

Article 4

Title: Pennsylvania Commonwealth Court to Consider Two Challenges to Philadelphia's Fair Workweek Law

Brief Overview: Employers within the City of Philadelphia in the retail, food service and hospitality industries are by now well-acquainted with the Philadelphia Fair Workweek Ordinance (Fair Workweek Law).

The Fair Workweek Law went into effect on April 1, 2020, and requires "Covered Employers," to provide predictable scheduling to employees in the form of "good faith estimates" of work hours. The fines and penalties for non-compliance can be steep, with certain violations resulting in over \$1,000 in penalties per violation per "impacted employee."

Currently, two Philadelphia employers are asking the Commonwealth Court to invalidate the Fair Workweek Law on the grounds that 1) the Fair Workweek Law exceeds the City of Philadelphia's power and authority under the Home Rule Act, and 2) the Fair Workweek Law imposes excessive fines and penalties in contravention of the United States Constitution and the Constitution of Pennsylvania.

Full Article: Employers within the City of Philadelphia in the retail, food service and hospitality industries are by now well-acquainted with the Philadelphia Fair Workweek Ordinance, Phila. Code §§ 9-4601 to 9-4611 (Fair Workweek Law). The Fair Workweek Law went into effect on April 1, 2020, and requires "Covered Employers," which the law defines as employers with over 30 locations worldwide and 250 employees, to provide predictable scheduling to employees in the form of "good faith estimates" of work hours, posting work schedules at least fourteen (14) days in advance, offering available work hours to current employees and providing predictability payments for employer-initiated scheduling changes, amongst other requirements. The fines and penalties for non-compliance can be steep, with certain violations resulting in over \$1,000 in penalties per violation per "impacted employee."

Currently, two Philadelphia employers, GSRH Wings PA, LLC, and Five Below, Inc. (collectively, "Appellants"), have been hit with class action claims under the Fair Workweek Law, are asking the Commonwealth Court to invalidate the Fair Workweek Law on similar grounds:

the Fair Workweek Law exceeds the City of Philadelphia's authority under the Pennsylvania First-Class Cities Home Rule Act, 53 P.S. §§ 13101 to 13157 (Home Rule Act); and

the Fair Workweek Law imposes excessive penalties and fines in contravention of the Home Rule Act and the Constitutions of the United States and the Commonwealth of Pennsylvania.[1]

Challenges to the Definition of "Covered Employer"

According to the Appellants, the Home Rule Act limits the City of Philadelphia from exercising its authority beyond the city's limits. Both Appellants challenge the Fair Workweek Law's definition of "Covered Employer" on the basis that it permits the City of Philadelphia to reach beyond its borders to investigate the total number of locations worldwide to determine whether the Fair Workweek Law's 30-location and 250-employee thresholds are met. Because neither Appellant operates more than 30 locations within the City of Philadelphia, Appellants both argue that they do not meet the definition of "Covered Employer" under Pennsylvania law.

Furthermore, GSRH Wings PA, LLC, which operates fourteen (14) Wingstop franchises, argues on appeal that the Fair Workweek Law improperly disregards its corporate form. On this point, GSRH Wings PA, LLC, argues that the Fair Workweek Law forces courts to aggregate Wingstop restaurants owned by other corporate entities to bring GSRH Wings PA under the definition of a "Covered Employer."

Challenges to the Fair Workweek Law's Fines and Penalties

The Appellants also challenge the validity of the Fair Workweek Law on the grounds that it assesses fines and penalties that: 1) exceed the Home Rule Act's limitations on remedies, and 2) contravene the bans on excessive fines and penalties under the Eighth Amendment to the United States Constitution and Article I, § 13 of the Pennsylvania Constitution.

According to Appellants, the Home Rule Act permits only the "imposition of fines, forfeitures and penalties, not exceeding two thousand three hundred dollars." 53 P.S. § 13131. Furthermore, the United States and Pennsylvania Constitutions both prohibit the imposition of excessive fines that are grossly disproportional to the gravity of the alleged offense. As such, because a single violation of the Fair Workweek Law could result in fines and penalties exceeding hundreds of thousands of dollars, Appellants argue that the Fair Workweek Law should be invalidated.

Impact on Philadelphia Employers

A ruling in favor of the Appellants by the Commonwealth Court would significantly curtail or eliminate the City of Philadelphia's power and authority to enforce the Fair Workweek Law against employers operating within the City's limits. In the meantime, the City of Philadelphia and private parties continue to initiate Fair Workweek Law actions against employers. Thus, employers should continue to maintain compliance with the Fair Workweek Law's requirements.

Buchanan's Labor and Employment team has substantial experience representing employers in Fair Workweek Law matters and is closely monitoring what impact the appeals at the Commonwealth Court will have on employers within the City of Philadelphia.

[1] The two cases currently on appeal to the Commonwealth Court are: *Simms et al. v. GSRH Wings PA, LLC*, No. 291 C.D. 2025 (Commw. Ct. 2025), and *Rosa v. Five Below, Inc.*, No. 290 C.D. 2025 (Commw. Ct. 2025).

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