City of Chicago

SO2019-3928

Office of the City Clerk

Document Tracking Sheet

Meeting Date: 5/29/2019

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Type: Ordinance

Title: Amendment of Municipal Code Title 1 by adding new Chapter 1-25 entitled "Chicago Fair Workweek Ordinance"

Committee(s) Assignment: Committee on Workforce Development

Committee on Workforce Development

SUBSTITUTE ORDINANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. Title 1 of the Municipal Code of Chicago is hereby amended by adding a new Chapter 1-25 as follows:

CHAPTER 1-25 CHICAGO FAIR WORKWEEK ORDINANCE

1-25-010 Purpose and Intent.

This Chapter shall be known and may be cited as the "Chicago Fair Workweek Ordinance." It is the purpose of this Chapter and the policy of the City: (i) to enact and enforce fair and equitable employment scheduling practices in the City of Chicago; (ii) to provide the working people of Chicago with protections that ensure employer scheduling practices do not unreasonably prevent workers from attending to their families, health, education, and other obligations; and (iii) to require Employers needing additional hours, whether temporary or permanent, to first offer those hours to current part-time Covered Employees.

1-25-020 Definitions.

As used in this Chapter, the following terms shall have the following meanings:

"Banquet Event" means a catered event staffed by employees dedicated to the event and held at a hotel. A banquet event is scheduled at the time that the customer provides a deposit in connection with a specific date.

"Building Services" means the care and maintenance of property, including, but not limited to, janitorial services, building maintenance services, and security services. This definition does not include on-duty police officers or other government officials performing their official duties.

"Commissioner" means the Commissioner of Business Affairs and Consumer Protection or the Commissioner's designee.

"Covered Employee" means an individual who meets all of the following (a) through (d): (a) performs work for an employer in the capacity of (i) an employee, as distinguished from a contractor, determined pursuant to Internal Revenue Service guidelines, or (ii) a worker for a day and temporary labor service agency, as defined in the Day and Temporary Labor Services Act, 820 ILCS 175/5, who has been on assignment to the employer for 420 hours within an 18-

month period; (b) spends the majority of their time at work for that employer while physically present within the City of Chicago; (c) performs the majority of their work in a Covered Industry for that employer; and (d) earns less than or equal to $50,000 per year as a salaried employee, or less than or equal to $26.00 per hour as an hourly employee, from that employer. For Hotels, set service fees that an employee earns are included in the calculation of the stated hourly wage threshold. An employee who staffs a Banquet Event and receives a set gratuity for that work shall not be deemed to be a Covered Employee for purposes of that Banquet Event. The stated wage amounts in this definition shall be increased yearly from the previous year in proportion to an increase in the CPI. Any increase shall be rounded up to the nearest multiple of $0.05. Any increase shall remain in effect until any subsequent adjustment is made. On or before June 1, 2021, and on or before every June 1 thereafter, the Department shall make available to Employers a bulletin announcing the adjusted amount for the upcoming year.

"Covered Industry" means:

(1) Building Services;
(2) Healthcare;
(3) Hotels;
(4) Manufacturing;
(5) Restaurants;
(6) Retail; and
(7) Warehouse Services.

"CPI" means the Consumer Price Index for All Urban Consumers most recently published by the Bureau of Labor Statistics of the United States Department of Labor.

"Department" means the Department of Business Affairs and Consumer Protection.

"Dialysis Facility" means a facility that provides outpatient maintenance dialysis.

"Domestic Violence" means abuse, as defined in Section 103 of the Illinois Domestic Violence Act of 1986, 750 ILCS 60/101 *et seq.*

"Employer" means a person who meets all of the following: (a) employs, (i) globally, 100 or more employees, or in the case of not-for-profit corporations, 250 or more employees, (ii) 50 of whom are Covered Employees; and (b) is primarily engaged in a Covered Industry. Numbers of Covered Employees will be aggregated if they are employed by members of a single unitary business group. For purposes of this subsection, the term "unitary business group" is as defined for Illinois income tax purposes.

"Family member" shall have the definition applied to that term in Section 1-24-010.

"Healthcare" means: (i) health care services or long-term care services that require licensure under one of the following Illinois licensing acts: the Hospital Licensing Act, the Nursing Home Care Act, the Specialized Mental Health Rehabilitation Facilities Act, the Assisted Living and Shared Housing Act, the Life Care Facilities Act, the Ambulatory Surgical Treatment Center Act, or licensure as a Freestanding Emergency Center under the Emergency Medical Services Systems Act, or (ii) dialysis services provided by a Dialysis Facility.

"Hotel" shall have the definition applied to that term in Section 4-6-180.

"Manufacturing" means the production of tangible goods for use from raw or prepared materials by giving the materials new forms, qualities, properties, or combinations, whether by hand-labor or machines.

"Person" shall have the definition applied to that term in Section 1-4-090(e).

"Predictability Pay" means wages paid to a Covered Employee, calculated on an hourly basis at the Employee's regular rate as compensation for schedule changes made by an Employer to a Covered Employee's schedule pursuant to this Chapter, in addition to any wages earned for work performed by that Employee.

"Regular rate" shall have the definition applied to that term in 29 U.S.C. § 207(e).

"Restaurant" means any business licensed to serve food in the City of Chicago which also has, globally, at least 30 locations and at least 250 employees in the aggregate. The term "Restaurant" shall not include businesses limited to three or fewer locations in the City that are owned by one Employer and operating under a sole franchise.

"Retail" means the sale to end users of tangible products that are primarily for personal, household, or family purposes, including, but not limited to, appliances, clothing, electronics, groceries, and household items.

"Self-schedule" means the practice of an employee to self-select work shifts without employer pre-approval pursuant to a mutually acceptable agreement.

"Sexual Violence" means any conduct proscribed by Article 11 of the Criminal Code of 2012, as well as the provisions in Article 12 related to stalking, 720 ILCS 5/12-7.3, 12-7.4, and 12-7.5.

"Shift" means the consecutive hours an Employer schedules a Covered Employee to work, including Employer-approved meal periods and rest periods.

"Ticketed Event" means a sporting, entertainment, civic, charitable or other event held at

a venue with a capacity of at least 5,000 people and that requires a ticket for admission. The form of the ticket may be electronic, physical, or as a name on a list held by the event's ticket auditor.

"Warehouse Services" means the storage of goods, wares, or commodities for hire or compensation, and, in connection with this operation, may include the loading, packing, sorting, stacking, wrapping, distribution, and delivery of those goods.

"Work Schedule" means all of a Covered Employee's shifts, including specific start and end times for each shift, during a calendar week.

"Writing" or "written" means a printed or printable communication in physical or electronic format including a communication that is transmitted through electronic mail, text message or a computer system or is otherwise sent and stored electronically.

1-25-030 Application to Collective Bargaining Agreements.

Nothing in this Chapter shall be deemed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing in order to establish wages or other conditions of work in excess of the applicable minimum standards of the provisions of this Chapter. Nothing in this Chapter shall be deemed to affect the validity or change the terms of bona fide collective bargaining agreements in force on the effective date of this Chapter. After the effective date of this Chapter, the requirements of this Chapter may be waived in a bona fide collective bargaining agreement, but only if the waiver is set forth explicitly in such agreement in clear and unambiguous terms.

1-25-040 Advance Notice of Work Schedules.

(a) Initial Estimate of Work Schedule.

(1) Prior to or on commencement of employment, an Employer shall provide every Covered Employee with a good faith estimate in writing of the Covered Employee's projected days and hours of work for the first ninety days of employment, including:

(A) The average number of weekly work hours the Covered Employee can expect to work each week;

(B) Whether the Covered Employee can expect to work any on-call shifts;

(C) A subset of days and a subset of times or shifts that the Covered Employee can expect to work, or days of the week and times or shifts on which the Covered Employee will not be scheduled to work. The good faith estimate is not a contractual offer binding the Employer, but an estimate made without a good faith basis is a violation of this section.

(2) Prior to or on commencement of employment, the Covered Employee

may request that the Employer modify the projected days and hours of work provided under Subsection (a)(1) of this section. The Employer shall consider any such request, and in its sole discretion may accept or reject the request, provided that the Employer shall notify the Covered Employee of Employer's determination in writing within three days of the request.

(b) Advance Notice of Work Schedule.

(1) An Employer shall provide its Covered Employees with written notice of work hours by posting the Work Schedule no later than 10 days before the first day of any new schedule from July 1, 2020, to June 30, 2022, and shall post the Work Schedule no later than 14 days before the first day of any new Work Schedule beginning July 1, 2022, by posting the Work Schedule within the unit or department or workgroup either in a conspicuous place at the workplace that is readily accessible and visible to all Covered Employees or using the usual methods of communication, or both. The written Work Schedule shall include the shifts and on-call status of all current Covered Employees at that worksite. Additionally, upon written request of a Covered Employee, an Employer shall transmit the Work Schedule by electronic means.

(2) An Employer may change a Covered Employee's Work Schedule after it is posted and/or transmitted, up to the deadline articulated in Subsection (b)(1) without penalty. After that deadline, such changes shall be subject to the notice and compensation requirements set forth in this Chapter.

(3) Covered Employees who Self-schedule or work in a venue that regularly hosts Ticketed Events shall not be bound by this Subsection (b), nor shall their Employers to the extent that the Covered Employee Self-schedules or works in a venue that regularly hosts Ticketed Events.

(4) A Covered Employee who is a victim of Domestic Violence or Sexual Violence or who has a family or household member who is a victim may request that the Covered Employee's Work Schedule not be posted or transmitted to other employees. An oral or written request shall be sufficient and implemented immediately and is sufficient until the Covered Employee gives written permission to post the Covered Employee's schedule. An Employer may request a written statement from the Covered Employee that states that the Covered Employee is, or has a family or household member who is, a victim of Domestic Violence or Sexual Violence. The written statement shall constitute the documentation needed for the Employer to implement the request. The Employer may not require a written statement more than once in a calendar year from any Covered Employee for this purpose.

1-25-050 Schedule Changes.

(a) *Right to decline.* Subject to the exceptions in Subsection (d) of this section, a Covered Employee has the right to decline any previously unscheduled hours that the Employer adds to the Covered Employee's schedule, and for which the Covered Employee has been provided advance notice of less than 10 days before the first day of any new schedule from July 1, 2020, to June 30, 2022, and less than 14 days before the first day of any new schedule

beginning July 1, 2022.

(b) *Alterations.* Subject to the exceptions in Subsection (d) of this section, if an Employer alters a Covered Employee's Work Schedule after the deadline articulated in Section 1-25-040(b)(1), in addition to the regular rate of pay, the Covered Employee shall receive:

(1) One hour of Predictability Pay for each shift in which the Employer:

(A) adds hours of work.

(B) changes the date or time of a work shift with no loss of hours.

(C) with more than 24 hours' notice, cancels or subtracts hours from a regular or on-call shift.

(2) No less than 50% of the Covered Employee's regular rate of pay for any scheduled hours the Covered Employee does not work because the Employer, with less than 24 hours' notice subtracts hours from a regular or on-call shift or cancels a regular or on-call shift, including while the Covered Employee is working on a shift.

(c) The Employer shall amend the posted Work Schedule and transmit it to the Covered Employee in writing within 24 hours of a schedule change.

(d) *Exceptions.* The requirements of this section shall not apply in the following circumstances:

(1) A Work Schedule change because:

(A) of threats to Employers, Covered Employees, or property, or when civil authorities recommend that work not begin or continue;

(B) public utilities fail to supply electricity, water, or gas, or the sewer system fails to serve the location of work;

(C) of acts of nature (including, but not limited to, flood, earthquake, tornado, or blizzard);

(D) war, civil unrest, strikes, threats to public safety, or pandemics.

(2) A Work Schedule change that is the result of a mutually agreed upon shift trade or coverage arrangement between Covered Employees, subject to any existing Employer policy regarding required conditions for Covered Employees to exchange shifts;

(3) A Work Schedule change that is mutually agreed to by the Covered Employee and Employer and is confirmed in writing.

(4) A Covered Employee requests a shift change, that is confirmed in writing, including but not limited to use of sick leave, vacation leave, or other policies offered by the Employer.

(5) An Employer subtracts hours from a Work Schedule for disciplinary reasons for just cause, provided the Employer documents the incident leading to the Covered Employee's discipline in writing.

(6) A Banquet Event is scheduled or rescheduled under circumstances that

are outside the Employer's control, the attendee counts increase by more than 20%, or a new banquet event is scheduled within 48 hours of the event occurring, after the Employer provides the posted Work Schedule.

(7) When, in Manufacturing, events outside of the control of the manufacturer result in a change in the need for Covered Employees, including, but not limited to, when a customer requests the manufacturer to delay production or there is a delay in the receipt of raw materials or component parts needed for production.

(8) With regard to Healthcare Employers, in (i) any declared national, State, or municipal disaster or other catastrophic event, or any implementation of an Employer's disaster plan, or incident causing a hospital to activate its Emergency Operations Plan, that will substantially affect or increase the need for healthcare services; (ii) any circumstance in which patient care needs require specialized skills through the completion of a procedure; or (iii) any unexpected substantial increase in demand for healthcare due to large public events, severe weather, violence, or other circumstances beyond the Employer's control.

(9) 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. Additional hours due to a change in a Ticketed Event's duration that fall within this exemption will also be fully exempt from this Section.

(10) When Covered Employees Self-schedule.

1-25-060 Offer of Additional Work Hours to Existing Employees.

(a) Subject to the limitations in this Chapter, when an Employer needs to fill additional shifts of work, the Employer shall first offer additional shifts of work to existing Covered Employees if the Covered Employees are qualified to do the additional work, as determined by the Employer. If offered shifts are not accepted by Covered Employees, the shifts shall be offered to temporary or seasonal workers who have worked on behalf of the Employer for two or more weeks.

(b) An Employer shall distribute additional shifts in compliance with Subsection (a), provided that:

(1) the Employer's system for distribution of hours must not discriminate on the basis of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity or expression, disability, age, or marital or familial status;

(2) whenever practicable, the Employer shall first offer those hours to part-time Covered Employees.

(c) This section shall not be construed to require any employer to schedule employees to work hours required to be paid at a premium rate.

1-25-070 Right to Rest.

(a) A Covered Employee has the right to decline Work Schedule hours that are less than 10 hours after the end of the previous day's shift

(b) When a Covered Employee works a shift that begins less than 10 hours after the end of the previous day's shift, the Employer shall pay the Covered Employee at a rate of 1.25 times the Covered Employee's regular rate of pay for that shift.

1-25-080 Right to Request a Flexible Working Arrangement.

A Covered Employee has the right to request a modified Work Schedule, including, but not limited, to additional shifts or hours; changes in days of work; changes in shift start and end times; permission to exchange shifts with other employees; limitations on availability; part-time employment; job sharing arrangements; reduction or change in work duties; or part-year employment.

1-25-090 Notice and Posting.

(a) Every Employer shall post in a conspicuous place in each facility where any Covered Employee works that is located within the geographic boundaries of the City a notice advising the Covered Employees of their rights under this Chapter. The Commissioner shall prepare and make available a form notice that satisfies the requirements of this Subsection (a).

(b) Every Employer shall provide with the first paycheck subject to this Chapter a notice advising the Covered Employee of their rights under this Chapter. The Commissioner shall prepare and make available a form notice that satisfies the requirements of this Subsection (b).

(c) All notices and postings that name individual Covered Employees shall comply with Section 1-25-040.

1-25-100 Retaliation prohibited.

(a) It shall be unlawful for any Employer to discriminate in any manner or take any adverse action against any Covered Employee in retaliation for exercising any right under this Chapter, including, but not limited to, disclosing, reporting, or testifying about any violation of this Chapter or rules promulgated thereunder. For purposes of this Section, prohibited adverse actions include, but are not limited to, termination, denial of promotion, negative evaluations, punitive schedule changes, punitive decreases in the desirability of work assignments, and other acts of harassment shown to be linked to such exercise of rights.

(b) A violation of this section shall subject the Employer to a $1,000.00 fine.

1-25-110 Avoidance of Application.

It shall be unlawful for an Employer to engage in any of the following to avoid coverage under this Chapter: (i) change a regular rate of pay, (ii) interfere with, restrain, deny, or change scheduled work days or hours, or (iii) hire, rehire, terminate, or suspend, even temporarily.

1-25-120 Enforcement – Rules.

The Department shall administer and enforce this Chapter and is authorized to adopt rules to effectuate that administration and enforcement.

1-25-130 Violation – Penalty.

Any Employer who violates this Chapter or any rule promulgated thereunder shall be subject to a fine of not less than $300.00 nor more than $500.00 for each offense. Each Covered Employee whose rights are affected shall constitute a separate and distinct offense to which a separate fine shall apply. Each day that a violation occurs shall constitute a separate and distinct offense to which a separate fine shall apply. Any agreement between the Employee and Employer that would violate this Chapter is no defense to an enforcement action.

1-25-140 Private cause of action.

(a) An employee may initiate a civil action asserting that they were subjected to a violation of this Chapter after the following sequence of events occurs: (i) the employee submits to the Department a factually supported written complaint describing the violation, and (ii) the Department forwards to the Employer the complaint and provides the Employer with an opportunity to either contest the alleged violation, in which case the Employer shall provide to the Department factual support for its position, or cure the alleged violation, in which case the Employer shall provide the Department with detail as to actions it has taken and will take to make the affected employee(s) whole and eliminate the basis for future similar complaints, and (iii) the Department has notified the complaining employee and the Employer in writing that the Department considers the complaint to be closed. The Department may consider a complaint closed because: the complaint has been cured by the Employer, or the Department has deemed the complaint justified and supported and has enforced it against the Employer to conclusion, or the Department has deemed the complaint unjustified or unsupported.

(b) Any claim or action filed under this Chapter must be made within two years of the alleged conduct resulting in the complaint.

(c) A Covered Employee who prevails in a civil action pursuant to this section shall be entitled to an award of compensation for any damages sustained, including the payment of Predictability Pay unlawfully withheld, as a result of the violation, including litigation costs, expert witness fees, and reasonable attorney's fees.

1-25-150 Non-exclusive Remedy.

The remedies, fines, and procedures provided under this Chapter are cumulative and are not intended to be exclusive of any other available remedies, penalties, and procedures established by law which may be pursued to address violations of this Chapter.

1-25-160 Retention of Records.

Each Employer shall maintain for at least three years, or for the duration of any claim, civil action, or investigation pending pursuant to this Chapter, whichever is longer, a record of each Covered Employee's name, hours worked, pay rate, and records necessary to demonstrate compliance with this Chapter, including but not limited to good faith estimates of Work Schedules, initial posted schedule and all subsequent changes to that schedule, consent to work hours where such consent is required by this Chapter, and documentation of offers of hours of work to existing staff and responses to such offers. Each Employer shall provide each Covered Employee a copy of the records relating to such Covered Employee upon the Covered Employee's reasonable request.

1-25-170 Access to Work Site.

Each Employer shall permit access to work sites and relevant records for authorized City representatives for the purpose of monitoring compliance with this Chapter and investigating Employee complaints of noncompliance, including production for inspection and copying of its employment records.

SECTION 2. The Commissioner shall study the effectiveness of this Chapter and submit a report to the City Council by September 30, 2021. The report shall include, but not be limited to, the economic impact of this Chapter and an assessment of whether the employee protections of this Chapter are adequate or should be strengthened or expanded in any area, with a special focus on whether Employers are engaging in practices to avoid conferring full-time status on their existing part-time Covered Employees. In order to ensure a meaningful, data-driven, robust report, the Commissioner: (i) shall solicit pertinent information from Employers, Covered Employees and other stakeholders, including information bearing on the economic impact of this Chapter, and (ii) may engage professionals to assist with research, analysis and report preparation, subject to the availability of duly appropriated funds.

SECTION 3. Section 2-25-200 of the Municipal Code of Chicago is hereby amended by adding the text underlined and deleting the text stricken as follows:

2-25-200 Office of Labor Standards.

(a) *Definitions.* As used in this section:

"Chapter 1-24" means Chapter 1-24 of the Municipal Code of Chicago.

"Chapter 1-25" means Chapter 1-25 of the Municipal Code of Chicago.

"Commissioner" means the Commissioner of Business Affairs and Consumer Protection or the Commissioner's designee.

"Covered employee" has the meaning ascribed to that term in Section 1-24-010 or 1-25-020, as appropriate.

"Department" means the Department of Business Affairs and Consumer Protection.

"Director" means the Director of the Office of Labor Standards or the Director's designee within the Office of Labor Standards.

"Office" means the Office of Labor Standards established pursuant to subsection (b) of this section.

(b) *Office of Labor Standards – Establishment – Powers and duties.* There is hereby established within the Department of Business Affairs and Consumer Protection an office of the municipal government, which shall be known as the Office of Labor Standards. Such Office shall include a Director, who shall be appointed by the Commissioner, and such other assistants and employees as provided for in the annual appropriation ordinance. The duties of the Office of Labor Standards, and of its Director, shall be to:

(Omitted text is unaffected by this ordinance)

(6) Administer and enforce Chapters 1-24 and 1-25 of this Code;

(Omitted text is unaffected by this ordinance)

(c) *Director – Duties pertaining to Chapters 1-24 and 1-25.* In connection with subsection (b)(6) of this section, the Director, consistent with the requirements of due process of law and in accordance with rules duly promulgated by the Commissioner, is authorized to: (i) receive complaints, which shall be filed by an employee or other person on behalf of an employee, of alleged violations; (ii) mediate disputes in connection with such complaints, if appropriate; (iii) investigate such complaints, as appropriate, and make findings of fact in connection with such investigations; (iv) issue notices of violation, as appropriate, if, following an investigation, the Director determines that there is reasonable cause to believe that a violation has occurred; (v) provide for a hearing following the issuance of any such notice of violation; (vi) conduct hearings; (vii) administer oaths, take testimony, issue subpoenas, and receive evidence in connection with such investigations or hearings; and (viii) otherwise enforce Chapters 1-24 and 1-25. Any investigation conducted pursuant to this section shall be conducted in a fair and impartial manner. The name and other identifying information of the employee or person reporting a violation of Chapters 1-24 and 1-25 shall be kept confidential to the extent permitted by law unless such employee or person authorizes the Director in writing to disclose this information as the Director deems necessary or appropriate to enforce this section. The Director may investigate complaints in cases where the complainant is unknown or anonymous.

(d) *Director – Recordkeeping and reporting – Required.* No later than March 15, 2020, and on or before each March 15 thereafter, the Director shall post on the City of Chicago Office of Labor Standards website the following information pertaining to enforcement of Chapter 1-24 and Section 4-4-320 (a)(1), (a)(3), and (b)(1), and Chapter 1-25, though for Chapter 1-25 the first posting date shall be March 15, 2021:

(1) Number of complaints received by the Office alleging violations of Chapters 1-24 and 1-25;

(2) Number of investigations opened by the Office in connection with alleged violations of Chapters 1-24 and 1-25;

(3) Number of employers cited for violations of Chapters 1-24 and 1-25;

(4) Results of each enforcement action initiated under Chapters 1-24 and 1-25;

(Omitted text is unaffected by this ordinance)

SECTION 4. Following due passage and publication, this ordinance shall be in full force and effect on July 1, 2020, except with regard to Safety-net hospitals, for which the ordinance will go into effect on January 1, 2021. "Safety-net hospital" shall have the definition applied to that term in 305 ILCS 5/5-5e.1.

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Susan Sadlowski-Garza
Alderwoman, 10th Ward

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Michael D Rodriguez
Alderman, 22nd Ward