

## Employee Open Forum

### Definitions - 5-39.01

- *Context: Good Cause:*
  - Feels very vague.
  - What is a good cause for employers to send employees home?
  - Context re: fear of vague “good faith” rules:
    - Store managers are under a lot of pressure to keep under a labor budget. They need to make sure they have enough hours stored for a busy day labor. If there is a slow day, there is incentive to send employees home so hours are saved later. Thought process is “Is there any way I can save some hours today” and there is a search for an excuse to send someone home with that in mind.
  - Good Cause should not be in regulations at all.
- *Context: Good Faith*
  - “Good Faith” has a definition in the ordinance and it is general.
  - Good faith estimate has to be on some sort of identifiable facts/data, fact based estimates. Provide context of what this estimate is what this is intended to do.
  - Is there some sort of record of average weekly hours and if there is a disparity in those averages, observe if those averages/estimates as data and represent good faith or not. If not, this doesn’t mean bad faith and case closed but it does require further investigation.
  - Can the regulation provide examples of how “good faith” will be evaluated and provide language on how the standard is applied, and an example of HOW that employer is providing good faith?

### Covered Employers – 5-39.02

- No specific feedback

### Advance Notice of Work Schedule – 5.39.03

- Change to “shall not pay” for predictability pay for changes to the work schedule. (5-39.03.E)

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

- Writing (5-39.04A):
  - If employee pays per text, is there a way to nominally pay for texting if scheduling is communicating via text. Must figure out a way for employer and employee to communicate flexibly and mindfully without incurring charges.

- Disciplinary exception:
  - I have been sent home early because I didn't come with a hat on or because my shirt was too dirty. I told the manager that I only had one shirt and one hat (both dirty from working previous days before). Manager refused to give a replacement and sent me home to wash my clothes, clock out, and then come back once they were clean. The exception to the predictability pay defeats the purpose of having it and makes it easier for the managers to not have to pay – like in this scenario. What is the law for having to provide work clothes for employees, they have to pay for the work clothes, is there a violation that a restaurant is sending employees home to wash clothes, forcing them to clock out but not providing uniforms.
- Exemptions:
  - What do they mean? What is the discretion that they get? What does that clearly look like? What is justified as dismissal?
  - Feels like loopholes
  - Common to go home early when slow, etc. This ordinance was supposed to help that, won't with these loopholes.
  - Regulations primary purpose how the law in its general terms is applied to nuanced situations. But that doesn't include exceptions and the exceptions are problematic.
  - Part time isn't treated the same as full time. And part time are the folks who need this the most.
  - I get the exemptions for the employer but they get the benefits. This ordinance was supposed to be there for protecting employees. And with the exemptions, I don't know the point.
- There should be an acceptance in writing. (5-39.04.B, C, D)

### **Offer of Work to Existing Employees – 5-39.05**

- Provide examples of ways to keep employees working:
  - Cross training example: Make sure that the full time employees are cross trained first. 2-3 hours on a set day, after FT is trained then the PT is trained.
  - Examples of cross trained: Sales Associate to go on the floor to know where everything is. Framers are trained as sales associates. Sales associates are trained as framers. Is cross training required or is it volunteer? Voluntary. Is it specific skill sets or task? General.
- Useful for the employee and employer to get help when one dept. is slow and the other is busy. But if there is one dept. who is hiring, the store has employees in house who have the skills to take on that job.
- Will be good to provide examples specific for fast food restaurants as well.
- Take out sentence about offering work hours to part time discretion.
  - And then instead offer to everyone and discretion around process. (5-39.05.B)

- Concern: complications with favoritism and giving hours out.
- Understanding is that they need to post a public posting of hours?
  - Not clear in regulations
  - Another understanding is to post the opportunity to everyone, not just one. Once you post the employee publicly, employer can create system to select an employee but giving the opportunity to one person is not consistent to the ordinance.
- Context: Folks who have been there the longest rarely get more hours and what they do instead is hiring more people who have more flexibility in their schedule. This is the common practice within retail and fast food. Want to make sure there are conversations with employers about this. This would be the change in their business model. Employers believe it is in their interest to employ a large pool of employees who are desperate for hours. If you have lots of people who are part time, it is more likely you will get someone to cover with just a few hours' notice.

#### **Right to Rest/"Clopening" – 5-39.06**

- There should be an acceptance in writing.

#### **Right to Request a Flexible Working Arrangement – 5-39.07**

- Retaliation:
  - Hard for to know how long a complaint can take. If one person files complaint and then gets fired, people will find out and have a very chilling impact on any other complaints E-ville could receive (implication could be no more complaints coming in).
  - City should have a strong emphasis on consequences for retaliation on workers. It doesn't seem like those consequences are real for retaliation, intimidation.

#### **Notice and Posting – 5-39.08**

- No specific feedback

#### **Implementation – 5-39.09**

- Need for transparency on how workers can bring up complaints.
  - What is the process, who do they call?
- What is the delegation process and how much of that is transparent for the employee?
- Is there a Spanish speaking process?
- Clarity on what it means by "anonymous"
- Clarify process for handling an investigation and how retaliation and intimidation is assessed.
  - Concern around confidentiality in process.
- Add procedure for both employee and employer enforcement. Is there more education and meetings for employers to know what these processes are looking like?

- Suggestion: Wall to Wall investigations:
  - If you receive a complaint from one worker, traditionally that complaint is the tip of the iceberg and other employees have experienced similar issues. Instead of investigating that one complaint, you investigate all employees under one similar period. It ensures the right to being enforced without feeling alone in bringing up the complaint in the first place, mitigates retaliation against one particular employee.
- Suggestion: Selecting a Representative:
  - Orgs like ACCE and EBASE can play supportive role in complaint process. If person files complaint and designates ACCE as representative and advocate, it could provide an additional person to support employee in follow up and understanding next steps.

### **Enforcement – 5-39.10**

- Suggestion: Craft template for employer:
  - Provide records, etc. code provision, period you want record for, etc – send to manager w/ deadline and get them to follow up on compliance issue in question. This can be the next step after the complaint is received.
  - Presentation of non-compliance would be if an employer receives complaint letter and doesn't do anything (outside request for more time, for example).