
OLR Bill Analysis

sHB 6859

AN ACT CONCERNING PREDICTABLE SCHEDULING.

SUMMARY

This bill generally requires employers in specified sectors (i.e., retail, food service, hospitality, or long-term health care services establishments) with at least 500 employees to pay employees when the employer, without meeting certain notice requirements, (1) cancels or reduces scheduled hours or (2) adds work hours or changes the date, time, or location of a work shift without reducing hours. The bill applies to employees who are paid hourly and not exempt from minimum wage or overtime rules. It allows exceptions to these requirements under certain circumstances, such as when an employee makes a written request for leave; employees mutually agree to swap shifts; or during power outages or a declared state of emergency.

Under the bill, employers must (1) try to schedule existing employees for their desired number of weekly hours before hiring a new employee and (2) pay an existing employee for the hours a newly hired employee works during the existing employee's written availability.

The bill requires that an employer and new employee take certain steps to establish a work schedule, including the employer (1) obtaining the employee's requested schedule and (2) providing an initial schedule estimate. It sets requirements for employers on posting and distributing work schedules for existing employees and giving notice about schedule changes. It also allows an employee to decline to work any hours not included in a posted work schedule or a shift that begins less than 11 hours after the employee's previous shift ended.

The bill specifies that it does not prohibit an employer from adopting scheduling policies that are more favorable to employees than those the

bill requires.

The bill authorizes any person aggrieved by a violation of its provisions to bring a civil action in Superior Court seeking relief for violations including, among other things, compensatory damages and other relief to make the employee or former employee whole. It also authorizes the labor commissioner, the attorney general, or any entity with a member who is aggrieved by a violation to bring a civil action. Additionally, it authorizes \$200 civil penalties to be paid to the labor commissioner for each employee affected by a violation.

Finally, the bill includes whistleblower provisions that allow a person with knowledge of an alleged violation to bring a civil action in court on behalf of the state. It authorizes a whistleblower to seek remedies and penalties equal to those an employer must pay to the labor commissioner, as allowed under the bill.

EFFECTIVE DATE: October 1, 2023

§ 1 — EMPLOYEE AND EMPLOYER DEFINITIONS

Under the bill, an employee is a person paid by the hour who is not exempt from minimum wage and overtime pay rules and is employed in a:

1. “retail establishment,” which is a fixed point of sale location for establishments as defined in the 2022 North American Industry Classification System (NAICS) sectors 4410 to 4599 (e.g., auto dealers, grocery stores, department stores, pharmacies, hardware stores, home furnishing stores, and office supply stores);
2. “food service establishment,” which is a fixed point of service location for food services contractors, caterers, mobile food services, drinking places, full- and limited-service restaurants, cafeterias, grill buffets and buffets, and snack and nonalcoholic beverage bars (NAICS 722);
3. “hospitality establishment,” which is a hotel, motel, or casino hotel (NAICS 721110 and 721120); or

4. “long-term health care services establishment,” which is a long-term health care provider (NAICS 623110) in an occupation the federal Bureau of Labor Statistics’ Standard Occupational Classification System, or a successor system, defines as 31-012 for nursing aides, orderlies, and attendants.

The bill allows the labor commissioner to add other classifications or use subsequent NAICS editions by adopting regulations. It also specifies that an alleged employer bears the burden of proof that an individual is, under applicable law, an independent contractor rather than the employer’s employee.

The bill applies to an employer in an establishment described above that:

1. has at least 500 employees within the U.S. or globally and is an individual, partnership, association, joint stock company, trust, firm, business, nonprofit agency, corporation, limited liability company, or any other entity with employees, including the state and its political subdivisions (it specifically applies to restaurants where food is prepared, served, and consumed on the premises only if the employer has at least 30 restaurant locations in the U.S. or globally); or
2. is a franchisee of a franchise network that, in total, employs at least 500 employees in the U.S. or globally (franchisees include entities authorized under a franchise to use a trademark, tradename, service mark, or other identifying symbol or name, including distributors, wholesalers, and jobbers or retailers).

§ 2 — EMPLOYEE SCHEDULE REQUEST AND EMPLOYER SCHEDULE ESTIMATE

Upon hiring an employee, the bill requires an employer to get a written statement from the employee on his or her desired weekly work hours, including available days and times. The employer must notify the employee that this statement may be modified in writing by the employee at any time during employment.

At the time of hire, an employer must give each employee a written estimate of the employee's work schedule. The employer must revise the estimate when there is a significant change to the employee's work schedule due to changes in the employee's availability or employer's business needs. Under the bill, an estimate made without a basis in good faith violates this requirement.

The work schedule estimate must include the:

1. average, minimum, and maximum number of work hours the employee can expect to work each week;
2. minimum length of shifts that the employee can expect to work; and
3. number of days, amount of time, and number of shifts that the employee can expect to work, plus the days of the week and times or shifts the employee will not be scheduled to work.

Under the bill, an employer does not violate these provisions when an employee's average weekly work hours significantly exceed the number in the written estimate if the employer makes every effort to schedule the employee for the employee's desired number of weekly work hours. (The bill doesn't define "significantly exceed" or "every effort" in this context.)

§ 3 — EMPLOYEE'S WORK SCHEDULE

Under the bill, an employer must give an employee his or her work schedule by the day of the employee's first shift. The schedule must cover the period starting on the date and ending on the last day of the seven-day period covered by the employer-posted work schedule required by the bill (see below). After that, the employer must notify the employee about the employee's work schedule as the bill requires.

Under the bill, a "work schedule" is a written notice of an employee's regular and on-call hours, including specific start and end times for each shift during a consecutive seven-day period.

Posting Work Schedules (§ 3(b))

The bill requires an employer to post a work schedule in a conspicuous place at the workplace at least 14 days before the first day of the schedule's seven-day period. The employer must also distribute the schedule to each employee, which may be by electronic means if that is the regular way of communicating this information to employees. The work schedule must identify all employees currently employed by the employer, whether or not they are scheduled to work any hours in the work schedule.

Notice of Work Schedule Changes (§ 3(c))

Under the bill, an employer must give an employee written notice about a work schedule change as soon as possible and before the change takes effect.

A "work schedule change" is any employer-initiated modification to the employee's work schedule, including: (1) adding or reducing hours; (2) cancelling a work shift or part of a shift; (3) changing the date, time, or location of a shift; or (4) scheduling the employee for an on-call shift for which the employee is subsequently not needed to report to work.

Within 24 hours after changing the work schedule, the employer must revise the posted schedule to reflect the change. An employee may decline to work any hours not included in the original or later versions of the posted schedule. If the employee voluntarily consents to work hours not included in the posted schedule, the consent must be recorded in writing.

Declining Shifts With Less Than 11 Hours Between Shifts (§ 3(d))

The bill allows an employee to decline to work a shift that begins less than 11 hours after the employee's previous shift ended. But if the employee agrees to work the shift, the employee must consent in writing and the employer must pay the employee one and one-half times the employee's regular pay rate for working the shift.

Under the bill, a "shift" is the consecutive hours that an employer schedules an employee to work, excluding breaks of one hour or less. It

includes the hours an employer schedules an employee to be available to work at the employer's request or permission (i.e., "on-call").

Work Schedule Adjustment Requests (§ 3(e))

The bill allows employees to request adjustments or changes to their work schedule, including requests:

1. not to be scheduled for shifts during certain days or times or at certain locations;
2. for certain hours, days, or work locations;
3. for more or fewer work hours; and
4. to be scheduled consistently for a specified or minimum number of weekly work hours.

The employer must engage in an interactive process to discuss the requests and may grant or deny them for any lawful, bona fide business reason.

§ 4 — PAY FOR WORK CANCELLATION AND ADDITIONAL WORK HOURS

The bill generally requires an employer to pay an employee one-half of the employee's regular pay rate for any of the employee's scheduled work hours that the employer cancels or reduces (1) after the employee reports to work for the scheduled hours or (2) less than seven days before the start of the scheduled work hours (i.e., the hours an employee is scheduled to work according to a work schedule).

Also, an employer must generally pay an employee one hour of pay at the employee's regular rate for each instance that the employer, less than seven days before the scheduled work, adds one or more hours of work or changes the date, time, or location of a work shift without a reduction of hours. Under the bill, an employee's "regular rate" of pay includes all remuneration for employment paid to the employee, but it does not include, among other things, (1) sums paid as gifts or (2) irrevocable employer contributions to a plan for providing old-age, retirement, life, accident, health insurance, or similar employee benefits.

Exceptions

Under the bill, an employer does not have to pay an employee for cancelling, reducing, or adding to the employee's scheduled work hours if it was due to:

1. the employee's written request, including requests to use sick, vacation, or other leave provided by the employer;
2. a mutually agreed on shift trade or coverage arrangement between employees, subject to an applicable existing employer policy; or
3. the employer's inability to operate due to (a) a public utility failure or public transportation shutdown; (b) fire, flood, or other natural disaster; or (c) a state of emergency declared by the President or governor.

§ 5 — LIMIT ON HIRING NEW EMPLOYEES

The bill requires an employer, before hiring a new employee, to make every effort to schedule existing employees for their desired number of weekly work hours identified in their written scheduling requests. An employer may hire a new employee if existing employees lack the qualifications needed to perform the duties of the position being filled and cannot obtain them with reasonable training. (It is not clear how these provisions apply to employers that need to hire additional staff because the amount of work exceeds the scheduled capabilities of the current staff.) These conditions apply to an employer that hires from an external applicant pool or through a contractor, including a temporary help service or an employment agency.

Under the bill, this requirement does not require an employer to schedule employees to work hours that would require overtime pay under state or federal law.

If an employer fails to offer existing employees the opportunity to work their desired number of weekly hours before hiring a new employee, the employer must pay the existing employees at their regular hourly rate for any hours the newly hired employee works

during the existing employees' written availability.

§ 6 — RECORDS REQUIREMENT

Under the bill, employers subject to the bill's requirements must, unless exempted by Department of Labor (DOL) regulations (see below), keep true and accurate records for at least three years of each employee's (1) daily and weekly shifts worked and (2) work schedule and schedule revisions.

§ 7 — DOL REGULATIONS

The bill allows the labor commissioner to adopt regulations to implement and enforce the bill's provisions, including a process for the commissioner to address violation complaints.

§ 8 — ENFORCEMENT AND REMEDIES

The bill authorizes any person aggrieved by a violation of the bill, or any entity with a member aggrieved by a violation, to bring a civil action in Superior Court to recover damages, civil penalties, and any equitable and injunctive relief the court deems appropriate. It also authorizes the labor commissioner or the attorney general to pursue civil action for violations.

It authorizes a court to grant employees or former employees the following relief for violations of the bill:

1. compensatory damages and other relief required to make the employee or former employee whole;
2. an order directing compliance with the bill's recordkeeping requirements; and
3. for each violation of specific provisions, an order directing compliance and the monetary penalties shown in the table below.

This relief must be (1) imposed on a per employee and per instance basis for each violation and (2) in addition to, or as an alternative to, any other remedies provided by law.

Table: Work Scheduling Violations and Penalty Amounts

<i>Violation Summary</i>	<i>Bill Section</i>	<i>Amount for Each Violation</i>
Failure to obtain employee schedule request, give employee work schedule estimate, or notify employee that they may modify the schedule request at any time	2	\$200
Failure to provide first work week schedule	3(a)	\$200
Failure to post work schedules 14 days in advance and distribute them to employees	3(b)	\$200
Failure to (1) give written notice about a work schedule change as promptly as possible and before the change takes effect or (2) revise the posted work schedule to reflect these changes within 24 hours	3(c)	\$200
Failure to provide additional pay for (1) cancelling or reducing scheduled hours or (2) adding hours or changing the date, time, or location of a shift without reducing hours	4	\$300, plus any unpaid compensation
Failure to schedule existing employees for their desired number of weekly hours before hiring new employees	5	Greater of \$500 or the employee's actual damages

In addition, the bill requires employers to pay a civil penalty of \$200 to the labor commissioner for each employee affected by a violation of any of the provisions in the above table, during each pay period the violation occurred.

Any individual who prevails in a civil action must also be awarded attorney's fees and costs.

§ 9 — WHISTLEBLOWER AND JUDGMENT PROVISIONS

The bill allows a whistleblower, on behalf of the state, to bring a civil action against an employer who violates any provision of the bill to seek equitable remedies or penalties equal to those an employer must pay to the labor commissioner, as described above.

Under the bill, a "whistleblower" is a person, or their representative, with knowledge of an alleged violation of the bill, regardless of whether the person is aggrieved by the violation. A whistleblower does not

include the state or its representatives.

It allows the state to intervene in a whistleblower action up to 30 days after it has begun. After 30 days, the state may intervene with the court's permission.

At least 30 days before filing the action, the whistleblower must give written notice to the DOL commissioner about the specific provisions that the whistleblower alleges an employer violated. The commissioner may prosecute the action in DOL's name or allow the whistleblower to proceed on the state's behalf.

The bill specifies that the proceeds of any judgment entered in favor of a whistleblower must be distributed as follows: (1) 75% to DOL for enforcement and (2) 25% to the first whistleblower who filed the action. The court must award attorney's fees and the judgment proceeds to a whistleblower who prevails in an action.

If any part of a whistleblower's claim under the bill is (1) ordered or submitted to arbitration or (2) resolved by way of final judgment, settlement, or arbitration in favor of the employee, the employee whistleblower retains standing to recover penalties for violations suffered by the other employees in any forum having jurisdiction over the claim.

The court must review any settlement resulting from civil action filed under the bill and approve it upon determining that the settlement is fair, adequate, reasonable, and in the public interest.

The bill also specifies that (1) the right to bring an action under the bill cannot be impaired by any private contract and (2) an action under the bill must be tried promptly and without regard to concurrent adjudication of private claims.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable

Yea 8 Nay 4 (03/23/2023)