

AN ORDINANCE TO AMEND CHAPTER 35 OF THE CITY CODE TO ENSURE EMPLOYEES IN RETAIL, HOSPITALITY, AND FOOD SERVICES ESTABLISHMENTS ARE PROVIDED ADVANCE NOTICE OF THEIR WORK SCHEDULES; COMPENSATION FOR LATE CHANGES TO THEIR WORK SCHEDULES; RIGHT TO REST BETWEEN WORK SHIFTS; AND FIRST-RIGHT OF REFUSAL FOR ADDITIONAL WORK SHIFTS

#0343

Sponsor:

**Council
Member
Darby**

WHEREAS, City Charter § 1-101 states that the “city shall have and exercise all express and implied powers and authority of local self-government and home rule, which, under the Delaware Constitution, it would be competent for the General Assembly to grant to the city by specific enumeration and which are not denied by general statute; and the city shall have complete powers of legislation and administration in relation to its municipal functions”; and

WHEREAS, as affirmed in *Gage v. Wilmington*, 293 A.2d 555, 557 (Del. 1972), the City of Wilmington is imbued with “broad police powers” to enact ordinances that do not conflict with Delaware law; and

WHEREAS, the Delaware General Assembly has not preempted the City in Title 19 or Chapter 85 of Title 29 of the Delaware Code from enacting employment laws governing private businesses; and

WHEREAS, as the Delaware Supreme Court noted in *City of Lewes v. Nepa*, 212 A.3d 270, 279 & n.36 (Del. 2019), an express or implied conflict does not arise when a municipal law concerns the same subject matter as a Delaware statute but is not otherwise inconsistent with, nor hinders the objective of, the Delaware statute; and

WHEREAS, 22 *Del. C.* § 802 states that the “grant of power does not include the power to enact private or civil law governing civil relationships except as an incident to an exercise of an independent municipal power”; and

WHEREAS, the City’s police power utilized to protect and preserve the public health,

safety, morals, and welfare is such an independent municipal power; and

WHEREAS, as noted in *Federman v. Bank of America*, 2014 U.S. Dist. LEXIS 175565, at *36 (D.N.J. Dec. 16, 2014) and *RUI One Corp. v. City of Berkeley*, 371 F.3d 1137, 1150 (9th Cir. 2004), both relying on *Metro. Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 756 (1985), states and municipalities possess the ability to regulate conditions of the employment relationship pursuant to the police power; and

WHEREAS, as stated in *Tucker v. Crawford*, 315 A.2d 737, 741 (Del. Super. 1974) (citing *McBriety v. City of Baltimore*, 148 A.2d 408 (Md. 1959)), the City is presumed to possess complete knowledge of the conditions within its jurisdiction and its pursuit of reasonable regulation to promote public interest is similarly presumed valid; and

WHEREAS, at times, retail, food, and hospitality employers with two hundred and fifty (250) or more employees within City limits are not providing adequate notice of shift changes, ability to rest between shifts, and the right for productive current employees to acquire more shifts before new employees are hired; and

WHEREAS, at times, the lack of employer oversight results in City residents who are underpaid and overworked; and

WHEREAS, at times, the lack of employer oversight results in City residents who are unable to schedule their personal lives around their work schedules or are perpetually on-call employees; and

WHEREAS, at times, employees suffer financially because of the current lack of advance notice for shifts and lack of compensation for late notice, requiring the employee to either agree to the employer's demands, sign up for less shifts, or be fired; and

WHEREAS, City Charter § 1-101 states that the "city shall have the power to enact ordinances and to make rules and regulations necessary and proper for carrying into execution

of any of its express or implied powers; and such ordinances, rules and regulations may be made enforceable by the imposition of fines, forfeitures, penalties and imprisonment.”; and

WHEREAS, City Council believes the imposition of fines is appropriate here; and

WHEREAS, in light of the foregoing, City Council deems it necessary and appropriate to amend Chapter 35 of the City Code to ensure employees in retail, hospitality, and food services establishments are provided advance notice of their work schedules, compensation for late changes to their work schedules, right to rest between work shifts, and first-right of refusal for additional work shifts.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON
HEREBY ORDAINS:**

SECTION 1. Chapter 35 (“Human Rights”) of the City Code is hereby amended by adding a new article, Article VI, and the underlined language to read as follows:

Article VI. – RIGHT TO A FAIR WORKWEEK

Sec. 35-169. – Definitions.

For the purpose of this Article, the following terms and phrases shall have the following meanings:

- (a) Chain. 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.
- (b) Commission. The governing body who shall enforce this Article, as defined in § 35-178 of this Article.
- (c) Covered Employer. For purposes of this Article, limited to an Employer that is: A Retail Establishment, a Hospitality Establishment or a Food Services Establishment as defined in this section, that employs two hundred and fifty (250) or more employees and has thirty (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 two hundred and fifty (250) employees in the aggregate. In determining the number of employees for purposes of this subsection, all employees performing work for

compensation on a full-time, part-time or temporary basis shall be counted, provided that where the number of employees who work for an employer for compensation fluctuates, business size may be determined for the current calendar year based upon the average number of employees who worked for compensation per week during the preceding calendar year. Further, in determining the number of employees in a chain, the total number of employees in that group of establishments shall be counted. As defined in this section, covered employers shall submit confirmation of their employee and location statistics to the City when the covered employer submits its City business license application pursuant to Wilm. C. § 5-41.

- (d) *Employee.* Any person employed or permitted to work at or for a covered employer within the geographic boundaries of the City of Wilmington, Delaware, who is required under state or federal law to be paid at an overtime rate for hours in excess of a maximum number per Work Week; including but not limited to full-time employees, part-time employees, and seasonal and temporary workers. The person's job duties must involve the provision of retail trade services, food services or hospitality services at a covered employer. An alleged employer bears the burden of proof that the individual is, under applicable law, an independent contractor rather than an employee of the alleged employer.
- (e) *Employer.* 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.
- (f) *Food Services Establishment.* An establishment that prepares meals, snacks, or beverages for customers' immediate on-premises or off-premises consumption, including, but not limited to, a: food services contractor; caterer; mobile food service; drinking place (alcoholic beverages); full-service restaurant; limited-service restaurant; cafeteria, grill buffet, or buffet; or snack and nonalcoholic beverage bar.
- (g) *Hospitality Establishment.* An establishment primarily engaged in providing short-term lodging in facilities known as hotels, motor hotels, resort hotels, and motels.
- (h) *On-Call Shift.* Any time that an employer requires an employee to be available to work and the employee must be available to contact the employer or the employer's designee to determine whether the employee must report to work at that time, or the employee must be available to be contacted by the employer or its designee.
- (i) *Posted Work Schedule.* The written work schedule that an employer must provide to employees under § 35-170 no later than fourteen (14) days before the first day of any new schedule.
- (j) *Predictability Pay.* An employee's regular hourly rate of pay, which shall not be less than the minimum wage rate outlined in 19 Del. C. § 902(a), paid to an employee as compensation for changes made by the employer to an employee's Work Schedule, in addition to any wages earned for work performed by that employee. For employees

who work in occupations where gratuities customarily constitute part of the employee's wages, the employee's regular hourly rate of pay shall also be set as outlined in 19 Del. C. § 902(b).

- (k) Retail Establishment. The fixed point-of-sale location of a business that sells goods to individual customers.
- (l) Shift. The consecutive hours an employer requires an employee to work or to be on-call to work, provided that breaks totaling two (2) hours or less shall not be considered an interruption of consecutive hours.
- (m) Successor. Any person to whom an employer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys in bulk, and not in the ordinary course of the employer's business, a major part of the property, whether real or personal, tangible or intangible, of the employer's business. For purposes of this definition, "person" means an individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, corporation, business trust, partnership, limited liability partnership, company, joint stock company, limited liability company, association, joint venture, or any other legal or commercial entity.
- (n) Ticketed event. A sporting, entertainment, civic, charitable, or other event that requires a ticket for admission. The ticket may be electronic, physical or a name on a list held by the event organizer.
- (o) Tipped Employee. An employee who customarily and regularly receives more than fifty dollars (\$50) a month in tips from the same employment.
- (p) Work Schedule. All of an employee's regular and on-call shifts, including specific start and end times for each shift, during a Work Week.
- (q) Written Communication. Communication by print or electronic means, including email, text messages, use of scheduling applications, or other forms of communication that can be saved in their original format.
- (r) Work Week. A period of seven (7) consecutive days beginning on any designated day.

Sec. 35-170. – Advance Notice of Work Schedules.

- (a) Estimate at Time of Hire. Upon hiring an employee, a covered employer shall provide such employee with a written, good faith estimate of the employee's work schedule. The employer shall revise the good faith estimate when there is a substantive change to the employee's work schedule due to changes in the employee's availability or to the employer's business needs.

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. The employer is

encouraged to engage in an interactive process to discuss such employee requests, but may grant or deny the request for any lawful reason. The good faith estimate shall contain: (1) the average number of work hours the employee can expect to work each week over a typical 90-day period; (2) whether the employee can expect to work any on-call shifts; and (3) a subset of days and a subset of times or shifts that the employee can typically expect to work, or days of the week and times or shifts on which the employee will not be scheduled to work.

- (b) Advanced Notice of Schedule. On or before the commencement of employment, a covered employer shall also provide the employee with a written work schedule that runs through the last date of the currently posted schedule. Thereafter, an employer shall provide written notice of work hours.

Written notice of the Work Schedule shall be provided in a conspicuous and accessible location where employee notices are customarily posted. If the employer posts the notice in electronic format, all employees in the workplace must have access to it on-site. The Posted Work Schedule shall include the employees' shifts at that worksite, whether or not they are scheduled to work or be on-call that week, and shall be posted no later than fourteen (14) days before the first day of any new schedule.

Nothing in this subsection shall be construed to prohibit an employer from providing greater advance notice of employee's work schedules or changes in schedules than that required by this Article.

A covered employer shall provide notice of any proposed changes to the work schedule as promptly as possible and prior to the change taking effect. The covered employer must revise the written work schedule to reflect any changes within twenty-four (24) hours of making the change.

- (c) Declining a Change. An employee may decline to work any hours or additional shifts not included in the Posted Work Schedule. If the employee voluntarily consents to work such hours, such consent must be recorded by written communication.
- (d) Employee Scheduling Requests. At the time of hire and during employment, the employee has the right to make work schedule requests. The requests protected under this Article include, but are not limited to:

- (1) Requests not to be scheduled for work shifts during certain days or times or at certain locations,
- (2) Requests not to work on-call shifts,
- (3) Requests for certain hours, days, or locations of work, or
- (4) Requests for more or fewer work hours.

This subsection shall not be read to prevent an employer from declining such work schedule requests.

Sec. 35-171. – Compensation for Late Changed Work Schedules.

- (a) Compensation. For each employer-initiated change to the posted work schedule that occurs after the advance notice required in § 35-170, a covered employer shall pay an employee Predictability Pay at the following rates, in addition to the employee’s regular pay for hours actually worked by the employee:
- (1) One (1) hour of predictability pay when the covered employer adds time to a work shift or changes the date or time or location of a work shift, with no loss of hours.
 - (2) One-half (1/2) of an hour of predictability pay for any scheduled hours the employee does not work for the following reasons:
 - (i) Hours are subtracted from a regular or on-call shift, or
 - (ii) A regular or on-call shift is cancelled.
- (b) Exceptions. A covered employer is not required to pay predictability pay under this subsection or obtain written consent pursuant to section § 35-170, whenever:
- (1) An employee requests a shift change by written communication, including, but not limited to, 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,
 - (2) A schedule change is the result of a mutually agreed-upon shift trade or coverage arrangement between employees, subject to any employer policy regarding required conditions for employees to exchange shifts,
 - (3) The covered employer’s operations cannot begin or continue due to:
 - (i) Threats to the employees or the Employer’s property,
 - (ii) The failure of a public utility or the shutdown of public transportation,
 - (iii) A fire, flood or other natural disaster,
 - (iv) A state of emergency declared by the President of the United States, Governor of Delaware, or Mayor of the City of Wilmington, Delaware, or
 - (v) Severe weather conditions that disrupt transportation or pose a threat to employee safety.

- (4) An employee begins or ends work no more than twenty (20) minutes before or after the scheduled start or end time of the shift,
- (5) An employee volunteers to work additional hours in response to a mass written communication from the employer about the availability of additional hours, provided that the mass communication is only used for additional hours that are the result of another employee being unable to work scheduled hours, and the communication makes clear that accepting such hours is voluntary and the employee has the right to decline such hours,
- (6) Employee hours are subtracted due to termination of employment,
- (7) Changes are made to the posted work schedule within twenty-four (24) hours after the advance notice required in § 35-170,
- (8) The covered employer subtracts hours from an employee's work schedule for disciplinary reasons pursuant to a multi-day suspension, provided the employer documents in writing the incident leading to the disciplinary action,
- (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, after the Employer provides the posted work schedule with the advance notice required by § 35-170. Additional hours due to a change in a ticketed event's duration that fall within this exemption will also be fully exempt from § 35-170(c), or
- (10) A hotel banquet event is scheduled, due to circumstances that are outside the employer's control, after the employer provides the Posted Work Schedule with the advance notice required by § 35-170.

Sec. 35-172. – Right to Rest Between Work Shifts.

- (a) Right to Rest. An employee may decline, without penalty, any work hours that are scheduled or otherwise occur: (1) less than nine (9) hours after the end of the previous day's shift or (2) during the nine (9) hours following the end of a shift that spanned two (2) days. An employee may consent to work such shifts; however, consent must be provided by written communication, either for each such shift or for multiple shifts, and may be revoked by written communication at any time during employment.
- (b) Compensation. A covered employer shall compensate the employee for each instance that the employee works a shift described in the above subsection, in the amount of forty dollars (\$40) for each such shift, in addition to the employee's regular rate of pay.

Sec. 35-173. – Right of First Refusal for Existing Employees.

- (a) Right of First Refusal. 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 subsection, offer work shifts to existing employees.
- (b) Written Notice. The employer shall provide written notice of available work shifts for at least seventy-two (72) hours, unless a shorter period is necessary in order for the work to be timely performed.
- (1) The notice shall be in English and in the primary language(s) of the employees at the particular workplace, posted in a conspicuous location at the workplace that is readily accessible and visible to all employees. The notice shall also be provided electronically to each employee if the covered employer customarily communicates scheduling information in such manner with employees;
 - (2) The notice shall include a description of the position and its required qualifications, the schedule of available shifts, the length of time the employer anticipates requiring coverage of the additional hours, and the process by which employees may notify the employer of their desire to work the offered shifts; and
 - (3) The notice shall also state how the covered employer shall distribute shifts if more than one employee, who a reasonable employer acting in good faith deems qualified to perform the work, has accepted such shifts.
 - (i) A covered employer shall first distribute shifts to employees whose regular workplace is the location where the shifts described in the notice will be worked; or, if no such employee accepts the shifts within the time defined in this subsection and it is a regular practice of the employer to schedule employees across multiple locations, then to employees whose regular workplace is a covered location other than the location where such shifts will be worked. If not a regular practice, offering additional shifts to employees at a different location shall be at the option of the employer; and
 - (ii) The covered employer's system for distribution of hours shall not discriminate on the basis of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity, disability, age, marital or familial status, nor on the basis of family caregiving responsibilities or status as a student.
- (c) Notice at Hire. An employer must notify an employee by written communication of its policy for offering and distributing work shifts under this Section, at the time of hire and within twenty-four (24) hours of any change in the policy, and must post the notice in an accessible location in the workplace. The notice shall state:

- (1) Where employees can access written notices of available work shifts;
 - (2) The process by which employees may notify the employer of their desire to work the available work shifts; and
 - (3) The criteria for distribution of work shifts among qualified and interested employees.
- (d) External Applicants. A covered employer may hire individuals from an external applicant pool or subcontractors to perform the work described if the employer provides notice of available work shifts as required above, and:
- (1) No employee accepts the offer of available work shifts within twenty-four (24) hours of the end of the seventy-two (72) hour posting period,
 - (2) The employees who have accepted the offer of available work shifts are not objectively qualified to perform the work, or
 - (3) Existing employees have accepted a subset of the offered work shifts, in which case the existing employees must be awarded that subset of work shifts, and external applicants may be offered the remaining shifts.
- (e) Premium Rate. This section shall not be construed to require any covered employer to offer employees work hours paid at a premium rate under state or federal law, or to prohibit such Employer from offering such work hours.

Sec. 35-174. – Exercise of Rights Protected; Adverse Action Prohibited.

- (a) Exercise of Rights. It shall be unlawful for an employer or an individual working on behalf of the employer, to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Article.
- (b) Adverse Action. No employer, or individual working on behalf of the employer, shall take any adverse action as to an employee that penalizes such employee for exercising or attempting to exercise any right protected under this Article. Taking an adverse action includes threatening, intimidating, disciplining, discharging, demoting, suspending or harassing an employee; assigning an employee to a lesser position in terms of job classification, job security, or other condition of employment; reducing the hours or pay of an employee or denying the employee additional hours; and discriminating against the employee, including actions or threats related to perceived immigration status or work authorization.

This Section shall also protect an employee from adverse action who mistakenly, but in good faith, alleges violations of this Article.

- (c) Rebuttable Presumption. It shall be considered a rebuttable presumption of adverse action if the employer, or individual working on behalf of the employer, takes an adverse action against an employee within ninety (90) calendar days of the employee's exercise of rights protected in this Article, unless due to disciplinary reasons for just cause. If for disciplinary reasons for just cause, the employer must be able to provide written documents evidencing the incident relating to the employee's discipline.

In the case of seasonal employment that ended before the close of the ninety (90) calendar day period, the presumption also applies if the employer fails to rehire a former employee at the next opportunity for work in the same position.

Sec. 35-175. – Posted Notice of this Article.

Each covered employer shall post and keep posted, in conspicuous and accessible places on the premises of the employer where notices to employees and applicants for employment are customarily posted, a notice, to be prepared or approved by the commission, setting forth the rights and privileges provided under this Article, stating that adverse action against employees for exercising such rights is prohibited, and providing such other information as the commission may require. This notice shall be posted at the employer's expense.

Sec. 35-176. – Employer Records.

- (a) Record Keeping. Covered employers shall keep all records necessary to demonstrate compliance with this Article. Employers shall retain such records for a period of one (1) year. The covered employer shall allow the commission access to employee records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Article.
- (b) Rebuttable Presumption. When an issue arises as to a covered employer's compliance with this Article, if the employer does not maintain or retain adequate records documenting compliance or does not allow the commission reasonable access to such records within thirty (30) days of the commission's request, it shall be a rebuttable presumption that the employer has violated the Article, absent clear and convincing evidence otherwise.
- (c) Employee Request. An employee, in accordance with any rules or regulations of the commission, may submit a written request to a covered employer requesting the employer provide said employee with the employee's work schedules for any previous week for the past one (1) year, including the originally posted and modified versions of the work schedules. The affected employee's request must be reasonable in scope by limiting the request to the records the employee alleges violate this Article.

Sec. 35-177. – Right of Collective Bargaining.

Nothing in this Article 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.

Sec. 35-178. – Labor Commission.

There is hereby established a commission to enforce this chapter.

- (a) Commission Members. The commission shall be comprised of the following seven (7) members: The Mayor’s Chief of Staff, the Director of Human Resources, the Director of Finance, and the City Solicitor, or their designees, as well as one member from each of the following organizations: United Food & Commercial Workers International Union (“UFCW”); Service Employees International Union (“SEIU”); and the Poor People’s Campaign.

Pursuant to City Charter § 3-206, the mayor shall appoint the members of UFCW, SEIU, and the Poor People’s Campaign upon advice and consent of Wilmington City Council. In the event an organization ceases to function, the mayor shall appoint a resident of the City of Wilmington with sufficient experience in employment law or labor disputes upon advice and consent of Wilmington City Council.

- (b) Commission Panel. Only three (3) members of the commission are required to subpoena records or testimony, hold evidentiary hearings, and render decisions on complaints. The Mayor’s Chief of Staff, or their designee, shall be chair of the commission and shall determine which members sit on the panels.

- (c) Authority. The commission is authorized to take such steps as it deems appropriate to resolve complaints and enforce this Article, including, but not limited to, establishing a system to receive complaints regarding non-compliance with this Article, and investigating alleged violations in a timely manner. Upon reasonably reliable information received regarding violations of this Article, the commission may also open an investigation on its own initiative by a majority vote of its members.

The commission is also authorized to promulgate rules of internal governance and regulations in support of this Article which will be adopted after approval by the Administrative Board, as outlined in City Charter § 4-200.

- (d) Meetings. The commission shall meet quarterly unless no complaints have been filed with the commission one (1) week before the scheduled quarterly meeting. The commission may schedule additional meetings as necessary based on the volume of complaints filed.

A quorum of three (3) members must be present for the commission to conduct business at its meetings.

Sec. 35-179. – Complaint & Review Process.

- (a) Standing. An employee alleging a violation of this Article (the “complainant”) has standing to report any suspected violation of this Article to the commission.

- (b) Filing a Complaint. A complainant shall file a complaint with the commission within one (1) year of the date the person knew, or should have known, of the alleged violation. The complaint must explicitly state: (1) the employee's name, (2) the employer's name, (3) the alleged violation of this Article, and (4) the timeframe or dates in which the alleged violations of this Article occurred. The complaint also must attach the employer's records pursuant to § 35-176. However, the complainant is not required to attach the employer's records if the complainant is alleging that the employer refused to hand over those records after the complainant requested those records pursuant to § 35-176.
- (c) Confidentiality. The identity of the complainant shall remain confidential, unless disclosure of such complainant's identity is necessary for resolution of an investigation by the commission, or otherwise required by law.
- (d) Review of Complaint. Upon receiving a complaint alleging a violation of this Article, the commission shall review such complaint and determine if it is necessary that an employer's records be subpoenaed.
- (e) Commission Authority. The commission shall have the power to subpoena records and testimony from any party to a complaint. Such records shall be provided to the commission within thirty (30) days after receipt of the subpoena.
- (f) Evidentiary Hearing. Only a commission panel can conduct an evidentiary hearing; however, the commission panel is not required to hold an evidentiary hearing and may decide the matter based on the documents and sworn testimony submitted to them by both parties, if such submissions provide sufficient evidence, or lack thereof, of the claims. A majority of the commission panel must agree that an evidentiary hearing is necessary. The parties shall be given notice thirty (30) days prior to the scheduled evidentiary hearing. The parties will be expected to notify any witnesses they wish to be present at the evidentiary hearing of the hearing date.
 - (1) The hearing shall proceed as follows: (1) complainant's brief statement of the reason(s) they are filed the complaint and view of the matter, (2) the employer's, or its representative's, brief statement of their view of the matter, (3) complainant will then provide their testimony, witnesses, and documentary proof, and finally (4) the employer, or its representative, will provide their testimony, witnesses, and documentary proof. The Delaware Rules of Evidence shall not apply.
 - (2) After both sides have presented their evidence, the commission panel will retire to a private room to deliberate. In deliberations, the commission panel shall discuss the evidence and arguments presented. After the commission panel has discussed the evidence and arguments, it shall return from deliberations and it will decide, by majority vote, whether it wants to render an oral decision immediately in person after deliberations or render a decision in writing. If a majority of the commission panel decide they would like to issue an oral decision, then it shall vote on whether the complainant has met their burden (by

a preponderance of the evidence). If a majority of the commission panel decide they would like to issue a decision in writing, the commission panel shall announce this intention to the parties and a written decision must be mailed to the parties within fourteen (14) days of the hearing. A majority of the panel must find that the complainant did or did not meet their burden.

Sec. 35-180. – Remedies & Appeal Right

- (a) Fines & Remedies. The commission shall have the power to impose civil fines and other remedies for violation of this Article. Remedies may include reinstatement and full restitution to the employee for lost wages and benefits, including predictability pay required by this Article. The commission may also impose a fine of \$250 for first and second violations, \$500 for second and third violations, \$750 for fourth and fifth violations, and \$1,000 for fifth or greater violations to be paid to the City of Wilmington. A successful complainant shall also be entitled to receive an equal amount to the fine imposed, up to a maximum of \$1,000, as liquidated damages, to be paid by the employer, as well as an award of reasonable attorney’s fees and costs. If a covered employer adversely acts against an employee for any activity protected under this Article, then the commission may fine the covered employer up to \$2,000 per violation.

- (b) Appeal. A complainant or employer shall have seven (7) days from the date the oral or written decision is issued to request an appeal from the commission panel’s decision to the full commission. The commission shall review the appeal on the record before the commission panel. The commission shall not conduct evidentiary hearings. The commission’s decision must be unanimous. If the commission is unable to agree unanimously, then the commission panel’s decision shall stand.

Sec. 35-181. – No Private Cause of Action.

This Article does not create a private cause of action against the city, the commission, or any city employee, elected city official, or any other city entity. This article shall not be construed as creating any private cause of action.

SECTION 2. This Ordinance shall become effective six (6) months after its passage by City Council and approval by the Mayor.

First Reading.....September 7, 2023
Second Reading.....September 7, 2023
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2023.

Mayor

SYNOPSIS: This Ordinance amends Chapter 35 of the City Code to ensure retail, hospitality, and food services establishments with two-hundred and fifty (250) or more employees are providing their employees with advance notice of their work schedules, compensation for late changes to their work schedules, right to rest between work shifts, and first-right of refusal for additional work shifts.

FISCAL IMPACT STATEMENT: Any anticipated fiscal impact is not quantifiable.