



General Assembly

January Session, 2023

Substitute Bill No. 6859



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
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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*