFEs only for new employee hired after the date of implementation.
- *Are there any exemptions to the GFE requirements? For example, if an employer provides an availability requirement for a specific role in both the job posting and company policy and provides the employee with the average number of hours the employee can expect to work based on a 90-day average, would the employer still be required to issue a GFE?* We believe employers who include an availability requirement in the job posting and internal policy should be exempt from the GFE requirements if they also provide the average number of hours an employee can expect to work based on a 90-day average.
- *With respect to GFE example #3, should the second bullet at the end of the example be amended to read, “The subset of days the employee can expect **not** to work.”?*
- *What is the timeline on which employers must provide current employees with a GFE?* As noted, the current implementation date sits during the holiday season when retail demand is extremely high and many retailers have seasonal employees to hire. Additionally, the focus of the legislation is on large retail employers, which can have hundreds of employees at one location – each needing a good faith estimate. The

compliance burden would be much more manageable with an enforcement delay of six months.

### 3.3 Significant Change

The proposed definition of “significant change” would require retailers to track several pieces of information and require multiple calculations that will make scheduling very difficult. It will be incredibly difficult for employers to keep track of changes required in the proposal. Our members would prefer regulatory language that is more manageable while still providing important employee protections:

A significant change from the Good Faith Estimate may be found in any of the following circumstances:

- a. Three workweeks out of six consecutive workweeks in which the number of actual hours worked differs by **fifty** percent or more from the good faith estimate during each of the three weeks, and the differences are not due to documented employee-initiated changes;
  - b. Three workweeks out of six consecutive workweeks in which the days of work **or days the employee does not work** differ from the good faith estimate at least once per week, and the differences are not due to documented employee-initiated changes; or
  - c. Three workweeks out of six consecutive workweeks in which the ~~start and end times of at least one shift per week differ from the good faith estimate by at least one hour; or, if shifts have been identified,~~ **start and end times of shifts differ by at least one hour from the range of times or shifts that the employee can typically expect to work, or times or shifts which the employee will not be scheduled to work identified in the good faith estimate** ~~by which the shift was identified;~~ and the differences are not due to documented employee-initiated changes.
- *Do anticipated or planned changes in an employee’s lifecycle, such as a status change (e.g. part-time to full-time or occasional/seasonal to part-time), promotion, or a role change qualify as a significant change?* We believe these changes should not qualify as a significant change because they will only happen after consultation with the employee and provide the employee ample opportunity to request any necessary changes.
  - *Do demotions and other disciplinary actions qualify as a significant change?* We believe demotions and other disciplinary actions should not qualify as a significant change, just as a subtraction in hours due to disciplinary action is exempt from penalty pay requirements.
  - *Would the City consider adopting a provision for instances where an employee believes their schedule is not in line with their GFE, to allow an employee to request an employer provide a revised estimate?* This type of provision, similar to what Seattle adopted in its law, will provide employees with the type of certainty a GFE provides, while reducing

the employer's burden to review each and every GFE with the release of each and every weekly schedule.

- *Would the City consider expanding the monitoring period from three out of six workweeks to six out of twelve? Similarly, would the City consider expanding from one hour to three hours the difference in start and end times of shift?* Expanding the time frames provides greater flexibility to account for the flow of work and varying consumer demands on retail and restaurant businesses in the city.

#### **4.0 Advance Notice of Work Schedules**

We believe this section of the proposal goes beyond the scope of Sec. 4602-4 of the ordinance. The ordinance provides that written notice “shall be provided in a conspicuous and accessible location where employee notices are customarily posted,” *but* goes on to say, “If the employer posts the notice in *electronic format*, all employees in the workplace must have access to it on-site.” We ask that the regulations be amended to permit employers to post notice in electronic format only (i.e. removing the requirements to post both written and electronic schedules) if all employees have access on-site. It is very unwieldy to have to update both hard copy and electronic schedules, particularly if retailers are also supposed to provide language translations and a date and time stamp on the schedule.

- *Can an employer provide notice of work schedules in an electronic format only if the employer provides access to the electronic format on-site?* We believe employers should have the option to provide notice of work schedules in an electronic format only (i.e. not in both written and electronic formats) if all employees in the workplace have access to the electronic posting on-site.
- *On what exact date does the city expect employers provide their first compliant schedule to employees?* The January 1 effective date is on a Wednesday, which is in the middle of a schedule week. Presumably, the city does not expect that partial week to be considered the first week in which ten-day notice is required.

#### **4.1 Names of All Employees**

We have significant concerns, related to employee privacy and safety, with the requirement to list all employees regardless of whether they are scheduled to work. We understand that advocates for this ordinance had a goal to increase transparency around the scheduling process, but employers have witnessed concerns in other jurisdictions around employee privacy, particularly for victims of stalking and domestic violence, and want to protect their employees' privacy. We would appreciate clarification of the personal employee information that the City intends to require. The requirement to denote employee-initiated changes also raises privacy concerns at it may be information that employees do not necessarily want or need shared.

- *What employee information is an employer required to post in the workplace?* Out of concern for our employees' privacy, we believe an employer should not be required to post and provide broad access to employees' full names or schedules.

## 4.2 Notice of Change to Work Schedule

The regulations permit employers to provide notice of change to work schedule “by in-person conversation, telephone call, email, text message or other accessible electronic or written format.” This requirement supports our request that employers be permitted to post the work schedule itself – as well as any changes – by electronic means, provided all employees can access the electronic schedule.

- *Can the City help employers avoid duplicative posting, expenses and environmental impacts by clarifying that notices either be in writing or electronically, but not both?*

## 5.1 Predictability Pay

Calculating an employee’s regular rate of pay is incredibly challenging for employers. In retail and restaurants, employees often have the opportunity to earn bonuses and other incentives. Further complicating this calculation, the Pennsylvania code (34 PA Code Sec. 231.43) outlines several remuneration examples that should not be included when calculating an employee’s “regular rate.” This definition varies across different states and has led to costly litigation in several areas due to a lack of clarity.

- *Will the city base predictability pay on an employee’s “base hourly rate of pay” rather than “regular rate of pay”? We believe this is consistent with the intent of the law. The definition of base hourly rate is more consistent with the intent of the ordinance, mirrors other jurisdictions’ requirements and is easier for an employer to apply in calculating predictability pay.*
- *How should employers calculate predictability pay for non-tipped employees? Are there any exclusions for commissions, bonuses, or other incentives? We believe predictability pay for non-tipped employees should be based on an employee’s base rate of pay, which is consistent with the examples in the regulations. The inclusion of bonuses and other incentives require a look-back calculation to apportion these earnings over time.*
- *Can the City set the calculation of predictability pay for tipped employees at the hourly rate of \$7.25/hour, the minimum non-tipped hourly wage, for all covered employers? A base hourly rate of pay, per the ordinance, that avoids the confusion and uncertainty of other incentive payments will provide an equal minimum pay rate for all tipped and non-tipped employees in a workplace. The regulations provide that a tipped employee’s pay rate for purposes of predictability pay is an average of SOC wages if the employee’s base hourly rate is less than \$7.25/hour; otherwise, the predictability pay rate can simply be \$7.25/hour. Using an example of two tipped servers working in two different restaurants, Server A is paid \$7.25 plus tips, and Server B is paid \$2.83 plus tips. Both servers are asked to stay two hours later past their previously scheduled shifts. Therefore, each server is due one additional hour of pay as predictability pay. Server A will get \$7.25; Server B will get close to \$12.00 (based on current SOC average) for the same violation. This is less than fair for the servers and their employers. Employers who choose to take a lawful tip credit should not be compelled to pay more than other employers for the same scheduling change that caused predictability pay.*

## **6.0b Exemptions from Predictability Pay - Voluntary Changes**

The regulations require that any voluntary changes requested by the employee be written, recorded and maintained by the employer – but does not require the changes to be written before the request is granted. Although a call out is not a schedule change within the meaning of the ordinance, this suggests a possibility of a situation where an employee can call out because of an emergency – a request the employer will grant, even if the request was not made in writing. The next time the employee comes to work, the regulations suggest that an employer must ask the employee to sign paperwork indicating that employee voluntarily requested the change. If the employee declines to sign, and requests predictability pay, the employer has no recourse. The ordinance creates a rebuttable presumption of retaliation when an adverse action taken against an employee within 90 days of assertion of rights under the law. The employer will have no written evidence that the employee made the request, and therefore nothing with which to rebut that presumption.

- *How would the City handle such a situation, and how can an employer protect itself while still providing employees the flexibility to “call out” without doing so in writing?*
- *Is written consent necessary if an employee has verbally agreed to work unscheduled hours and come in to work the shift? Is there an irrebuttable presumption that an employee has voluntarily agreed to work an unscheduled shift if the employee provides verbal agreement and comes in to work the shift?* Employees have the express right to decline any additional hours or shifts not included in the notice of work schedule as noted several times in the ordinance and regulations. As such, we believe an employee’s verbal agreement and the employee’s appearance to work the shift are de facto consent, demonstrating that the employee has voluntarily accepted the shift and rendering written consent unnecessary.

## **6.0c Exemptions from Predictability Pay – Mass Communication**

The mass communication requirement should mirror other scheduling ordinances and define mass communication as communication to three or more eligible employees vs. all employees, particularly with the “genuinely and readily available to all employees” language. This change would provide necessary clarity to employers and ensure that employees are only receiving communications about shifts for which they are trained and qualified to work.

- *What qualifies as “genuinely and readily available to all employees”?* We believe any communication that is made using the employer’s standard method and is communicated to three or more employees who are eligible to work the open hours (e.g. the employee has the necessary skills and training to fill the role) should qualify as mass communication. Employers should also have the express ability to exclude employees from the mass communication if acceptance of the available shift would require the employer to pay overtime.

## **7.0 Right to Rest Between Work Shifts**

The regulations do not clarify what the \$40 compensatory pay amount is for tax purposes. “Compensatory pay” is a defined term under the law, and this does not align with that definition.

Without clarification, it can create tax and wage liability issues for both the employer and the employee.

- *What does the City consider “compensatory pay” to be for tax and other purposes? Is it a W2 item, or a 1099 item?* We do not believe it is wages, and thus should not be included in regular rate of pay calculations.

## **8.8 Hiring External Staff**

The regulations imply that new employees are limited to the hours advertised in a hiring notice. This creates a situation in which employers must now advertise for shifts on specific dates at specific times, which many retailers do not currently do. Additionally, the statute does not contemplate limiting a “new employee” to only shifts advertised in a hiring notice, which is implied by the regulations. Rather, it requires an offering of hours to “existing employees.”

At the point a “new employee” begins working and indeed fills the shift that “existing employees” did not pick up, that employee should be considered “existing” and be available to pick up additional hours elsewhere on the schedule. Without such a determination, a new employee is locked into a limited number of shifts. That employee cannot change their availability if they are unable to work at the times they were “hired for” without forcing the employer to either provide that employee with zero hours or terminate the employee.

## **8.9 Postings in Primary Language of Employees**

Employers should not be in a position to determine the primary spoken language of its employees or perform such a calculation due to legal and privacy concerns. Employers can comply with requests for translations of posted hours without the additional burden (and potential liability) for making inquiries as to the “spoken” language of employees.

## **9.1 Employee Record Request**

The regulations should require that employee record requests to employers be in writing, rather than require that employers adopt a policy that requests must be made in writing. Requiring requests be made in writing protects both the employer and employee. Every section of the statute and regulations requiring recordkeeping requires employers to operate “in writing,” and there’s no reason this should be any different.

- *Will the City require employees’ record requests of their employer to be made in writing?*

## **10.0 Presumed Damages**

Similar to our concerns regarding Section 7.0, the regulations do not clarify what these penalty amounts are for state tax and wage purposes. We also request that the City clarify if the presumed damages are per employee or perceived violation.

- *Can the City clarify what the penalty amounts are for tax and wage purposes? Are the presumed damages per employee or per perceived violation?*

## **Conclusion**

On behalf of the Pennsylvania Retailers Association, we sincerely thank you for the opportunity to comment on the regulatory proposal to implement the City of Philadelphia's fair workweek employment standards law. As you know from our previous discussions, we share the goals of the City to create a dynamic economy and opportunity for all. However, the regulations fail to acknowledge the current realities of not only today's workforce but also the future of work. Online technology and mobile apps have brought new competitive forces that impact the traditional brick and mortar retail workplace. Our customers demand products and services on their terms and their timeline. Employees demand work schedules that are flexible and adaptable to their life schedule. Retailers in Philadelphia cannot meet these challenging marketplace demands when faced with an overly restrictive and arcane regulatory framework. We hope our comments on this proposal will assist the City in its work and allow retailers and restaurants to continue to provide the flexibility our consumers and employees want.

Thank you for your consideration of these comments. If we can be of further assistance, please do not hesitate to contact me at [john@paretailers.org](mailto:john@paretailers.org) or (717) 233-7976.

Sincerely,

A handwritten signature in black ink, appearing to read "John Holub", with a long horizontal stroke extending to the right.

John Holub  
Executive Director

cc: Manny Citron, Chief of Staff  
Mayor's Office of Labor

**From:** Jillian Antinore <[JAntinore@urbn.com](mailto:JAntinore@urbn.com)>  
**Sent:** Friday, November 1, 2019 11:51 AM  
**To:** Regulations <[Regulations@Phila.gov](mailto:Regulations@Phila.gov)>  
**Cc:** Candace Chewning <[Candace.Chewning@Phila.gov](mailto:Candace.Chewning@Phila.gov)>  
**Subject:** Public Comment: Fair Workweek Regulations

**External Email Notice. This email comes from outside of City government. Do not click on links or open attachments unless you recognize the sender.**

Dear Sir/Madam:

Below please find my comments on the Philadelphia Fair Workweek Regulations, issued by the Managing Director's Office on October 4, 2019.

**Comment #1:**

Section 5.1(b) of the Regulations states that the regular rate of pay for a tipped employee who is paid less than \$7.25 will be the numerical average of (1) the hourly wage for Standard Occupational Classification (SOC) Code 35-3011 "Bartenders," (2) the hourly wage for SOC 35-3031 "Waiters & Waitresses," and (3) the hourly wage for SOC 35-9011 "Dining Room & Cafeteria Attendants & Bartender Helpers," all as published for Philadelphia County by the Pennsylvania Department of Labor and Industry.

The regulation further provides that this average will be calculated and published annually by the Agency by no later than June 15 of each year, based on the most recently published data at the time of publication. The rate will not be less than it was the previous year, and the rate will be effective from 7/1 to the next 6/31.

*Question:* What is the rate of pay for tipped employees who are paid less than \$7.25/hour beginning 1/1/2020 through 7/1/2020?

*Question:* Where will the Managing Director's Office post rate updates?

**Comment #2:**

Section 3.2 of the Regulations states that an employer must revise the good faith estimate if a significant change to an employee's work schedule occurs.

Section 3.3 of the Regulations states that the following qualify as a significant change:

- Three workweeks out of six consecutive workweeks in which the number of actual hours worked differs by twenty percent or more from the good faith estimate during each of the three weeks, and the differences are not due to documented employee-initiated changes;



- Three workweeks out of six consecutive workweeks in which the days of work differ from the good faith estimate at least once per week, and the differences are not due to documented employee-initiated changes; or
- Three workweeks out of six consecutive workweeks in which the start or end times of at least one shift per week differ from the good faith estimate by at least one hour; or if shifts have been identified, start and end times of shifts differ by at least one hour from the range by which the shift was identified; and the differences are not due to documented employee-initiated changes.

This portion of the Regulations imposes a significant administrative burden that far outweighs any intended benefit. The variances noted above are so slight (e.g., a change in a day, a change in an hour) and may occur with such frequency that a “significant change” could occur in every 6-week period, across many employees, resulting in numerous revised good faith estimates.

As a result, managers will be forced to spend a tremendous amount of time managing good faith estimates and completing paperwork: manually determining whether a “significant change” occurred; parsing out employee-initiated changes and other changes that are not considered “significant”; comparing these situations against the initial – and any subsequent revised? – good faith estimate; and completing and issuing revised good faith estimates.

To date, there are 7 predictive scheduling laws in the United States, including Philadelphia and Chicago which are both set to take effect in 2020. Of these 7 jurisdictions, only 2 require employers to reissue the good faith estimate in certain circumstances: Seattle and Philadelphia.

I would encourage the Managing Director’s Office to eliminate the revised good faith estimate requirement, citing the administrative burdens noted above. If the goal is to provide employees with advance notice of their work schedules, and any changes to those schedules, the revised good faith estimate does little to further that goal. By that point in time, the employee will have already received their initial good faith estimate, advance notice of their work schedule, and additional notice of any changes to their schedule that occur after the schedule is posted.

If, however, the Managing Director’s Office retains the revised good faith estimate requirement, it should adopt a definition of “significant change” that is more manageable in practice, such as the definition in Seattle’s predictive scheduling ordinance.

In Seattle, a significant change occurs when there is a difference of at least 30% between the good faith estimate and the median number of scheduled hours in the written work schedule over the course of one or more three-month increments. A significant change includes differences of 30% or more above and 30% or more below the good faith estimate. This definition is more workable in practice: it focuses on one factor – hours – rather than multiple

factors, and it allows employers to assess changes over a traditional quarter rather than a narrow six-week period.

For the reasons noted above, I respectfully request that the Managing Director's Office reconsider the proposed requirements around the revised good faith estimate.

Thank you for the opportunity to submit these comments.

**Jillian Antinore**

Compliance Specialist - Policy & Procedure

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November 12, 2019

To Whom it May Concern:

On behalf of the Pennsylvania Restaurant & Lodging Association (PRLA), which represents restaurants, hotels and other businesses in the hospitality and tourism industry, we are writing provide feedback on the proposed regulations regarding chapter 9-4600 of the Philadelphia Code: Fair Workweek Employment Practices. Our full comments are included with this letter.

We appreciate the time the working group and the Mayor's Department of Labor put into putting together regulations that help with implementation of the law. With that being said, we are concerned that not all businesses that will be impacted are even aware that the law will be taking effect January 1, 2020. Because of that, we urge the Department to use a warning system in lieu of penalties for the first year to allow businesses to update software, educate employees and come in compliance with the law.

Further, we believe there are some items outlined in the regulations that are contradictory to the actual language in the legislation and we urge the department to revisit those items to ensure they are following the intent of the law and not going above and beyond the written act.

Please do not hesitate to reach out if we can provide further information regarding our concerns.

Melissa Bova  
Vice President of Government Affairs  
Pennsylvania Restaurant & Lodging Association

**List of Concerns/Clarifications requested to Chapter 9-4600 of the Philadelphia Code:  
Fair Workweek Employment Standards**

**Section 2 Definitions:**

- Section 2.2, Employee: There needs to be more clarity regarding the employees covered in this definition. In hotels especially, departments such as Banquets, Banquet Culinary, Event Services, Engineering, and Security should be excluded from the definition of a covered employee.
  - *For example, hotels already have procedures in place to ensure equity in the way Banquets hours are scheduled. The regulations' requirements will force hotels to abandon those procedures, potentially harming the employees the law is intended to protect.*
  - *In Engineering and Security, the regulation could create a scenario where an employer has to choose between (1) violating the regulations and facing "presumed damages" for requiring someone to work or (2) leaving crucial life safety shifts unfilled.*
  - *The regulations should also make clear that hotel-based Sales employees working on events and group room sales are excluded. These employees do not interact with the general public (i.e., guests and other visitors to hotels); rather, they interact with booking coordinators for events or group room sales. Due to the nature of events and large volume sales, it is impossible to predict and keep consistent the hours of these employees. Their job inherently has varying hours week to week.*
- Section 2.3, Co-Employers: Section c. is not clear as it pertains to the explanation of "completely disassociated"—this could be a contradiction to federal standards of joint employment. This could also be a problem for section 3.5 as it pertains to co-employment. A franchisor may have no interaction as it pertains to something like the good faith estimate, but if a violation occurs and an individual chooses to include the franchisor—there is nothing they can do about it. The local franchisee controls all aspects of the employer/employee relationship, including scheduling. The franchisor (the brand) is not involved in and should not be held liable for day-to-day business operations of franchisees and their employees. Ensuring any definition of 'co-employers' or 'joint employers' recognizes the unique relationship between local franchisees and franchisors is essential to maintain a business model that has been successful for decades and continues to be in Philadelphia. There needs to be clarity here.
  - *We suggest changing this to clarify that if the franchisor is "exercising direction and control" over the franchisee's employees, that would then trigger the co-employer requirement.*
- Section 2.4, New Location: The definition should be amended to include establishments that have been operated by a Covered Employer for less than 12 months. The current 30-day window is insufficient for a newly operating business.

**Section 3 Good Faith Estimate (GFE):**

- The ordinance requires a Good Faith Estimate "upon hiring [of] an employee." The regulations appear to expand the requirement to all current employees, impermissibly expanding the scope of the ordinance.
  - *We suggest the good faith estimate should apply to the hiring of new employees, not require this assessment to be done for all employees.*

- Additionally, the regulations essentially convert the Good Faith Estimate from a one-time requirement to an ongoing obligation that could require updating every few weeks. This creates an enormous and costly burden on employers while providing little to no benefit to employees.
- Further, while the ordinance specifically states that “the Good Faith Estimate is not a contractual offer binding on the employer,” the regulations’ burdensome requirements essentially convert the estimate to a binding offer. This was not the intent of the ordinance, nor is such a requirement feasible in the hospitality business, where service providers desire to remain flexible for their customers. Customers’ desire for flexibility often results in huge fluctuations in business that employers cannot control.
- The legislation as passed clearly states that this is an *estimate*. Further, the law states that the good faith estimate begins with how many hours an employee should expect to work over a 90-day period. 90 days is the standard as put forward in the law. Yet, the regulations seem to go beyond the law, stating a 50 percent change at any point in time is a violation.
  - *We submit that the 90-day window should be the determination of a violation of the GFE. If the employer goes outside of the GFE more than 50 percent of the time during the 90-day window, that would be a violation of the GFE.*
- Good Faith Estimate Example #2: This only allows for two variations of a schedule. What if an employee wants more variations or more flexibility?
  - *If an employee regularly changes their own shift, does this put the burden on the employer to change the good faith estimate because of constant changes on behalf of the employee? What if an employer does attempt to change the estimate due to that and the employee does not agree?*
- Section 3.3, Significant Change: As stated before, this provision does not take into consideration the 90 days section as put forth in the actual law.
  - *We again submit that if there is a change more than 50 percent of the time to the proposed schedule over the course of 90 days, that would trigger a review of the GFE and possibly a violation. A running loop of 50 % creates confusion and goes against the standard put in the law.*

#### Section 4 Advance Notice of Schedules:

- 4.0 Advance Notice of Work Schedules: There is a conflict between the law and the regulations here; the law states “If the employer posts the notice in electronic format, all employees in the workplace must have access to it on-site.” This clearly allows for electronic posting of the schedule. But, the regulations read: “...the written notice of the work schedules shall be provided to all employees in the workplace, by posting in a conspicuous and accessible location **as well as** in electronic format if that is a customary method of notice...”
  - *We suggest the regulations reflect the clear language in the law that if an employer uses an electronic format and ensures all employees can access it, a written schedule is not required.*
- 4.1. Names of all employees: Requires all employees’ names to be on the schedule even if they are not working.
  - *We request an exemption for extenuating circumstances, such as a victim of domestic violence who does not want their name listed on the schedule.*

- *Businesses should also be able to list first names and the last initial to preserve employee confidentiality.*
- *If a complaint is submitted under section 9-4609(2) the business should be able to submit information without listing the names of all employees.*
- 4.2. Notice of Change to Work Schedule: there appears to be a typo in the actual legislation. In 94603(2)(g). The law says there is an exception where: “(g) Changes are made to the Posted Work Schedule within 24 hours after the advance notice required in § 9-4602(3).” The City should consider a regulation clarifying that the law should state, instead: (g) Changes are made to the Posted Work Schedule within 24 hours after the advance notice required in § 9-4602~~(3)~~(4).

#### Section 5 Compensation Required for Changed Work Schedules

- 5.1 Predictability pay for tipped employees: The formula set forth could be in violation of Pennsylvania’s Minimum Wage law, as it dictates a wage for employees that is different than the standard rate of pay/minimum wage.
- How will the Department inform all employees of the change year to year? By only allowing 15 days between the posting and notification—the Department should lay out a plan of informing businesses of the new hourly wage for predictability pay.
- Subsection (b) refers to June 31, which does not exist.

#### Section 6 Exemptions from Predictability Pay

- The law states in section 9-4603(2)(c)(v) that “severe weather conditions that disrupt transportation or pose a threat to employee safety” is an exemption under predictability pay. This needs to be further clarified in regulations.
  - *The regulations should make clear that the exemption applies when a local or national severe weather event substantially affects an employer’s operation. Severe weather events outside of Philadelphia can have a major effect on operations, particularly for hotels and other businesses located at or near the airport. The regulations should clarify that predictability pay is not due when schedule changes result from any severe weather event, whether local or in another area, that significantly affects a hotel or hospitality business operation.*
- a. 24-hour window for initial changes: we believe the regulations go beyond what was the intent of the law and punishes operators that try to go above and beyond the law itself. The ordinance states that predictability pay is not required when “[c]hanges are made to the Posted Work Schedule within 24 hours after the advance notice required in § 9-4602(3).” The ordinance also makes clear that employers may give greater advance notice than required, i.e., may post the schedule earlier. By its plain terms, this language in the ordinance permits an employer to post a schedule early and to make changes, without owing predictability pay, through the first 24 hours of the 10-day (and eventually 14-day) required notice period.
  - *The regulations impermissibly change this provision. The regulations exempt only changes made in the first 24 hours after the schedule is posted, regardless of whether the schedule is posted early. This arbitrarily punishes an employer making an effort to*

*post schedules earlier than required. The regulations should be changed to reflect the clear language of the law.*

- e. Hotel Banquets: The Banquets exemption for last-minute “pop up” events, while positive, is unnecessarily narrow and ignores the realities of Banquets booking. Banquet customers generally are not required to confirm their attendee numbers until three days prior to an event. This is standard across the Banquets industry nationwide. As a result, Banquet attendee numbers, and therefore scheduling needs, can fluctuate drastically in the days leading up to an event. Altering the three-day guarantee window would have the unintended consequence of driving Banquets business out of the Philadelphia market, hurting Banquets employees and employers alike. The regulations should reflect the reality of the Banquets industry and incorporate an exemption for Banquet events where the size of a Banquet event increases or decreases in expected attendance. The regulations should also exempt Banquet event changes out of the employer’s control.
  - *The exemption should read: Covered Employers are not required to pay Predictability Pay when a hotel banquet is scheduled, cancelled, rescheduled, postponed, delayed, increased or decreased in expected attendance by 25%, or increased or decreased in expected duration, due to circumstances that are outside the employer’s control, after the employer provides the Posted Work Schedule.*
- f. Ticketed events: We suggest the City adjust the regulations to reflect the ticketed events exemption used by other Cities that have passed similar ordinances and to reflect what was the actual intent of the exemption. It is not just the businesses located on the premises that are impacted by a ticketed event change, cancellation, adjustment of 20 percent, etc. These variabilities impact businesses outside of the event, as well. In fact, at no place in the legislation does it stipulate that the ticketed event exemption impacts only the “building” that holds the event. The language states it is a “sporting, entertainment, civic, charitable or other event that requires a ticket for admission.”
  - *We suggest aligning with every other piece of legislation passed in other cities and allow this exemption to cover any employer impacted by the “cancellation, scheduled, rescheduled, postponed, delayed, increases in attendance by 20 percent or more, or increases in duration outside of the employer’s control,” to also be exempt from predictability pay.*
- We suggest the City consider an additional exemption from predictability pay if an employer must make a shift change because it is required by law. For example, if an employee is sick, they are not allowed to work—the business MUST send them home. This is out of the control of the business and therefore predictability pay should not be triggered.

#### Section 8 Offer of Work to Existing Employees

- 8.2 Existing Employee: What is the definition of an existing employee? If someone is going through their training period?
  - *We suggest defining existing employees as those who have been employed at the covered employer for more than 90 days.*
- 8.8 Example 2: If an employer hires an external candidate, but upon being hired, the employee does not want to work those shifts. What recourse does the business have when the business

hired in good faith to fill the available shifts, but the person hired no longer wants to work them?

- *We request further guidance in this area. Does the business fire the newly hired candidate to avoid being in violation of the law? Is there a certain amount of time that a newly hired candidate must work the shifts they were hired for before their good faith estimate/schedule can be changed?*

#### Section 10 Presumed Damages

- Generally, these fines are extremely high and encourage employees to abuse the system, instead of filing complaints about true bad actors.
  - *We suggest these fines be reduced, or eliminated if it is a first offense of a business. Further, we request 1 year where there will be no penalties—to ensure businesses are educated and able to make investments and adjustments to be in compliance with the law. The regulations were released less than 2 months before the law takes effect. There are many businesses that may not know this even impacts them—a bad actor will be a bad actor—but we believe that all businesses should have the opportunity to come into compliance before the threat of fines and penalties are put on them.*