



New Predictive Scheduling Laws Impact the Food Service Industry

How technology can help restaurants achieve
compliance with legislative requirements



Employee scheduling is undergoing a significant transformation in the food service industry. On-call scheduling practices, once widely used in the restaurant business to adjust staffing levels to fluctuating demand, are under fire as more states and municipalities across the U.S. pass fair workweek laws. Predictive scheduling legislation is designed to protect workers from last-minute changes to shifts — giving them increased flexibility to arrange childcare, make medical appointments, attend classes, or even work a second job.¹

Schedule fairness regulations are creating new compliance challenges for food service companies, especially those that operate across multiple jurisdictions where the rules may differ. Plus the stakes are high; restaurants in violation of predictive scheduling laws could face tens of millions of dollars in fees, on top of meeting existing labor regulations.² Therefore, finding a way to effectively manage predictive scheduling compliance is critical to avoid stiff penalties and costly lawsuits moving forward.

What is predictive scheduling?

Laws related to predictive scheduling, also called “fair scheduling” and “secure scheduling,” typically include some or many of the following provisions that employers must meet:³

Advance notice: Employees must be given a set amount of advance notice of their schedules; some legislation also requires pre-employment estimates of schedules and minimum hours.

Predictable pay: When an employer makes a last-minute change to an employee’s schedule, the employee must receive specific hours of compensation in addition to time worked.

On-call pay: When an employee must be available to work a shift and wait for or initiate shift confirmation, the employee must be paid for a set number of hours of compensation.

Reporting-time pay: When an employee arrives for a shift and the shift is cancelled, the employee must be paid for a portion of the cancelled shift.

Right to rest: Employees are allowed a set number of hours of rest between shifts, but employees who agree to work within this rest period must be paid at a higher rate.

Split-shift pay: Employees must receive additional pay for any days they are required to work shifts that have a gap between shifts.

Retention pay: Employees must be paid for their availability through a minimum biweekly payment of wages or benefit payments to discourage employers from hiring employees but not offering them sufficient hours.

Right to request: Employees who request a schedule change or flexible hours may do so without fear of retaliation by the employer. Some laws also require employers to grant employee requests because of an employee’s health condition, education or career training, caregiving duties, or other job, unless the employer has a legitimate reason to deny the request.

Full-time work promotion: Qualified employees must be offered additional time before an employer hires additional employees to work these hours.

Part-time parity: Part-time and full-time workers must be treated equally relative to wages, benefit accruals, pay raises, and promotions.

How to prepare for predictive scheduling legislation

The predictive scheduling trend can present challenges to employers in the the food service industry, where flexible scheduling of staff can be critical to successful operations. How can you know how many employees you will need on a specific shift two weeks from now? Customer traffic can change daily, weekly, and monthly depending on a host of factors, from weather and the time of day or year to holidays and events.

In the predictive scheduling world of advance notice rules, varying pay rules, and specific rest rules, manual paper-based scheduling processes can create serious challenges. Managers relying on their gut instincts to determine the right staffing mix two weeks out can lead to costly overstaffing — or understaffing that results in lost business and unhappy customers. There is a strong workforce culture component to consider as well. Having stressed-out employees in an understaffed situation or bored workers in an overstaffed situation can foster employee burnout instead of employee engagement. Providing more predictable schedules can help minimize the potential for employee burnout.

Forgetting to give employees the correct number of rest hours between shifts also creates compliance issues. Using manual processes to adhere to this rest rule could be difficult if an organization has locations across states or municipalities with different “right to rest” requirements. In addition, correctly applying varying pay rules that depend on the situation can be a logistical nightmare and generate compliance concerns.

Workforce management technology, including scheduling tools, can help organizations overcome these challenges and meet predictive scheduling legislative requirements. The technology can project customer traffic fluctuations based on historical data, helping you align employee staffing with demand, while correctly applying varying work rules and pay rules. The result is appropriate staffing that optimizes productivity, supports employee and customer satisfaction, improves labor cost control, and helps minimize compliance risk.

Workforce management technology can project customer traffic fluctuations based on historical data, helping you align employee staffing with demand, as well as correctly apply varying work rules and pay rules.

Forecasting and scheduling technology align staffing to demand

Using an automated forecasting and scheduling solution, managers can project sales and labor needs for each quarter hour. The technology uses historical data such as customer traffic and transactions — as well as sophisticated algorithms — to forecast your business needs and align staffing with demand. It factors in recurring promotions, seasonal trends, irregular patterns, and more. With an accurate forecast of your sales volume by day, the technology can determine your staffing needs for each position in 15-minute increments for the week.

Workforce management technology helps meet predictive scheduling regulations

An automated scheduling solution can use this detailed forecasting information to schedule staff by position and daily time periods for weeks in advance, meeting predictive scheduling advance notice requirements. In addition, rules configured in the scheduling solution can help ensure that rest requirements between and during shifts are met. Punch restrictions at the time clock also can prohibit employees from breaking the rest rules as well as meal and break rules. A solution that integrates forecasting, scheduling, and time and attendance data can further help employers ensure they are meeting predictability pay, on-call pay, reporting-time pay, split-shift pay, and retention-pay rules.

Approval workflows help drive compliance

Predictive scheduling laws require employees' approval of any changes made to their schedule within the determined penalty period. Workforce management technology enables complete automation of the approval process — from proposed schedule change to employee approval to schedule updates to reflect the change. The workflow can also trigger automated notifications to keep all relevant parties informed every step of the way.

*Easy schedule access and swapping and adding of shifts help to **enhance employee engagement and satisfaction.***

Mobile devices provide schedule visibility

With automated scheduling solutions that provide mobile functionality, employees can use their smartphones and other mobile devices to view their schedules weeks in advance — at any time, from any place. Employees also can use mobile devices to request and make shift swaps with other employees, request coverage for a shift, and accept open shifts added to the schedule, helping them maintain work-life balance. The ability to easily access schedules, as well swap and add shifts, helps enhance employee engagement and satisfaction. Geofencing functionality in the mobile application also ensures that employees can punch in and out on a mobile device only when they are at their place of work.



Automation enhances efficiency and transparency

Should an employer need to distribute penalty pay to an employee, workforce management technology can automatically post that pay against the employee's timesheet and have it automatically flow into payroll to alleviate administrative burden and help ensure accuracy. What's more, the technology can send notifications of pay and schedule changes to employees' mobile devices, making it easy for workers to access this information wherever and whenever they need it.

Attestation tools support predictive scheduling compliance

Using the technology's attestation tools makes complying with predictive scheduling regulations easier for employers and assists in meeting the legislation's record-keeping requirements. Employees can use solution self-service features to attest to schedule changes they accepted, as well as to access, review, and approve or reject the accuracy of their timecards, improving enforcement of all wage and hour policies. Employees also can indicate when they punch out if they took their meal break(s), aiding meal and break documentation. A verifiable audit trail helps employers track compliance with all regulations to improve adherence.

Analytics and reporting deliver valuable insights

As employers address predictive scheduling challenges, they need insight into when and how often violations are happening across their organization. Traditional reporting provides a record of these occurrences, but advanced workforce management technologies, including data visualizations and predictive analytics, are even better as they enable employers to spot and get ahead of trends — before they become bigger issues.

Analytics use daily traffic information for individual food service establishments to predict future activity. By providing insight into expected and actual demand, this technology enables managers to schedule employees to meet demand — even helping them identify when employees are available and want to work. With predictive analytics, managers gain clear and immediate visibility into key data and metrics, allowing them to better control overtime, absence, and labor costs. In addition, these powerful capabilities empower business leaders with valuable insights to help them manage budgets, mitigate compliance risk, and increase accountability in individual costs centers.

Employer benefits of predictive scheduling with a workforce management solution

Although some employers in the food service industry may balk at complying with predictive scheduling regulations, there are benefits to compliance. Using forecasting and scheduling technology can help organizations more accurately forecast their labor needs and staffing levels, enabling them to predict wages and better manage labor costs.

By deploying a complete workforce management solution, organizations can avoid the sunk costs related to compliance violations and provide a modern experience for employees and managers. These technology tools enable organizations to incorporate a variety of work shifts, providing flexibility for employees and helping to avoid employee fatigue and burnout, an added bonus of complying with scheduling predictability rules. This is especially beneficial to part-time staff members who want flexibility in accepting shifts and predictable schedules so they also can go to school, plan day care, or work another job.

These predictive scheduling benefits can help attract and retain best-fit employees and improve their engagement and satisfaction, which, ultimately, improves customer satisfaction, positively impacting the bottom line. In an industry known for high turnover, which brings added costs, retaining happy, best-fit employees can reduce overall costs.

Prepare now for the predictive scheduling movement

With on-call scheduling practices questioned and predictive scheduling legislation gaining momentum, employers in the food service industry — and other industries as well — should monitor this shift. Rather than waiting for predictive scheduling laws to be enacted where your organization does business, the best course could be updating your workforce scheduling practices now to avoid potential compliance issues later. No organization wants to be slapped with expensive penalties for noncompliance, especially if this could have been avoided through prudent planning.

Taking a broader view, deploying a workforce management solution that is easily configurable to comply with whatever workplace regulations may be enacted down the road — and choosing a solution that continuously incorporates the latest legislative changes — could be the best way to prepare your organization for the future.

UKG (Ultimate Kronos Group) does not determine an employer's policies and practices. It is the responsibility of each company or organization to determine how to respond and adapt to legislative changes. UKG does not give legal advice or guarantee legal compliance. This white paper is meant to identify the current state of wage and hour compliance laws and that a workforce management solution may help with compliance. Please consult with your legal counsel for advice regarding wage and hour compliance and how your use of UKG products may affect it.

References:

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