

Emeryville Employer Open Forum

Definitions – 5-39.01

- Temporary, On-Call, etc.
 - Are they included in this? It is not clear.

Covered Employers – 5.39.02

- Clarity around not rounding up needed
- How do you know if you are in the city limits?
 - We can provide a map. We can also provide information in our education materials for employers to verify location in Emeryville.
- Typically, and in part because larger companies have the software to demonstrate compliance, from our perspective, the executive and exempt employees do count in overall size. (5-39.02.Ai)

Advance Notice of Work Schedule – 5-39.03

- Intention is not supposed to add an exemption. It is supposed to clarify the conditions of when Predictability Pay is due.
 - But if you call them PP it is applicable, yes?
 - The issue is that employers HAVE to notify employees that there are shifts/hours available so when do we do that and have to pay predictability pay and when do we do that and not have to pay that fine?
- *Clarity Statement from City Staff:* The employer can always reach out to employees to take on additional shifts. The way it is structured right now, when the employer asks if the employee wants more shifts, there is no predictability pay due.
 - That doesn't feel clear.
- Is there a way we are going to regulate how that ask is going to be shared – by individual or by group?
- Employees will call out sick and we need to cover those shifts. If we are calling people in to cover shifts, is it subject to Predictability Pay – we are under the impression that it is. We need to know if we are going to have to pay Predictability Pay if we call people in. If we do have to pay, we might NOT call people in and not have that part of the process. Are they subject to predictability pay if we call them in or are they not?
- And if we call in and it is VOLUNTARY do we have to pay Predictability Pay?
 - Voluntary means they can say no – so what is the clarification?
- What is the Grace Period?
 - Punching out – if the shift is over at 11am and the clock out at 11:02, they are paid for a whole other hour. Does that mean I have to pay Predictability Pay for that extra hour (accumulated by that 2 minute over)

Notice, Right to Decline, and Compensation for Schedule Changes – 5-39.04

A - Notice for Shift Changes

- Shall not use any methodology for posting that would cause the Employee to incur charges. (5-39.04.Aii)
 - What does that mean?
- *Clarity State from City Staff:* Employee should not have to incur charges when that methodology is not available
 - Examples of tech: text – is the employee who is receiving that text incurring charges to receive that text
 - Make that clear in regulations
- Clarify if employee wants to waive that so that text can be used, if wanted?

B - Right to Decline for Schedule Changes

- Clarification – you can decline shifts that are added or extended? My understanding is if an employer says “we actually don’t need you tomorrow, we are going to compensate you under the ordinance, but you don’t have to work” the employee does not have the right to decline that. Only if an employee is told to work another shift?

H - Compensation for Schedule Change

- If it is slow, can I ask for volunteers to go home?
 - Not the same as volunteering for extra hours.
 - Make that clear
- If they clock out because it is slow, do I have to pay Predictability Pay?
 - If employees volunteer when it is slow – when they want to go home, when we want them to go home – we are not going to let them go home.
 - What does all this mean when the employee is initiating it (when they want to leave to get to a function on time, for example) and they are bringing it up. Do I have to pay them for the whole shift AND Predictability Pay.

(Tracking the Notice, Decline and Compensation)

- Suggestion: Language around “you can’t send folks home w/o predictability pay. But you can let employees know that if they want to go home, and they initiate it – we want to preserve employee flexibility – we don’t want to create a dynamic where managers are pressuring people into going home.
- To maintain these processes, is there a form that we need to maintain to document this initiation. Do they have to sign something indicating that they are initiating the early shift end so that we do not have to pay?
- If I had an employee who was already scheduled for 4 hours, worked for those hours, and then because there was a call out, he stays to cover: When it is voluntary (no PP) and when is it not voluntary (has to pay PP)? Can there be an example of these situations here?
- When I say “Would you like to work the next 2 hours?” – is that me telling them they have to or when is that voluntary?
 - What is the language we should be using (asking vs. telling, for example)? Can that be provided?
- Workforce management systems that are operational on phones?

- Define more broadly for all methods of shift notification (tech)

H - Compensation for Schedule Changes (Matrix)

- Seeing it this way is making it clear to me.

Offer of Work to Existing Employees – 5-39.05

- Can you not just post open hours? (5-39.05.A)
 - You have to post those hours before you hire someone else, yes? We are going to have to date those open hour shifts, wait for the 72 hours for employees to respond, and then go from there. Is this in compliance?
 - Would be nice to have some sort of suggestion structure on how to do this.
 - Suggestion: The ordinance has language around posting and has to post the hours. But if there are multiple people who are interested, one of the pieces employers have control over is HOW they delegate those hours (seniority, first come first serve, rotation system, performance) – employers have the discretion to choose how it is delegated but it needs to be posted (and can't be discriminatory). Can that be included in the regs?
- If I don't post it, how do coworkers know which shifts are available? How do they know that they can apply for these shifts if I am not posting them and doing so before I hire a new person?
- What does it mean to assess whether one of your part-time employees is qualified for more hours? (5-39.05.E)
 - Clarity to define skill sets that warrant those additional hours, clarity around when employers are denying hours for unclear reasons.
 - When season is slow, when there is an opportunity for an assistant role, when there are opportunities to do more and is it clear that those hours CAN be given and when they are denied (and when PP would need to be paid and not need to be paid)?

Right to Rest/"Clopening" – 5-39.06

- Make sure that in final regulations communication process aligns with all other communication processes, writing, text, etc. (5-39.04.A)

Right to Request a Flexible Working Arrangement – 5-39.07

- For the employees request and employer's response, can it be done electronically?
 - Seattle states that electronic writing is sufficient – is it sufficient for Emeryville, as well?

Notice and Posting – 5-39.08

- *No feedback*

Implementation – 5-39.09

- It would be very helpful when talking to employees who are experiencing a violation of the ordinance, to provide steps on how to communicate and investigate that violation. For most employees, they will go to their manager to say they are violating the ordinance. But, employees also have the right to go to the city to share that their manager has been violating the ordinance, even after discussion, but what happens after that? Can there be more language in regulations for employers to know what that complaint to the city looks like, what happens after that, are there documents to follow up on? (5-39.09.A)
 - *Helpful from employee perspective what to expect.*

Enforcement – 5-39.10

- *Clarity Statement from City Staff:* If it is an area that makes sense to have a form, we will have a form.
- How will we determine (and with who?) what a form is needed for?
- Request flexibility around documentation process to adapt already in place operations?
- Are you saying that this needs to be in writing?
 - I don't know if you are going to get that from software.
- We need to figure out what we need to document and how we are going to communicate all of this to NEW employees and current ones. How do we document that the communication has been done?
 - Ideas on how to do this should be provided.