
OLR Bill Analysis

SB 413

AN ACT CONCERNING PREDICTABLE SCHEDULING.

SUMMARY

This bill generally requires employers with at least 500 employees in specified sectors (i.e., retail, food service, hospitality, or long-term health care services establishments) 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, covered 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 covered employers on posting and distributing work schedules for existing employees and giving notice about schedule changes. It also bars an employer from requiring an employee 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 anyone aggrieved by a violation of its provisions to bring a civil action in Superior Court for, among other things, compensatory damages and other relief to make the employee or former employee whole. It also authorizes a collective bargaining agent (union agent) on behalf of an aggrieved person or the labor commissioner 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 someone with knowledge about an alleged violation to bring a civil action in court on the state's behalf. 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. It also specifies that the proceeds of any judgment in favor of a whistleblower must be distributed as follows: (1) 75% to the Department of Labor (DOL) for enforcement and (2) 25% to the whistleblower.

EFFECTIVE DATE: October 1, 2024

§ 1 — COVERED EMPLOYEES AND EMPLOYERS

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’s (NAICS) sectors 441 to 45999 (e.g., 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 to 722515);

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 nursing care facility (NAICS 623110).

The bill allows the labor commissioner to add other classifications or use subsequent NAICS editions by adopting regulations.

Under the bill a “covered employer” is an establishment described above that also:

1. has at least 500 employees within the U.S. or globally and is an individual, partnership, association, joint stock company, trust, or corporation, 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).

§ 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 employer 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 of the first shift 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 scheduled hours, including specific start and end times for each shift or on-call shift during a consecutive seven-day period. An "on-call shift" is the consecutive hours a covered employer schedules an employee to be available to report to work at the employer's request or permission.

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 work schedule. The employer must also distribute the schedule to each employee, which may be by electronic means if that is a regular

way of communicating this information to employees. The work schedule must include 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) & (d))

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 scheduled hours; (2) cancelling a work shift or part of a shift; (3) changing a shift’s date, time, or location; or (4) scheduling the employee for an on-call shift for which the employee does not need to report to work.

Within 24 hours after changing the work schedule, the employer must revise the posted schedule to reflect the change. The bill bans an employer from requiring an employee to work any hours not included in the original or later versions of the posted schedule. But an employee may consent, in writing, to work hours not included in the posted schedule.

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

The bill bars an employer from requiring an employee to work a shift (1) that begins less than 11 hours after the employee’s previous shift ended or (2) during the 11-hour period following the end of a shift that lasted more than a day. 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.

Work Schedule Adjustment Requests (§ 3(f))

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

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

The employer must engage in a collaborative 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 on a work schedule).

Also, an employer must generally pay an employee one additional 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 benefit plan (e.g., for retirement or health insurance).

Exceptions (§ 4(c))

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 generally 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. 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. (It is not clear for how long this requirement to pay existing employees for the hours new employees work will carry on.)

§ 6 — MORE FAVORABLE SCHEDULING POLICIES

The bill specifies that its provisions do not prevent an employer from adopting scheduling policies that are more favorable to the employee than the bill's.

§ 7 — RECORDS REQUIREMENT

Under the bill, employers subject to the bill's requirements must keep true and accurate records for at least three years on each employee's (1) daily and weekly shifts worked and (2) work schedule and schedule revisions.

§ 8 — 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.

§ 9 — ENFORCEMENT AND REMEDIES

The bill authorizes any person aggrieved by a violation of the bill, a collective bargaining agent (union agent) on behalf of the person, or the labor commissioner to bring a civil action in Superior Court to recover damages, civil penalties, and any equitable and injunctive relief the court deems appropriate. Anyone who prevails in civil action must be awarded reasonable attorney's fees and costs.

Under the bill, if an employer alleges that the person bringing the civil action is an independent contractor, the burden of proof is on the employer to show that the person is an independent contractor under law (bill does not specify which law should be used for this test as the definition of independent contractor is different under different labor laws).

The bill authorizes a court to grant employees or former employees the following relief (in addition to, or as an alternative to, other remedies provided in law) 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.

§ 10 — 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 as described above.

Under the bill, a “whistleblower” is a person, or his or her 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.

The bill allows the state to intervene in a whistleblower action up to 30 days after it has begun and with the court's permission after 30 days.

At least 30 days before filing the action, the whistleblower must give the DOL commissioner written notice 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 reasonable 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 (03/19/2024)