



# Senate

General Assembly

**File No. 313**

February Session, 2024

Substitute Senate Bill No. 413

*Senate, April 8, 2024*

The Committee on Labor and Public Employees reported through SEN. KUSHNER of the 24th Dist., Chairperson of the Committee on the part of the Senate, 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, 2024*) As used in this section and  
2 sections 2 to 10, inclusive, of this act:

3 (1) "Employee" means any individual suffered or permitted to work  
4 by a covered employer and who is (A) paid on an hourly basis, (B) not  
5 exempt from the minimum wage and overtime compensation  
6 requirements of the Fair Labor Standards Act of 1938 and the  
7 regulations promulgated thereunder, as amended from time to time,  
8 and (C) employed (i) in an occupation in a retail establishment, food  
9 services establishment or hospitality establishment, or (ii) as a nursing  
10 assistant or orderly, as defined in Sections 31-1131 and 31-1132 of the  
11 federal Bureau of Labor Statistics Standard Occupational Classification  
12 system or any successor system, at a long-term health care services  
13 establishment;

14 (2) "Covered employer" means a retail establishment, a food services  
15 establishment, a hospitality establishment or a long-term health care  
16 services establishment that is (A) an employer that employs not less than  
17 five hundred employees within the United States or globally and, for an  
18 employer that is a restaurant where food is prepared, served and  
19 consumed on the premises, such employer has not less than thirty  
20 restaurant locations within the United States or globally, or (B) a  
21 franchisee that is part of a network of franchises within the United States  
22 or globally that employs not less than five hundred employees in the  
23 aggregate;

24 (3) "Employer" has the same meaning as provided in section 31-71a  
25 of the general statutes;

26 (4) "Franchisee" has the same meaning as provided in section 42-133e  
27 of the general statutes;

28 (5) "Food services establishment" means the fixed point of service  
29 location for food services contractors, caterers, mobile food services,  
30 drinking places, full service restaurants, limited service restaurants,  
31 cafeterias, grill buffets and buffets and snack and nonalcoholic beverage  
32 bars, as defined under Sections 722 to 722515, inclusive, of the 2022  
33 North American Industry Classification System, or other classification  
34 or subsequent edition of the North American Industry Classification  
35 System designated pursuant to regulations adopted by the Labor  
36 Commissioner;

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

43 (7) "Long-term health care services establishment" means a nursing  
44 care facility as defined under Section 623110 of the 2022 North American  
45 Industry Classification System, or other classification or subsequent

46 edition of the North American Industry Classification System  
47 designated pursuant to regulations adopted by the Labor  
48 Commissioner;

49 (8) "Regular rate" has the same meaning as provided in section 31-  
50 76b of the general statutes;

51 (9) "Retail establishment" means the fixed point of sale location for an  
52 establishment as defined under Sections 441 to 45999, inclusive, of the  
53 2022 North American Industry Classification System, or other  
54 classification or subsequent edition of the North American Industry  
55 Classification System designated pursuant to regulations adopted by  
56 the Labor Commissioner;

57 (10) "Scheduled work hours" means the hours an employee is  
58 scheduled to work or be available to work pursuant to a work schedule  
59 provided by a covered employer;

60 (11) "Shift" means the consecutive hours a covered employer  
61 schedules an employee to work;

62 (12) "On-call shift" means the consecutive hours a covered employer  
63 schedules an employee to be available to report to work at the request  
64 or permission of the covered employer;

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

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

74 (15) "Whistleblower" means a person, or a representative of such  
75 person, with knowledge of an alleged violation of sections 2 to 10,

76 inclusive, of this act regardless of whether such person is aggrieved by  
77 the violation. "Whistleblower" does not include the state or its  
78 representatives.

79 Sec. 2. (NEW) (*Effective October 1, 2024*) (a) Whenever a covered  
80 employer hires a new employee, such covered employer shall:

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

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

99 (b) If an employee's average weekly scheduled work hours  
100 significantly exceed the number provided in the written estimate, a  
101 covered employer shall not be in violation of this section if such covered  
102 employer made every effort to schedule the employee for such  
103 employee's desired number of weekly scheduled work hours.

104 Sec. 3. (NEW) (*Effective October 1, 2024*) (a) Not later than the date of  
105 an employee's first scheduled shift, a covered employer shall provide  
106 such employee with the employee's work schedule for the period  
107 commencing on the date of the employee's first scheduled shift and

108 ending on the last date of the seven-day period covered by the work  
109 schedule posted by the covered employer pursuant to subsection (b) of  
110 this section. Thereafter, a covered employer shall provide the employee  
111 such employee's work schedule in accordance with the provisions of  
112 subsection (b) of this section.

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

123 (c) If there is a change in an employee's work schedule, a covered  
124 employer shall (1) provide such employee with notice, in writing, of  
125 such change as soon as possible and prior to such work schedule change  
126 taking effect, and (2) revise the posted work schedule to reflect such  
127 change not later than twenty-four hours after making such change to the  
128 work schedule.

129 (d) No covered employer shall require an employee to work any  
130 hours not included in the original or any subsequent versions of the  
131 posted work schedule. An employee may consent to work any such  
132 hours, provided such consent is in writing.

133 (e) No covered employer shall require an employee to work any shift  
134 that begins less than eleven hours after the end of such employee's  
135 previous day's shift or during the eleven-hour period following the end  
136 of a shift that spanned more than one day. An employee may consent to  
137 work such shift, provided such consent is in writing. If an employee  
138 consents to working such shift, such employee shall be paid  
139 compensation at one and one-half times the employee's regular rate of  
140 pay for the hours worked during such shift.

141 (f) (1) An employee may request adjustments to such employee's  
142 work schedule, including, but not limited to, requests (A) to be  
143 scheduled (i) for certain hours, days or locations of work, (ii) for more  
144 or fewer work hours, or (iii) consistently for a specified or minimum  
145 number of weekly work hours, or (B) to not be scheduled for work shifts  
146 during certain days or times or at certain locations.

147 (2) A covered employer shall engage in a collaborative process to  
148 discuss any employee's request for an adjustment or change to such  
149 employee's work schedule, and may grant or deny the request for any  
150 bona fide business reason that is not unlawful.

151 Sec. 4. (NEW) (*Effective October 1, 2024*) (a) For each instance a covered  
152 employer (1) adds one or more hours of work to an employee's work  
153 schedule, or (2) changes the date, time or location of an employee's shift  
154 without a reduction of hours less than seven days prior to the  
155 commencement of such employee's scheduled shift, such covered  
156 employer shall pay such employee one additional hour of pay at such  
157 employee's regular rate.

158 (b) Any time a covered employer cancels or reduces the scheduled  
159 work hours of an employee's scheduled shift (1) after such employee  
160 reports to work for such scheduled shift, or (2) less than seven days prior  
161 to the commencement of such scheduled shift, such covered employer  
162 shall pay such employee at one-half of such employee's regular rate for  
163 the scheduled work hours of such cancelled shift or for the scheduled  
164 work hours that were reduced for such shift.

165 (c) The provisions of this section shall not apply if a covered employer  
166 changes, reduces or cancels an employee's scheduled work hours due  
167 to:

168 (1) An employee's written request, including, but not limited to, a  
169 request to use sick leave, vacation leave or other leave pursuant to the  
170 covered employer's policy;

171 (2) A mutually agreed upon shift trade or coverage arrangement

172 between employees, subject to an existing covered employer policy  
173 regarding such shift trade or coverage arrangement; or

174 (3) The inability of a covered employer's operations to begin or  
175 continue due to (A) the failure of a public utility, (B) the shutdown of  
176 public transportation, (C) fire, flood or other natural disaster, or (D) an  
177 emergency declaration issued by the President of the United States or  
178 the Governor.

179 Sec. 5. (NEW) (*Effective October 1, 2024*) (a) Prior to hiring a new  
180 employee from an external applicant pool or through a contractor,  
181 including a temporary help service or an employment agency, as  
182 defined in section 31-129 of the general statutes, a covered employer  
183 shall make every effort to schedule such covered employer's current  
184 employees for such current employees' desired number of weekly  
185 scheduled work hours identified in the written statements provided  
186 pursuant to section 2 of this act, provided a covered employer may hire  
187 a new employee if such covered employer's current employees lack, and  
188 cannot obtain with reasonable training, the qualifications necessary to  
189 perform the duties of the position being filled.

190 (b) If a covered employer fails to offer such covered employer's  
191 current employees opportunities to work such current employees'  
192 desired number of weekly scheduled work hours before hiring a new  
193 employee from an external applicant pool or through a contractor, such  
194 covered employer shall compensate such covered employer's current  
195 employees at such current employees' regular hourly rate for hours  
196 worked by a newly hired employee that occurred within a current  
197 employees' desired number of weekly scheduled work hours identified  
198 in the written statement provided pursuant to section 2 of this act.

199 (c) Nothing in this section shall be construed to require any covered  
200 employer to schedule employees to work hours required to be paid at  
201 an overtime rate under state or federal law.

202 Sec. 6. (NEW) (*Effective October 1, 2024*) Nothing in sections 2 to 5,  
203 inclusive, of this act shall be construed to prohibit a covered employer

204 from adopting policies related to employee scheduling that are more  
205 favorable to an employee than those required by sections 2 to 5,  
206 inclusive, of this act.

207 Sec. 7. (NEW) (*Effective October 1, 2024*) Each covered employer,  
208 subject to the provisions of sections 2 to 5, inclusive, of this act, shall  
209 keep and maintain a true and accurate record for not less than three  
210 years of (1) the shifts worked each day and each week by each of its  
211 employees, (2) each employee's work schedule, and (3) any revisions to  
212 such work schedule.

213 Sec. 8. (NEW) (*Effective October 1, 2024*) The Labor Commissioner may  
214 adopt regulations, in accordance with the provisions of chapter 54 of the  
215 general statutes, to implement and enforce the provisions of sections 2  
216 to 5, inclusive, and section 7 of this act, including, but not limited to, a  
217 process for the commissioner to address complaints relating to  
218 violations of said sections 2 to 5, inclusive, and section 7 of this act.

219 Sec. 9. (NEW) (*Effective October 1, 2024*) (a) Any person aggrieved by  
220 a violation of any provision of sections 2 to 5, inclusive, and section 7 of  
221 this act, or a collective bargaining agent on behalf of such person, or the  
222 Labor Commissioner may bring a civil action in the Superior Court to  
223 recover damages, civil penalties and such equitable and injunctive relief  
224 as the court deems appropriate. Any individual who prevails in such  
225 civil action shall be awarded reasonable attorney's fees and costs to be  
226 taxed by the court. Any covered employer alleging an individual  
227 bringing a civil action under this section is an independent contractor  
228 shall bear the burden of proof that such individual is, under applicable  
229 law, an independent contractor rather than an employee of such covered  
230 employer.

231 (b) In the case of a civil action under this section, the Superior Court  
232 may grant, in addition to, or as an alternative to, any other remedies  
233 provided by law, the following relief to an employee, or former  
234 employee, for a violation of any provision of sections 2 to 5, inclusive,  
235 and section 7 of this act:



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

238 (2) An order directing the covered employer to comply with the  
239 recordkeeping requirements of section 7 of this act;

240 (3) For each violation of the provisions of section 3 of this act, (A) two  
241 hundred dollars, and (B) an order directing compliance with said  
242 section;

243 (4) For each violation of the provisions of section 4 of this act, (A)  
244 payment of compensation withheld in violation of said section, (B) three  
245 hundred dollars, and (C) an order directing compliance with said  
246 section;

247 (5) For each violation of the provisions of section 2 of this act, (A) two  
248 hundred dollars, and (B) an order directing compliance with said  
249 section; and

250 (6) For each violation of the provisions of section 5 of this act, (A) the  
251 greater of five hundred dollars or such employee's actual damages, and  
252 (B) an order directing compliance with said section.

253 (c) The relief authorized pursuant to subsection (b) of this section  
254 shall be imposed on a per-employee or per-instance basis for each  
255 violation.

256 (d) A covered employer that violates a provision of section 2 of this  
257 act, subsections (a) to (c), inclusive, of section 3 of this act or section 4 or  
258 5 of this act may be assessed a civil penalty by the court of not more than  
259 two hundred dollars for each employee affected by such violation  
260 during each pay period such violation continued. Any civil penalty  
261 assessed under this subsection shall be paid to the Labor Commissioner.

262 Sec. 10. (NEW) (*Effective October 1, 2024*) (a) (1) A whistleblower may,  
263 on behalf of the state, bring a civil action in the Superior Court against a  
264 covered employer who violates any provision of sections 2 to 5,  
265 inclusive, of this act to seek equitable remedies or penalties described in

266 section 9 of this act.

267 (2) The state may intervene in an action brought under this section at  
268 any time from the commencement of the action until thirty days after  
269 the commencement of the action. After thirty days, the state may  
270 intervene with permission from the court.

271 (b) (1) Not less than thirty days before the action is filed, the  
272 whistleblower shall give written notice to the Labor Commissioner of  
273 the specific provisions of sections 2 to 5, inclusive, of this act that such  
274 whistleblower alleges a covered employer violated.

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

278 (c) (1) The proceeds of any judgment entered in favor of a  
279 whistleblower pursuant to this section shall be distributed as follows:  
280 (A) Seventy-five per cent to the department for enforcement of this  
281 section; and (B) twenty-five per cent to the first whistleblower who filed  
282 the action.

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

287 (d) The court shall review any settlement of civil action filed pursuant  
288 to this chapter. Once the court determines that such settlement is fair,  
289 adequate, reasonable and in the public interest, the court shall approve  
290 such settlement.

291 (e) The right to bring an action under this section shall not be  
292 impaired by any private contract.

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

295 (g) If any part of a whistleblower's claim under this section is ordered  
 296 or submitted to arbitration or is resolved by way of final judgment,  
 297 settlement or arbitration in favor of the employee, the employee  
 298 whistleblower shall retain standing to recover penalties for violations  
 299 suffered by the other employees in any forum having jurisdiction over  
 300 the claim.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2024	New section
Sec. 2	October 1, 2024	New section
Sec. 3	October 1, 2024	New section
Sec. 4	October 1, 2024	New section
Sec. 5	October 1, 2024	New section
Sec. 6	October 1, 2024	New section
Sec. 7	October 1, 2024	New section
Sec. 8	October 1, 2024	New section
Sec. 9	October 1, 2024	New section
Sec. 10	October 1, 2024	New section

**Statement of Legislative Commissioners:**

In Section 1(9), "4413" was changed to "441" for accuracy; in Section 3(a), references to "shift" were changed to "scheduled shift" for clarity and accuracy; in Section 4(a), "scheduled work hours" was changed to "scheduled shift" for clarity and accuracy; in Section 7(a) "and maintain" was inserted after "keep" for consistency with standard drafting conventions; in Section 9(b), in Subdivs. (4), (5) and (6), "said subsection" was changed to "said section" for accuracy; in Section 10, in Subsec. (e), "this section is not" was changed to "this section shall not be" for consistency with standard drafting conventions, and in Subsec. (g), "the employee whistleblower retains" was changed to "the employee whistleblower shall retain" 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 25 \$	FY 26 \$
Labor Dept.	GF - Cost	79,988	101,984
State Comptroller - Fringe Benefits <sup>1</sup>	GF - Cost	29,076	38,768
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 \$79,988 in FY 25 (partial year cost) and \$101,984 in FY 26 and (2) the State Comptroller- Fringe Benefits account of \$29,076 in FY 25 (partial year cost) and \$38,768 in FY 26, 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 (annualized cost of \$93,984 for salary, \$38,768 for fringe benefits, and \$8,000 for equipment/overhead costs).

<sup>1</sup>The 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 41.25% of payroll in FY 25.

The bill allows aggrieved parties, whistleblowers, and other 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 263,000 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 would continue in the future subject to the number of violations found.

**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 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 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)