



House of Representatives

General Assembly

File No. 489

January Session, 2023

Substitute House Bill No. 6859

House of Representatives, April 11, 2023

The Committee on Labor and Public Employees reported through REP. SANCHEZ, E. of the 24th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING PREDICTABLE SCHEDULING.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2023*) As used in this section and
2 sections 2 to 8, inclusive, of this act:

3 (1) "Employee" means any person (A) paid on an hourly basis, (B) not
4 exempt from the minimum wage and overtime compensation
5 requirements of the Fair Labor Standards Act of 1938 and the
6 regulations promulgated thereunder, as amended from time to time, (C)
7 suffered or permitted to work by an employer, and (D) employed in an
8 occupation in a retail establishment, food services establishment, a
9 hospitality occupation or a long-term health care services establishment
10 in an occupation defined by the federal Bureau of Labor Statistics
11 Standard Occupational Classification system or any successor system as
12 31-012 for nursing aides, orderlies and attendants. An alleged employer
13 bears the burden of proof that the individual is, under applicable law,
14 an independent contractor rather than an employee of the alleged

15 employer;

16 (2) "Employer" means a retail establishment, a food services
17 establishment, a hospitality establishment or a long-term health care
18 services establishment that is (A) an individual, partnership,
19 association, joint stock company, trust, firm, business, nonprofit agency,
20 corporation, limited liability company or any other entity employing
21 any person, including the state and any political subdivision thereof,
22 that employs not less than five hundred employees within the United
23 States or globally and, for an employer that is a restaurant where food
24 is prepared, served and consumed on the premises, such employer has
25 not less than thirty restaurant locations within the United States or
26 globally, or (B) a franchisee, that is a person to whom a franchise is
27 granted, including a distributor, wholesaler or jobber or retailer who is
28 granted the authority under a franchise to use a trademark, tradename,
29 service mark or other identifying symbol or name, if the network of
30 franchises within the United States or globally employs not less than five
31 hundred employees in the aggregate;

32 (3) "Food services establishment" means the fixed point of service
33 location for food services contractors, caterers, mobile food services,
34 drinking places, full service restaurants, limited service restaurants,
35 cafeterias, grill buffets and buffets and snack and nonalcoholic beverage
36 bars, as defined under Sector 722 of the 2022 North American Industry
37 Classification System, or other classification or subsequent edition of the
38 North American Industry Classification System designated pursuant to
39 regulations adopted by the Labor Commissioner;

40 (4) "Hospitality establishment" means hotel, motel or casino hotel, as
41 defined under Sectors 721110 and 721120 of the 2022 North American
42 Industry Classification System, or other classification or subsequent
43 edition of the North American Industry Classification System
44 designated pursuant to regulations adopted by the Labor
45 Commissioner;

46 (5) "Long-term health care services establishment" means a provider
47 of long-term health care services as defined under Sector 623110 of the

48 2022 North American Industry Classification System, or other
49 classification or subsequent edition of the North American Industry
50 Classification System designated pursuant to regulations adopted by
51 the Labor Commissioner;

52 (6) "Regular rate" has the same meaning as provided in section 31-
53 76b of the general statutes;

54 (7) "Retail establishment" means the fixed point of sale location for an
55 establishment as defined under Sectors 4410 through 4599, inclusive, of
56 the 2022 North American Industry Classification System, or other
57 classification or subsequent edition of the North American Industry
58 Classification System designated pursuant to regulations adopted by
59 the Labor Commissioner;

60 (8) "Scheduled work hours" means the hours an employee is
61 scheduled to work pursuant to a work schedule;

62 (9) "Shift" means the consecutive hours an employer schedules an
63 employee to work, or to be available to report to work at the request or
64 permission of the employer, except a break period of not more than one
65 hour is not considered an interruption of consecutive hours;

66 (10) "Work schedule" means a written notice of an employee's regular
67 and on-call hours, including specific start and end times for each shift,
68 during a consecutive seven-day period;

69 (11) "Work schedule change" means any employer-initiated
70 modification to the employee's work schedule, including (A) the
71 addition or reduction of hours, (B) cancellation of a work shift or portion
72 of a work shift, (C) a change in the date, time or location of a work shift,
73 or (D) scheduling of an employee for an on-call work shift for which the
74 employee does not need to report to work; and

75 (12) "Whistleblower" means a person, or a representative of such
76 person, with knowledge of an alleged violation of sections 2 to 8,
77 inclusive, of this act regardless of whether such person is aggrieved by
78 the violation. "Whistleblower" does not include the state or its

79 representatives.

80 Sec. 2. (NEW) (*Effective October 1, 2023*) (a) Upon the hiring of an
81 employee, an employer shall:

82 (1) Obtain a written statement from the employee of such employee's
83 (A) desired number of weekly work hours, and (B) the days and times
84 such employee is available to work, and inform such employee that such
85 written statement may be modified by the employee at any time; and

86 (2) Provide such employee with a written estimate of the employee's
87 anticipated work hours that contains (A) the average number of work
88 hours the employee can expect to work each week, (B) the minimum
89 and maximum numbers of work hours the employee can expect to work
90 each week, (C) the minimum length of shifts that the employee can
91 expect to work, (D) the number of days, the amount of time and the
92 number of shifts that the employee can expect to work, and (E) the days
93 of the week and times or shifts on which the employee will not be
94 scheduled to work. Any estimate made without a basis in good faith
95 shall be a violation of this subsection. An employer shall revise the
96 written estimate of the employee's work schedule if there is a significant
97 change to such employee's work schedule due to changes in the
98 employee's availability or to the employer's business needs.

99 (b) An employer shall not be in violation of any provision of this
100 section if an employee's average weekly work hours significantly exceed
101 the number provided in the written estimate if the employer makes
102 every effort to schedule the employee for the employee's desired
103 number of weekly work hours.

104 Sec. 3. (NEW) (*Effective October 1, 2023*) (a) Not later than the date of
105 an employee's first shift, an employer shall provide such employee with
106 the employee's work schedule for the period commencing on the date
107 of the employee's first shift and ending on the last date of the seven-day
108 period covered by the work schedule posted by the employer pursuant
109 to subsection (b) of this section. Thereafter, the employer shall notify the
110 employee of the employee's work schedule in accordance with the

111 provisions of subsection (b) of this section.

112 (b) Not later than fourteen days prior to the first date of the seven-
113 day period of any work schedule, an employer shall post the work
114 schedule in a conspicuous place at the workplace and shall distribute
115 such schedule to each employee. Such distribution may be electronic if
116 electronic means are regularly used to communicate scheduling
117 information to such employer's employees. The work schedule shall
118 identify all employees currently employed by the employer, whether or
119 not such employees are scheduled to work any hours or shifts in such
120 work schedule.

121 (c) (1) An employer shall provide an employee with written notice of
122 any change to such employee's work schedule as soon as possible and
123 prior to such change taking effect. Such employer shall revise the posted
124 work schedule to reflect such change not later than twenty-four hours
125 after making such change to the work schedule.

126 (2) An employee may decline to work any hours not included in the
127 original or any subsequent versions of the posted work schedule. If such
128 employee voluntarily consents to work such hours, such consent shall
129 be recorded in writing.

130 (d) An employee may decline to work any shift that begins less than
131 eleven hours after the end of such employee's previous day's shift or
132 during the eleven-hour period following the end of a shift that spanned
133 more than one day. If an employee consents to work such shift, such
134 consent shall be in writing and such employee shall be compensated at
135 one and one-half times the employee's regular rate of pay for any hours
136 worked during the shift for which such employee consented.

137 (e) (1) An employee may request adjustments or changes to such
138 employee's work schedule, including, but not limited to, requests not to
139 be scheduled for work shifts during certain days or times or at certain
140 locations, for certain hours, days or locations of work, for more or fewer
141 work hours and to be scheduled consistently for a specified or minimum
142 number of weekly work hours.

143 (2) An employer shall engage in an interactive process to discuss any
144 employee request for an adjustment or change to such employee's work
145 schedule, and may grant or deny the request for any bona fide business
146 reason that is not unlawful.

147 Sec. 4. (NEW) (*Effective October 1, 2023*) (a) Except as otherwise
148 provided in subsection (b) of this section, an employer shall pay an
149 employee:

150 (1) One hour of pay at the employee's regular rate for each instance
151 that such employer (A) adds one or more hours of work, or (B) changes
152 the date, time or location of a work shift, without a reduction of hours
153 less than seven days prior to the commencement of scheduled work
154 hours; and

155 (2) One-half of the employee's regular rate for any scheduled work
156 hours the employee does not work due to such employer cancelling or
157 reducing the employee's scheduled work hours (A) after the employee
158 reports to work for such scheduled work hours, or (B) less than seven
159 days prior to the commencement of such scheduled work hours.

160 (b) The provisions of subsection (a) of this section shall not apply if
161 the employee's scheduled work hours are changed due to:

162 (1) An employee's written request, including, but not limited to, a
163 request to use sick leave, vacation leave or other leave pursuant to the
164 employer's policy;

165 (2) A mutually agreed-upon shift trade or coverage arrangement
166 between employees, subject to an existing employer policy regarding
167 such shift trade or coverage arrangement; or

168 (3) The inability of an employer's operations to begin or continue due
169 to (A) the failure of a public utility, (B) the shutdown of public
170 transportation, (C) fire, flood or other natural disaster, or (D) an
171 emergency declaration issued by the President of the United States or
172 the Governor.

173 Sec. 5. (NEW) (*Effective October 1, 2023*) (a) (1) Prior to hiring a new
174 employee from an external applicant pool or through a contractor,
175 including a temporary help service or an employment agency, as
176 defined in section 31-129 of the general statutes, an employer shall make
177 every effort to schedule existing employees for such existing employees'
178 desired number of weekly work hours identified in the written
179 statements provided pursuant to section 2 of this act, provided the
180 employer may hire a new employee if existing employees lack, and
181 cannot obtain with reasonable training, the qualifications necessary to
182 perform the duties of the position being filled.

183 (2) If an employer fails to offer existing employees opportunities to
184 work such existing employees' desired number of weekly work hours
185 before hiring a new employee, such employer shall compensate the
186 existing employees at such employees' regular hourly rate for hours
187 worked by a newly hired employee that occurred within the existing
188 employees' written availability.

189 (b) Nothing in this section shall be construed to require any employer
190 to schedule employees to work hours required to be paid at an overtime
191 rate under state or federal law.

192 Sec. 6. (NEW) (*Effective October 1, 2023*) (a) Each employer, subject to
193 the provisions of sections 2 to 5, inclusive, of this act, shall, unless
194 exempted by regulations adopted by the Labor Commissioner pursuant
195 to section 7 of this act, keep a true and accurate record for not less than
196 three years of (1) the shifts worked each day and each week by each of
197 its employees, (2) each employee's work schedule, and (3) any revisions
198 to such work schedule.

199 (b) Nothing in this section shall be construed to prohibit an employer
200 from adopting policies related to employee scheduling that are more
201 favorable to an employee than those required by sections 2 to 5,
202 inclusive, of this act.

203 Sec. 7. (NEW) (*Effective October 1, 2023*) The Labor Commissioner may
204 adopt regulations, in accordance with the provisions of chapter 54 of the

205 general statutes, to implement and enforce the provisions of sections 2
206 to 6, inclusive, of this act, including, but not limited to, a process for the
207 commissioner to address complaints relating to violations of said
208 sections.

209 Sec. 8. (NEW) (*Effective October 1, 2023*) (a) Any person aggrieved by
210 a violation of any of the provisions of sections 2 to 6, inclusive, of this
211 act, the Labor Commissioner, the Attorney General or any entity, a
212 member of which is aggrieved by a violation of said sections, may bring
213 a civil action in the Superior Court to recover damages, civil penalties
214 and such equitable and injunctive relief as the court deems appropriate.
215 Any individual who prevails in such civil action shall be awarded
216 reasonable attorney's fees and costs to be taxed by the court.

217 (b) In the case of a civil action under this section, the Superior Court
218 may grant, in addition to, or as an alternative to, any other remedies
219 provided by law, the following relief to an employee, or former
220 employee, for a violation of any provision of sections 2 to 6, inclusive,
221 of this act:

222 (1) All compensatory damages and other relief required to make the
223 employee or former employee whole;

224 (2) For each violation of the provisions of section 2 of this act, (A) two
225 hundred dollars, and (B) an order directing compliance with said
226 section;

227 (3) For each violation of the provisions of subsections (a) to (c),
228 inclusive, of section 3 of this act, (A) two hundred dollars, and (B) an
229 order directing compliance with said subsections;

230 (4) For each violation of the provisions of section 4 of this act, (A)
231 payment of compensation withheld in violation of said section, (B) three
232 hundred dollars, and (C) an order directing compliance with said
233 section;

234 (5) For each violation of the provisions of section 5 of this act, (A) the
235 greater of five hundred dollars or such employee's actual damages, and

236 (B) an order directing compliance with said section; and

237 (6) An order directing the employer to comply with the
238 recordkeeping requirements of subsection (a) of section 6 of this act.

239 (c) The relief authorized pursuant to subsection (b) of this section
240 shall be imposed on a per-employee and per-instance basis for each
241 violation.

242 (d) An employer that violates a provision of subsections (a) and (b) of
243 section 2 of this act, subsections (a) to (c), inclusive, of section 3 of this
244 act or section 4 or 5 of this act, shall pay a civil penalty of two hundred
245 dollars to the Labor Commissioner for each employee affected by the
246 violation during each pay period the violation occurred.

247 Sec. 9. (NEW) (*Effective October 1, 2023*) (a) (1) A whistleblower may,
248 on behalf of the state, bring a civil action in the Superior Court against
249 an employer who violates any provision of sections 2 to 6, inclusive, of
250 this act to seek equitable remedies or penalties described in subsection
251 (d) of section 8 of this act.

252 (2) The state may intervene in an action brought under this section at
253 any time from the commencement of the action until thirty days after
254 the commencement of the action. After thirty days, the state may
255 intervene with permission from the court.

256 (b) (1) Not less than thirty days before the action is filed, the
257 whistleblower shall give written notice to the Labor Commissioner of
258 the specific provisions of sections 2 to 6, inclusive, of this act that such
259 whistleblower alleges an employer violated.

260 (2) The commissioner may prosecute an action brought under this
261 section in the name of the Labor Department or allow the whistleblower
262 to proceed on behalf of the state.

263 (c) (1) The proceeds of any judgment entered in favor of a
264 whistleblower pursuant to this section shall be distributed as follows:
265 (A) Seventy-five per cent to the department for enforcement of this

266 section, and (B) twenty-five per cent to the first whistleblower who filed
267 the action.

268 (2) In addition to the amount described in subdivision (1) of this
269 subsection, the court shall award reasonable attorney's fees to a
270 whistleblower who prevails in an action brought pursuant to said
271 subdivision.

272 (d) The court shall review and approve any settlement of civil action
273 filed pursuant to this chapter upon determining that such settlement is
274 fair, adequate, reasonable and in the public interest.

275 (e) No private contract shall impair the right to bring an action under
276 this section.

277 (f) An action under this section shall be tried promptly and without
278 regard to concurrent adjudication of private claims.

279 (g) If any part of a whistleblower's claim under this section is ordered
280 or submitted to arbitration or is resolved by way of final judgment,
281 settlement or arbitration in favor of the employee, the employee
282 whistleblower retains standing to recover penalties for violations
283 suffered by the other employees in any forum having jurisdiction over
284 the claim.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2023	New section
Sec. 2	October 1, 2023	New section
Sec. 3	October 1, 2023	New section
Sec. 4	October 1, 2023	New section
Sec. 5	October 1, 2023	New section
Sec. 6	October 1, 2023	New section
Sec. 7	October 1, 2023	New section
Sec. 8	October 1, 2023	New section
Sec. 9	October 1, 2023	New section

Statement of Legislative Commissioners:

In Section 1(3) "section" was replaced with "Sector" for accuracy and statutory consistency, in Section 1(4) "sections" was replaced with "Sectors" for accuracy and statutory consistency, in Section 1(5) "section" was replaced with "Sector" for accuracy and statutory consistency, in Section 1(7) "sections" was replaced with "Sectors" for accuracy and statutory consistency, Section 1(9) was rewritten for clarity, in Section 3(b), "its" was replaced with "such employer's" for clarity and "at the worksite" was replaced with "by the employer" for clarity, in Section 3(e)(1), "or changes" was added after "adjustments" for clarity, Section 4 was reorganized for clarity, Section 8(b) was rewritten for clarity, in Section 8(d), "continued" was replaced with "occurred" for clarity and consistency with standard drafting conventions, and Section 9(e) was rewritten for consistency with standard drafting conventions.

LAB *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 24 \$	FY 25 \$
Labor Dept.	GF - Cost	74,883	99,407
State Comptroller - Fringe Benefits ¹	GF - Cost	28,639	39,140
Labor Dept.	GF - Potential Revenue Gain	Minimal	Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill, which establishes requirements regarding employee scheduling for certain employers, results in a cost to (1) the Department of Labor (DOL) of \$74,883 in FY 24 (partial year cost) and \$99,407 in FY 25 and (2) the State Comptroller- Fringe Benefits account of \$28,639 in FY 24 (partial year cost) and \$39,140 in FY 25, as well as a potential minimal revenue gain to the extent there are violations and therefore civil penalties paid.

In order to accommodate the anticipated workload in administering and enforcing the bill's provisions, DOL would require one Wage Enforcement Agent (\$89,177 for salary and \$38,186 for fringe benefits) along with associated equipment/overhead costs of \$8,000.

The bill allows aggrieved parties, whistleblowers, and other

¹The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 42.82% of payroll in FY 24.

enumerated entities to bring an action in Superior Court over alleged violations. This does not result in any fiscal impact to the state or municipalities. The court system disposes of over 250,000 cases annually and the number of cases is not anticipated to be great enough to need additional resources.

The Out Years

The annualized ongoing cost impact identified above would continue into the future subject to inflation. The ongoing revenue impact identified above you continue in the future subject to the number of violations found.

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

Violation Summary	Bill Section	Amount for Each Violation
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)