

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

BUILDING OWNERS AND MANAGERS	)	
ASSOCIATION OF CHICAGO,	)	
	)	
Plaintiff,	)	
	)	Case No. 19-cv-7212
v.	)	
	)	
THE CITY OF CHICAGO,	)	
	)	
Defendant.	)	

**COMPLAINT**

Plaintiff, Building Owners and Managers Association of Chicago (“BOMA/Chicago”), on behalf of itself, its members and affiliate members, complains of Defendant, City of Chicago (“City”), as follows:

**NATURE OF THE ACTION**

1. On July 24, 2019, the City, a home rule unit under the 1970 Illinois Constitution, enacted the Chicago Fair Workweek Ordinance (“Ordinance”), which requires only certain employers to provide certain categories of new employees with an estimate of work days and hours for the first 90 days of employment, to post work schedules for certain categories of employees 10 days in advance describing every shift during the upcoming calendar week and compensate those employees for any changes, to offer additional shifts to certain categories of existing employees first, and to concede to certain categories of employees the right to either decline work or receive 1.25 times their standard wages for shifts that begin less than 10 hours after the previous day’s shift. The Ordinance also imposes penalties and creates a private right of action for violations of its provisions, and requires parties that enter into collective bargaining agreements after July 1, 2020 to either abide by its provisions or include an explicit written waiver in their agreements.

2. In addition to these detailed requirements, which would otherwise be central issues in collective bargaining negotiations, the Ordinance also excludes a wide group of employers from enforcement of its provisions. Specifically, the Ordinance only applies to employers that employ 100 or more employees (or 250 or more employees for not-for-profit corporations), at least 50 of which must spend the majority of their time at work within Chicago, perform the majority of their work in one of only seven rigidly defined industries, and earn less than or equal to \$50,000 per year or \$26.00 per hour. Moreover, the Ordinance further restricts its application to only those employers who are “primarily engaged in” one of the same seven defined industries: (1) Building Services, (2) Healthcare, (3) Hotels, (4) Manufacturing, (5) Restaurants, (6) Retail, and (7) Warehouse Services.

3. Any employers whose primary work falls outside the strict definitions of those industries set forth in the Ordinance are exempted from following its regulations. Excluded from the applicability of the Ordinance are industries that employ tens of thousands of workers in Chicago, including the industries of construction, banking, finance, telecommunications, professional services, government, education, insurance, printing, and publishing, to name a few.

4. This complaint seeks to enjoin enforcement of the Ordinance on parties to a collective bargaining relationship on the grounds that it violates United States labor policy as set forth in the National Labor Relations Act, that it denies equal protection under the United States Constitution and the Illinois Constitution, and that its enactment exceeded the home rule authority of the City.

#### **JURISDICTION AND VENUE**

5. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331, as this case arises under the National Labor Relations Act, 29 U.S.C. § 151 *et seq.*, and the Fourteenth

Amendment of the United States Constitution, U.S. CONST., amend. XIV, § 1.

6. This Court has supplemental jurisdiction as to BOMA/Chicago's state law claims pursuant to 28 U.S.C. § 1367.

7. Venue is proper in the Northern District of Illinois pursuant to 28 U.S.C. § 1391(b) because both BOMA/Chicago and the City reside in and a substantial portion of the events giving rise to BOMA/Chicago's claims occurred in the Northern District of Illinois.

### **PARTIES**

8. BOMA/Chicago is an Illinois not-for-profit association that represents the interests of its members, comprised of owners and managers of office buildings in the City of Chicago, and its affiliate members, comprised of persons engaged, *inter alia*, in the business of providing janitorial, security and other building services to commercial office buildings situated in the City of Chicago. BOMA/Chicago's offices are located at 115 South LaSalle Street, Suite 2300, Chicago, Illinois 60603.

9. BOMA/Chicago has standing to bring this action, because (a) essentially all of its non-governmental building owner and manager members and a number of its affiliate service contractor members are threatened by the unlawful obligations imposed by the Ordinance; (b) one of BOMA/Chicago's main purposes is to promote the legal welfare of its members; and (c) neither BOMA/Chicago's claim nor the relief it is requesting requires the participation of its members in this proceeding.

10. The City is a political subdivision of the State of Illinois, a unit of local government established pursuant to, existing under, and subject to the laws of the State of Illinois.

### **FACTUAL ALLEGATIONS**

11. The Chicago City Council enacted the Chicago Fair Workweek Ordinance on July

24, 2019. The Ordinance becomes effective July 1, 2020. (*See* Exh. A hereto).

12. Section 1-25-020 of the Ordinance defines an “Employer” as “a person who . . . (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.”

13. Section 1-25-020 of the Ordinance defines a “Covered Employee” as “an individual who . . . (a) performs work for an employer in the capacity of (i) an employee . . . or (ii) a worker for a day and temporary labor service agency . . . 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.”

14. Section 1-25-020 of the Ordinance defines a “Covered Industry” as “(1) Building Services; (2) Healthcare; (3) Hotels; (4) Manufacturing; (5) Restaurants; (6) Retail; and (7) Warehouse Services.”

15. “Building Services” is defined to mean “the care and maintenance of property, including, but not limited to, janitorial services, building maintenance services, and security services,” but “does not include on-duty police officers or other government officials performing their official duties.”

16. “Healthcare” is defined to mean health care or long-term care services that require one of seven enumerated Illinois licenses, or dialysis services provided by a dialysis facility.

17. “Hotel” carries the definition applied to that term in Section 4-6-180. That Section

defines “Hotel” as “any building or structure kept, used, maintained as, advertised or held out to the public to be an inn, hotel, motel, family hotel, apartment hotel, lodging house, dormitory or other place, where sleeping or rooming accommodations are furnished for hire or rent, and in which seven or more sleeping rooms are used or maintained for the accommodation of guests, lodgers or roomers.” However, the term “Hotel” “shall not include ‘single-room occupancy buildings,’ ‘bed-and-breakfast establishments,’ ‘vacations rentals;’ or ‘shared housing units’ licensed or registered, or required to be licensed or registered, by the city.”

18. “Manufacturing” is defined to mean “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.”

19. “Restaurant” is defined to mean any business licensed to serve food in Chicago “which also has, globally, at least 30 locations and at least 250 employees in the aggregate,” but “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.”

20. “Retail” is defined to mean “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.”

21. “Warehouse Services” is defined to mean “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.”

22. All employers that are not “primarily engaged” in one of the seven industries specifically defined in the Ordinance are not considered Employers under the Ordinance, and therefore the Ordinance does not apply to them.

23. The vast majority of BOMA/Chicago's building owner and manager members and a considerable number of its affiliate service contractor members are "Employers" as defined in Section 1-25-020. The provisions of the Ordinance are therefore likely to be enforced against BOMA/Chicago's members when the Ordinance becomes effective.

24. Section 1-25-040(a) of the Ordinance requires Employers to provide every Covered Employee with a good faith written estimate of projected work days and hours for the first 90 days of employment, including average work hours per week, whether the employee can expect to work any on-call shifts, and a subset of days and times that the employee will or will not be scheduled to work. But for the Ordinance, Employers would not be legally obligated to provide these 90-day estimates.

25. Section 1-25-040(b) of the Ordinance requires Employers to post a work schedule describing every Covered Employee's shifts during a calendar week, including specific start and end times for each shift, no later than 10 days before the first day of any new schedule from July 1, 2020 to June 30, 2022, and no later than 14 days before the first day of any new schedule beginning July 1, 2022. Section 1-25-050(a) of the Ordinance grants Covered Employees the right to decline any previously unscheduled hours that the Employer adds after these deadlines, subject to limited exceptions. Section 1-25-050(b) of the Ordinance requires Employers to compensate Covered Employees at specified rates for adding, subtracting, or changing the date or time of a work shift after these deadlines, subject to limited exceptions. But for the Ordinance, Employers would not be legally obligated to provide these work schedules or make these payments.

26. Section 1-25-060(a) of the Ordinance requires Employers to offer additional shifts of work that arise to existing Covered Employees. If Covered Employees decline, Employers must offer additional shifts of work to temporary or seasonal workers who have worked on behalf of the

Employer for two or more weeks. Section 1-25-060(b)(2) of the Ordinance further provides that Employers must first offer additional hours to part-time Covered Employees “whenever practicable.” But for the Ordinance, Employers would not be legally obligated to distribute additional shifts of work in this manner.

27. Section 1-25-070(a) of the Ordinance provides Covered Employees the right to decline work schedule hours that are less than 10 hours after the end of the previous day’s shift. Section 1-25-070(b) of the Ordinance requires Employers to pay Covered Employees at a rate of 1.25 times their regular rate of pay if a Covered Employee works such a shift. But for the Ordinance, Employers would not be legally obligated to grant this right or make these payments.

28. Section 1-25-100(a) and (b) of the Ordinance provide that it is unlawful for an Employer to discriminate or take any adverse action against a Covered Employee in retaliation for exercising any right under the Ordinance, and will subject the Employer to a \$1,000.00 fine. Section 1-25-130 of the Ordinance provides that an Employer who violates any provision in the Ordinance is subject to a fine of not less than \$300.00 nor more than \$500.00 for each offense. But for the Ordinance, Employers would not be subject to this liability.

29. Section 1-25-140 of the Ordinance provides employees who are subjected to a violation of the Ordinance with a private civil cause of action. Subsection (c) thereto provides that a Covered Employee who prevails in such a civil action is entitled to an award of compensation for damages sustained, including litigation costs, expert witness fees, and reasonable attorney’s fees. But for the Ordinance, this private right of action does not exist and these damages are not mandated.

30. Section 1-25-030 of the Ordinance provides that the Ordinance does not affect the validity or change the terms of bona fide collective bargaining agreements in force on the effective

date of the Ordinance. Section 1-25-030 further provides that, after the effective date, the requirements of the Ordinance 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.” But for the Ordinance, Employers would not be legally obligated to bargain with labor organizations for such a waiver in their collective bargaining agreements. Work schedule issues like the ones addressed in the Ordinance are a central part of collective bargaining negotiations.

31. BOMA/Chicago represents its members in collective bargaining negotiations with labor unions that represent employees in the Building Services industry as that term is defined by the Ordinance. This multi-employer collective bargaining results in collective bargaining agreements with each respective union, signed by BOMA/Chicago, that governs BOMA/Chicago members who choose to be so obligated for non-residential buildings in the Chicago central area (defined as the area West of Lake Michigan bounded by and including Roosevelt Road, Ashland Avenue, and North Avenue). Generally, the duration of those collective bargaining agreements is three years.

32. The Ordinance imposes new and dramatic requirements on BOMA/Chicago members, in their role as employers of Covered Employees, and mandates that BOMA/Chicago bargain with the unions in order to obtain the explicit waiver required to avoid application of the Ordinance. Thus, the effect of the Ordinance is to create a complex series of union-backed proposals, never before requested at the bargaining table, and enable the unions to extract economic or other benefits from BOMA/Chicago and its members that may not have otherwise been subject to collective bargaining negotiations.

33. Three such collective bargaining agreements are currently in effect and each will expire after July 1, 2020, the effective date of the Ordinance. As the bargaining representative for

its members, BOMA/Chicago negotiated and is a signatory to all three collective bargaining agreements. The first collective bargaining agreement expires and will require BOMA/Chicago to renegotiate with a labor union that represents Building Services employees in Spring 2021. The second agreement expires and will require BOMA/Chicago to renegotiate with another labor union that represents Building Services employees in Spring 2022. The third agreement expires and will require BOMA/Chicago to renegotiate with a third labor union that represents Building Services employees in Spring 2023. When each agreement expires, BOMA/Chicago's members will be forced under Section 1-25-030 of the Ordinance to either make concessions to labor representatives for an explicit waiver of the Ordinance's provisions, abide by the Ordinance's preempted and unconstitutional work schedule requirements and restrictions, or face penalties and potential litigation for violating the Ordinance. Whatever path they choose, BOMA/Chicago's members will be irreparably harmed by the Ordinance.

**FIRST CAUSE OF ACTION**

**Declaratory Judgment That the Ordinance is Preempted by the National Labor Relations Act, 29 U.S.C. § 151 *et seq.***

34. BOMA/Chicago realleges and incorporates by reference paragraphs 1 through 33 as if fully set forth herein.

35. Labor relations between Employers, including BOMA/Chicago's members, and Covered Employees are regulated by federal labor laws, including the National Labor Relations Act, 29 U.S.C. § 151 *et seq.* ("NLRA").

36. In enacting the NLRA, Congress chose to enable collective bargaining between employers and the duly chosen representatives of their employees, subject to an extensive and delicately balanced federal regulatory scheme of rights and obligations, as the means of fostering labor-management peace, thereby preserving the free flow of goods in interstate commerce.

37. Under the NLRA, an employer and union must bargain in good faith over terms

and conditions of employment such as hours of work, work shifts, and schedules of workers.

38. Under the NLRA, Congress protected certain conduct, prohibited certain conduct, and left other conduct to the free play of the parties' respective economic forces. In deciding which forms of economic pressure were to be prohibited under the NLRA, as amended, Congress struck a careful balance between labor and management in collective bargaining relationships.

39. State and local regulations are presumptively pre-empted by the NLRA where they concern conduct that Congress intended to be unregulated because Congress left the conduct to be controlled by the free play of economic forces, or where the conduct at issue in the regulations is either protected or prohibited by the NLRA.

40. The Ordinance contravenes, violates, and is preempted by the NLRA, in whole or in part, because it is not a minimum labor standard and therefore concerns conduct that Congress intended to be unregulated and left to the free play of economic forces.

41. The Ordinance contravenes, violates, and is preempted by the NLRA, in whole or in part, because it is not a law of general application in that it applies only to certain occupations in certain industries while excluding others.

42. The Ordinance contravenes, violates, and is preempted by the NLRA, in whole or in part, because it impermissibly imposes an unbalanced state of collective bargaining by establishing detailed and specific terms of employment that would be difficult for unions to bargain for.

43. The Ordinance contravenes, violates, and is preempted by the NLRA, in whole or in part, because it forces parties to either negotiate a specific term in collective bargaining (a waiver of the Ordinance's provisions) or face penalties for failing to abide by the Ordinance's provisions.

44. The Ordinance contravenes, violates, and is preempted by the NLRA, in whole or

in part, because it regulates conduct that Congress intended to be controlled by the free play of economic forces, and thereby affects the collective bargaining process in a way that is incompatible with the general goals and overarching labor relations scheme established by Congress in the NLRA.

45. The Ordinance contravenes, violates, and is preempted by the NLRA, in whole or in part, because it is a direct intrusion by the City of Chicago into the negotiation between Employers and Covered Employees and their representatives concerning substantive and central terms in the collective bargaining process, which infringes on the protections of Section 7 of the NLRA including, but not limited to, the right to bargain collectively through chosen representatives.

46. For these reasons, the Ordinance is preempted by the NLRA and is therefore unconstitutional and unenforceable.

### **SECOND CAUSE OF ACTION**

#### **Declaratory Judgment That the Ordinance Denies Equal Protection in Violation of the Fourteenth Amendment**

47. BOMA/Chicago realleges and incorporates by reference paragraphs 1 through 33 as if fully set forth herein.

48. The Fourteenth Amendment of the United States Constitution prohibits a state or any division thereof from making or enforcing any law that denies any person the “equal protection of the laws.” U.S. CONST., amend. XIV, § 1.

49. The Ordinance arbitrarily, unfairly, and without rational basis distinguishes “Employers” subject to the Ordinance from other classes of employers based on the number and types of employees they have and the industries they are primarily engaged in, making one class of employers subject to obligations under the Ordinance, while excusing all other classes of employers from the same obligations.

50. The Ordinance arbitrarily, unfairly and without rational basis classifies which of the class of “Employers” subject to the Ordinance shall be subject to and which shall be exempt from obligations under the Ordinance based upon such employers’ willingness or agreement to enter into collective bargaining agreements with labor organizations.

51. For these reasons, the Ordinance violates the Fourteenth Amendment of the United States Constitution. U.S. CONST., amend. XIV, § 1.

**THIRD CAUSE OF ACTION**

**Declaratory Judgment That the Ordinance Denies Equal Protection in Violation of Illinois Constitution, art. I, § 2**

52. BOMA/Chicago realleges and incorporates by reference paragraphs 1 through 33 as if fully set forth herein.

53. The Illinois Constitution provides that “no person shall . . . be denied the equal protection of the laws.” IL CONST., art. I, § 2.

54. The Ordinance arbitrarily, unfairly, and without rational basis distinguishes “Employers” subject to the Ordinance from other classes of employers based on the number and types of employees they have and the industries they are primarily engaged in, making one class of employers subject to obligations under the Ordinance, while excusing all other classes of employers from the same obligations.

55. The Ordinance arbitrarily, unfairly and without rational basis classifies which of the class of “Employers” subject to the Ordinance shall be subject to and which shall be exempt from obligations under the Ordinance based upon such employers’ willingness or agreement to enter into collective bargaining agreements with labor organizations.

56. For these reasons, the Ordinance violates the Illinois Constitution and is unenforceable.

**FOURTH CAUSE OF ACTION**

**Declaratory Judgment That the Ordinance Violates the City's Home Rule Authority Under Illinois Constitution, art. VII, § 6(a)**

57. BOMA/Chicago realleges and incorporates by reference paragraphs 1 through 33 as if fully set forth herein.

58. The Illinois Constitution authorizes a local home rule unit to legislate only on matters that pertain to local government or affairs. IL CONST., art. VII, § 6(a). An ordinance enacted by a local home rule unit, such as the City of Chicago, relating to a matter pertaining to statewide or national concerns exceeds the scope of authority granted by the Illinois Constitution.

59. The Ordinance violates the Illinois Constitution's home rule authority by regulating employment terms and conditions, matters traditionally and properly considered to be of state and federal rather than local government concern.

60. The Ordinance violates the Illinois Constitution's home rule authority by creating a private right of action in state court and setting specific damages, including litigation costs, expert witness fees, and reasonable attorney's fees, thereby imposing a burden on the uniform State of Illinois judicial system set forth in IL CONST., art. VI.

61. For these reasons, the Ordinance violates the Illinois Constitution and is unenforceable.

**RELIEF REQUESTED**

WHEREFORE, BOMA/Chicago prays for judgment:

- (a) declaring that the Chicago Fair Workweek Ordinance is preempted by the NLRA;
- (b) declaring that the Chicago Fair Workweek Ordinance violates BOMA/Chicago's members' rights to equal protection under the Fourteenth Amendment of the United States Constitution;
- (c) declaring that the Chicago Fair Workweek Ordinance violates BOMA/Chicago's members' rights to equal protection under the Illinois Constitution;

- (d) declaring that the Chicago Fair Workweek Ordinance violates the City of Chicago's home rule authority under the Illinois Constitution;
- (e) enjoining the City of Chicago from enforcing the Chicago Fair Workweek Ordinance against BOMA/Chicago's members; and
- (f) awarding BOMA/Chicago its costs, including its reasonable attorney's fees, together with such other relief as the Court deems just and equitable.

Dated: November 1, 2019

/s/ Jack Carriglio

One of the Attorneys for BOMA/Chicago

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