
Labor & Workplace Standards Committee

HB 1491

Brief Description: Concerning employer and employee scheduling.

Sponsors: Representatives Macri, Lekanoff, Frame, Davis, Fitzgibbon and Cody.

Brief Summary of Bill

- Requires food service, hospitality, and retail establishments with more than 100 employees worldwide to provide employees 14 days' notice of work schedules, compensate employees for schedule changes, grant employee requests for schedule changes under certain conditions, and meet other requirements.
- Requires employers to give access to additional hours to existing employees before hiring externally.
- Provides for administrative remedies and a civil cause of action.

Hearing Date: 2/5/19

Staff: Joan Elgee (786-7106).

Background:

State law does not address when and how workers are scheduled. How much notice an employer gives an employee regarding a schedule change, for example, is up to the employer unless there is a collective bargaining agreement or employment contract that specifies the amount of notice. A number of jurisdictions, including Seattle and Oregon, have enacted scheduling laws.

The Minimum Wage Act covers most employees in the state. Exemptions include some executive, administrative, and professional employees.

To be eligible for unemployment insurance, a claimant who quits work must quit only under "good cause quit" circumstances listed in statute.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Summary of Bill:

Coverage.

Employees covered by the state's Minimum Wage Act who work at a fixed point of sale location are covered by provisions establishing scheduling requirements for certain employers. Covered employers are food service, hospitality, and retail establishments with 100 or more employees worldwide. A restaurant must also have 40 or more locations worldwide.

Establishments include franchises that are associated with a franchisor or network of franchises that employ 100 or more employees in the aggregate.

Requirements.

- *Good Faith Estimate of Work Schedule.* Upon hire, employers must provide employees with a good faith estimate of the employee's work schedule, which must include the expected median hours per week and whether the employee is expected to work on-call shifts. An employer must revise the estimate annually and when there is a significant change to the employee's work schedule.
- *Work Schedule Input.* Employees may identify any limitations or changes in availability, and may request schedule and location preferences. Employers must engage in an interactive process regarding requests not to work certain shifts or at certain locations or preferences for hours or locations of work. If the request is due to a major life event, the employer must grant the request unless the employer has a bona fide business reason for denial. A "major life event" is the employee's change in transportation or housing; or the employee's serious health condition, responsibilities as a caregiver, enrollment in career-related education or training, or other job. An employer may require verifying information from the employee.
- *Rest Between Work Shifts.* Employers may not require employees to work shifts separated by less than 12 hours, and an employee who requests or agrees to work such hours is entitled to one and a half times the regular rate of pay for hours separated by fewer than 12 hours.
- *Advance Notice of Work Schedule.* Employers must provide the work schedule to employees at least 14 days before the first day of the schedule. An employer must post the work schedule in English and the primary languages of all the employees at the workplace and transmit it to each employee. An employer who fails to timely post the work schedule must compensate each employee \$100 for each day the schedule is not posted.
- *Work Schedule Changes.* Employees may decline any schedule changes made by the employer after the advance notice. If the employee requests a change in the schedule after the advance notice, the employer may ask or require the employee to find a replacement as follows:
 - if another law prohibits asking the employee or protects the absence from employer interference, the employer may not ask or require the employee to find a replacement;

- if the reason is an emergency or major life event, an employer may ask but not require the employee to find a replacement; and
 - for other reasons, the employer may require the employee to find a replacement.
- *Compensation for Work Schedule Changes.* For employer requested changes after the advance notice, the employee is entitled to additional compensation as follows:
 - One hour of regular pay for adding hours or changing the date or start or end time of a work shift with no loss of hours, or changing the location.
 - One-half the regular pay for any scheduled hours not worked, including on-call hours not worked.

Exceptions include mutually agreed shift swaps or coverage, employee-requested changes, and when operations close because of a natural disaster.

- *Underscheduling.* An employer may not engage in a pattern or practice of systemic underscheduling in which the total hours actually worked are significantly greater than the hours in the work schedule. Employers must periodically provide data to the Department of Labor and Industries (Department) with aggregate data on discrepancies between hours scheduled and hours worked.
- *Access to Hours for Existing Employees.* Before hiring external employees, including temporary employees, employers must offer additional hours to current employees as follows:
 - Employers must post notice of the available hours for five days and must offer the hours to qualified existing employees. Details of the notice are specified.
 - Employees are not qualified if overtime pay would be required or if other laws would bar the employee from working.
 - The employer must give the employee offered hours at least five days to accept the offer.
 - The priorities for offering shifts to employees are specified.
 - If no employee responds to the notice of additional hours or accepts offered hours within the timeframe specified, or all employees decline hours, the employer may hire externally.

An employer who fails to offer additional hours as required must compensate each employee \$100 for each occurrence. An employer who fails to award hours to a qualified employee must compensate the employee \$1,000.

Enforcement.

- *Administrative Enforcement.* The Department must investigate complaints and may order payment to the employee of unpaid compensation plus interest, statutory damages of twice the unpaid compensation, and payment to the Department of the costs of the investigation and enforcement. A prevailing employee is entitled to attorneys' fees and costs.
- *Civil Penalties.* The Department may also order payment of a civil penalty of not less than the greater of \$1,000 per violation or 10 percent of unpaid wages, up to \$20,000 per aggrieved party. Penalties may be waived the employer pays the full remedy due to employee within 10 days of the final order.

- *Whistleblower Enforcement.* An employee may seek the civil penalties through a civil action on behalf of the Director of the Department and other employees, if the Director after notice decides not to investigate the alleged violation. The process for a whistleblower action is specified. An employee may designate an organization to represent it in the whistleblower proceedings. Penalties are distributed 70 percent to the Director for enforcement and education of employers and employees, and 30 percent to the aggrieved employees. Twenty percent of the Director's share of penalties must be allocated to community-based enforcement partnerships.
- *Private Cause of Action.* An employee or class of employees may bring a civil action for remedies similar to those available in an administrative action.
- *Retaliation.* Retaliation for filing a complaint or taking other action under the provisions is prohibited. Prohibited discrimination includes demoting, reducing hours, and actions or threats relating to perceived immigration status or work authorization. An adverse action against an employee within 90 days of the employee's exercise of rights is presumed retaliatory. If an employer is found to have retaliated, the Director or court must order an additional payment to the employee of up to \$5,000.

Other.

- *Unemployment.* If an employer knowingly fails to comply with the requirements or makes a significant change in the employee's work schedule due to changes in the employer's needs, an employee has good cause to quit for purposes of unemployment insurance.
- *Recordkeeping.* Employers must maintain specified records documenting compliance for three years. A failure to retain adequate records creates a presumption, rebuttable by clear and convincing evidence, that the employer violated the provisions.
- *Rulemaking/Technical Assistance.* The Department must adopt implementing rules and provide technical assistance to employers.

Appropriation: None.

Fiscal Note: Requested on January 30, 2019.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.