



General Assembly

January Session, 2015

Raised Bill No. 6933

LCO No. 4293



Referred to Committee on LABOR AND PUBLIC EMPLOYEES

Introduced by:
(LAB)

AN ACT CONCERNING PREDICTABLE SCHEDULING FOR EMPLOYEES.

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

1 Section 1. Section 31-76b of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2015*):

3 As used in sections 31-76b to 31-76j, inclusive, and sections 2 and 3
4 of this act:

5 (1) The "regular rate" at which an employee is employed shall be
6 deemed to include all remuneration for employment paid to, or on
7 behalf of, the employee, but shall not be deemed to include (A) sums
8 paid as gifts; payments in the nature of gifts made at Christmas time or
9 on other special occasions, as a reward for service, the amounts of
10 which are not measured by or dependent on hours worked,
11 production or efficiency; (B) payments made for occasional periods
12 when no work is performed due to vacation, holiday, illness, failure of
13 the employer to provide sufficient work, or other similar cause;
14 reasonable payments for traveling expenses, or other expenses,

15 incurred by an employee in the furtherance of the employer's interests
16 and properly reimbursable by the employer; and other similar
17 payments to an employee that are not made as compensation for the
18 employee's hours of employment; (C) sums paid in recognition of
19 services performed during a given period if either, (i) both the fact that
20 payment is to be made and the amount of the payment are determined
21 at the sole discretion of the employer at or near the end of the period
22 and not pursuant to any prior contract, agreement or promise causing
23 the employee to expect such payments regularly; (ii) the payments are
24 made pursuant to a bona fide profit-sharing plan or trust or bona fide
25 thrift or savings plan, meeting the approval of the Labor
26 Commissioner who shall give due regard, among other relevant
27 factors, to the extent to which the amounts paid to the employee are
28 determined with regard to hours of work, production or efficiency; (D)
29 contributions irrevocably made by an employer to a trustee or third
30 person pursuant to a bona fide plan for providing old-age, retirement,
31 life, accident or health insurance or similar benefits for employees; (E)
32 extra compensation provided by a premium rate paid for certain hours
33 worked by the employee in any day or workweek because such hours
34 are hours worked in excess of eight in a day or in excess of the
35 maximum workweek applicable to such employee under section 31-
36 76c, as amended by this act, or in excess of the employee's normal
37 working hours or regular working hours, as the case may be; (F) extra
38 compensation provided by a premium rate paid for work by the
39 employee on Saturdays, Sundays, holidays or regular days of rest, or
40 on the sixth or seventh day of the workweek, where such premium
41 rate is not less than one and one-half times the rate established in good
42 faith for like work performed in nonovertime hours on other days; or
43 (G) extra compensation provided by a premium rate paid to the
44 employee, in pursuance of an applicable employment contract or
45 collective-bargaining agreement, for work outside of the hours
46 established in good faith by the contract or agreement as the basic,
47 normal or regular workday, not exceeding the maximum workweek
48 applicable to such employee under section 31-76c, as amended by this

49 act, where such premium rate is not less than one and one-half times
50 the rate established in good faith by the contract or agreement for like
51 work performed during such workday or workweek. For the purpose
52 of calculating the overtime rate of compensation required to be paid to
53 an employee who is (i) employed as a delivery driver or sales
54 merchandiser, (ii) paid on a base salary and commission basis, and (iii)
55 not exempt from the overtime requirements of this chapter, the
56 employee's regular rate shall be one-fortieth of the employee's weekly
57 remuneration;

58 (2) (A) "Hours worked" include all time during which an employee
59 is required by the employer to be on the employer's premises or to be
60 on duty, or to be at the prescribed work place, and all time during
61 which an employee is employed or permitted to work, whether or not
62 required to do so, provided time allowed for meals shall be excluded
63 unless the employee is required or permitted to work. Such time
64 includes, but shall not be limited to, the time when an employee is
65 required to wait on the premises while no work is provided by the
66 employer. (B) All time during which an employee is required to be on
67 call for emergency service at a location designated by the employer
68 shall be considered to be working time and shall be paid for as such,
69 whether or not the employee is actually called upon to work. (C) When
70 an employee is subject to call for emergency service but is not required
71 to be at a location designated by the employer but is simply required
72 to keep the employer informed as to the location at which he or she
73 may be contacted, or when an employee is not specifically required by
74 his or her employer to be subject to call but is contacted by his or her
75 employer or on the employer's authorization directly or indirectly and
76 assigned to duty, working time shall begin when the employee is
77 notified of his or her assignment and shall end when the employee has
78 completed his or her assignment. (D) Notwithstanding the provisions
79 of this subdivision, when an individual employed by a third-party
80 provider to provide "companionship services", as defined in the
81 regulations of the federal Fair Labor Standards Act, is required to be

82 present at a worksite for a period of not less than twenty-four
83 consecutive hours, such individual and his or her employer may agree
84 in writing to exclude a regularly scheduled sleeping period of not
85 more than eight hours from hours worked, provided (i) adequate on-
86 site sleeping facilities are furnished to such individual, and (ii) such
87 individual receives at least five hours of sleep time. If the scheduled
88 sleeping period is more than eight hours, only eight hours will be
89 excluded. If the scheduled sleeping period is interrupted by an
90 assignment to work, the interruption shall be counted as hours
91 worked. If such individual does not receive at least five hours of sleep
92 time during the scheduled sleeping period, the entire sleeping period
93 shall be considered hours worked. The provisions of this
94 subparagraph shall be effective on and after the effective date of the
95 United States Department of Labor's Final Rule concerning the
96 Application of the federal Fair Labor Standards Act to Domestic
97 Service published in the Federal Register of October 1, 2013;

98 (3) "Employee" means employee, as defined in section 31-58; [.]

99 (4) "Employer" means employer as defined in section 31-58;

100 (5) "On-call hours" means any time that an employer requires an
101 employee to (A) be available to work, or (B) contact the employer, or a
102 designee of such employer, or wait to be contacted by such employer
103 or designee, in order to determine whether the employee is required to
104 report to work;

105 (6) "Predictability pay" means additional payments from an
106 employer to an employee at a rate of not less than the regular rate of
107 pay at which such employee is employed as compensation for certain
108 work schedule changes;

109 (7) "Shift" means the consecutive hours an employer requires an
110 employee to work or to be on call to work, provided that a break of
111 one hour or less shall not be considered an interruption of consecutive
112 hours; and

113 (8) "Work schedule" means a written notice of an employee's regular
114 and on-call hours during a consecutive seven-day period.

115 Sec. 2. (NEW) (*Effective October 1, 2015*) (a) An employer shall
116 provide a work schedule to each of the employer's employees not less
117 than twenty-one days prior to the first day of such work schedule,
118 except, in the case of a new employee, the employer shall provide such
119 new employee with work schedules covering such employees' first
120 twenty-one days of employment prior to the commencement of such
121 employee's employment. The employer shall notify an employee of
122 any change in the employee's work schedule prior to such change
123 taking effect and shall provide the employee with a revised work
124 schedule reflecting such changes not more than twenty-four hours
125 after making such change.

126 (b) No employer shall require an employee to work shifts not
127 included in the employee's work schedule without the employee's
128 written consent.

129 (c) An employer shall post a written schedule at each worksite that
130 includes the work schedule, including shifts, off time and leave, of all
131 employees employed at such worksite. Such schedule shall be posted
132 not less than twenty-one days prior to the commencement of the work
133 schedule. Employers may comply with the provisions of this section by
134 displaying such schedule in a conspicuous place, accessible to such
135 employees, at the workplace.

136 (d) No employer shall change an employee's work schedule to begin
137 on a different day of the week unless such employer provides written
138 notice of such change to an employee not less than twenty-one days
139 prior to the commencement of the work schedule in which the
140 employer makes such change.

141 (e) No employer shall require an employee to search for or identify
142 a replacement employee to cover any hours during which an employee
143 is unable to work a scheduled shift.

144 Sec. 3. (NEW) (*Effective October 1, 2015*) (a) If an employer (1) adds
145 hours to, (2) subtracts hours from, (3) cancels, or (4) changes the start
146 time or end time of an employee's shift less than twenty-one days but
147 more than twenty-four hours prior to the commencement of such shift,
148 the employer shall pay the employee one hour of predictability pay, in
149 addition to wages owed, for each shift that is changed pursuant to
150 subdivisions (1) to (4), inclusive, of this subsection.

151 (b) (1) If an employer (A) adds hours to, or (B) changes the start time
152 or end time of an employee's shift less than twenty-four hours prior to
153 the commencement of such shift, the employer shall pay the employee
154 four hours of predictability pay in addition to wages owed, for each
155 shift that is changed pursuant to subparagraph (A) or (B) of this
156 subdivision.

157 (2) If an employer (A) subtracts hours from, or (B) cancels an
158 employee's shift less than twenty-four hours prior to the
159 commencement of such shift, the employer shall pay the employee the
160 lesser of four hours of predictability pay or an amount of predictability
161 pay equal to (i) the number of hours such shift was reduced by, or (ii)
162 the total number of hours in such shift, in addition to wages owed, for
163 each shift that is changed pursuant to subparagraph (A) or (B) of this
164 subdivision.

165 (c) No employer shall require an employee to work a shift, or any
166 portion of such shift, that occurs eleven hours or fewer (1) after the end
167 of a previous shift, or (2) following the end of a shift that began prior
168 to midnight and ended after midnight on consecutive days. An
169 employer shall compensate an employee who works such shift, or any
170 portion of such shift, as specified in subdivision (1) or (2) of this
171 subsection, at a rate not less than one and one-half times the regular
172 rate at which he or she is employed for any shift so worked.

173 (d) The provisions of this section shall not apply to any shift
174 changes made at the request of an employee, including requests to

175 work shifts other than those scheduled by the employer or requests to
176 use sick leave, vacation time, personal days or other leave policies
177 offered by the employer, or as required by law.

178 (e) Nothing in this section shall be construed to prevent an
179 employer from allowing an employee to work in place of another
180 employee who has been scheduled to work a particular shift, provided
181 the change in schedule is mutually agreed upon by such employees
182 and the employer. An employer shall not be subject to the provisions
183 of this section or section 2 of this act for such mutually agreed upon
184 shift trades.

185 Sec. 4. (NEW) (*Effective October 1, 2015*) Any employee aggrieved by
186 a violation of section 2 or 3 of this act may file a complaint with the
187 Labor Commissioner alleging violation of the provisions of said
188 sections. Upon receipt of any such complaint, the commissioner shall
189 hold a hearing. After the hearing, the commissioner shall send each
190 party a written copy of the commissioner's decision. The commissioner
191 may award the employee all appropriate relief, including rehiring or
192 reinstatement to the employee's previous job, payment of back wages
193 or predictability pay, as defined in section 31-76b of the general
194 statutes, as amended by this act, and reestablishment of employee
195 benefits to which the employee otherwise would have been eligible if a
196 violation of this subsection had not occurred. Any party aggrieved by
197 the decision of the commissioner may appeal the decision to the
198 Superior Court in accordance with the provisions of chapter 54 of the
199 general statutes.

200 Sec. 5. (NEW) (*Effective October 1, 2015*) (a) Nothing in section 2 or 3
201 of this act shall be construed to prohibit an employer from adopting
202 policies related to scheduling that are more beneficial to an employee
203 than those required herein.

204 (b) Nothing in section 2 or 3 of this act shall be construed to
205 diminish the obligation of an employer to comply with any contract,

206 collective bargaining agreement, employment benefit plan or other
207 agreement providing policies that are more beneficial to an employee
208 than required herein.

209 (c) The provisions of sections 2 and 3 of this act are severable and, if
210 any provision is determined to contravene state or federal law, the
211 remainder of such provisions shall remain in full force and effect.

212 (d) The Labor Commissioner may adopt regulations, in accordance
213 with chapter 54 of the general statutes, to carry out the provisions of
214 sections 2 and 3 of this act.

215 Sec. 6. Section 31-13a of the general statutes is repealed and the
216 following is substituted in lieu thereof (*Effective October 1, 2015*):

217 With each wage payment each employer shall furnish to each
218 employee in writing a record of hours worked, the gross earnings
219 showing straight time and overtime as separate entries, itemized
220 deductions, including the total number of hours of and the rate of
221 predictability pay, as defined in section 31-76b, as amended by this act,
222 and net earnings, except that the furnishing of a record of hours
223 worked and the separation of straight time and overtime earnings shall
224 not apply in the case of any employee with respect to whom the
225 employer is specifically exempt from the keeping of time records and
226 the payment of overtime under the Connecticut Minimum Wage Act
227 or the Fair Labor Standards Act.

228 Sec. 7. Section 31-66 of the general statutes is repealed and the
229 following is substituted in lieu thereof (*Effective October 1, 2015*):

230 Each employer subject to the provisions of this part, unless
231 exempted by regulation issued by the commissioner or as hereinafter
232 provided, shall keep at the place of employment for a period of three
233 years a true and accurate record of (1) the name, address and
234 occupation of each employee, (2) the shifts, as defined in section 31-
235 76b, as amended by this act, worked each day and each week by each

236 employee, (3) each work schedule, as defined in section 31-76b, as
237 amended by this act, and any revisions to such work schedule, (4) any
238 predictability pay, as defined in section 31-76b, as amended by this act,
239 paid by him or her to each employee, and (5) the hours worked by, and
240 the wages paid by him or her to, each employee, as required by the
241 applicable regulations issued by the Labor Commissioner, and shall
242 furnish to the commissioner or [his] the commissioner's authorized
243 representative, upon demand, a sworn statement of the same provided
244 if the place of employment is designed primarily as an establishment
245 for the housing and use of coin-operated service or vending machines,
246 such records may be kept by the employer in some location approved
247 by the commissioner other than at the place of employment. Such
248 records shall be open to inspection by the commissioner or his or her
249 authorized representative at any reasonable time. Each employer
250 subject to the provisions of this part, unless exempted by regulation
251 issued by the commissioner or as hereinafter provided, shall allow an
252 employee to inspect the records kept under this section pertaining to
253 such employee at a reasonable time and place. An employer who fails
254 to keep true and accurate records or fails to furnish a record in a timely
255 fashion, or who falsifies records required under this section, shall have
256 violated this section and be punished by civil penalties as provided in
257 section 31-69a. Each day there is a failure to keep a record or to furnish
258 a record or other information required for the proper enforcement of
259 this section shall constitute a separate violation under said section.
260 Each employer subject to this part or to a minimum fair wage order
261 shall keep a copy of such order and the regulations issued by the Labor
262 Commissioner posted at the place of employment where it can be read
263 easily by the employees. Employers shall be furnished copies of orders
264 and regulations on request, without charge.

265 Sec. 8. Section 31-76c of the general statutes is repealed and the
266 following is substituted in lieu thereof (*Effective October 1, 2015*):

267 No employer, except as otherwise provided herein, shall employ
268 any of his or her employees for a workweek longer than forty hours,

269 unless such employee receives remuneration for his or her
270 employment in excess of the hours above specified at a rate not less
271 than one and one-half times the regular rate at which he or she is
272 employed. No employer shall employ any of his or her employees
273 during a workweek of seven consecutive calendar days for longer than
274 fifty-five hours, unless such employee (1) receives remuneration for his
275 or her employment in excess of the hours above specified at a rate not
276 less than one and one-half times the regular rate at which he or she is
277 employed, and (2) agrees in writing to work such hours.

278 Sec. 9. Section 31-76i of the general statutes is repealed and the
279 following is substituted in lieu thereof (*Effective October 1, 2015*):

280 The provisions of sections 31-76b to 31-76j, inclusive, as amended by
281 this act, and sections 2 and 3 of this act shall not apply with respect to
282 (a) any driver or helper, excluding drivers or helpers employed by
283 exempt employers, with respect to whom the Interstate Commerce
284 Commission or its successor agency or the Secretary of Transportation
285 has power to establish qualifications and maximum hours of service
286 pursuant to the provisions of applicable federal law or regulation of
287 any employee of a carrier by air subject to the Railway Labor Act or
288 any employee of any employer subject to said Railway Labor Act; (b)
289 any employee employed as a seaman; (c) any employee employed as
290 an announcer, a news editor or chief engineer by a radio station or
291 television station; (d) repealed by 1972, P.A. 116, S. 3, 6; (e) any person
292 employed in a bona fide executive, administrative or professional
293 capacity as defined in the regulations of the Labor Commissioner
294 issued pursuant to section 31-60; (f) any person employed in the
295 capacity of outside salesman as defined in the regulations of the
296 Federal Fair Labor Standards Act; (g) any inside salesperson whose
297 sole duty is to sell a product or service (1) whose regular rate of pay is
298 in excess of two times the minimum hourly rate applicable to him or
299 her under section 31-58, (2) more than half of whose compensation for
300 a representative period, being not less than one month, represents
301 commissions on goods or services, and (3) who does not work more

302 than fifty-four hours during a [work week] workweek of seven
303 consecutive calendar days. In determining the proportion of
304 compensation representing commissions, all earnings resulting from
305 the application of a bona fide commission rate shall be deemed
306 commissions on goods or services without regard to whether the
307 computed commissions exceed the draw or guarantee; (h) any person
308 employed as a taxicab driver by any employer engaged in the business
309 of operating a taxicab, if such driver is paid forty per cent or more of
310 the fares recorded on the meter of the taxicab operated by him or her;
311 (i) any person employed in the capacity of a household delivery route
312 salesman engaged in delivering milk or bakery products to consumers
313 and who is paid on a commission basis as defined in the regulations of
314 the Labor Commissioner issued pursuant to section 31-60; (j) any
315 [salesman] salesperson primarily engaged in selling automobiles. For
316 the purposes of this subdivision, ["salesman"] "salesperson" includes
317 any person employed by a licensed new car dealer (1) whose primary
318 duty is to sell maintenance and repair services, (2) whose regular rate
319 of pay is in excess of two times the minimum hourly rate applicable to
320 him or her under the provisions of section 31-58, (3) more than half of
321 whose compensation for a representative period, being not less than
322 one month, represents commissions on goods or services, and (4) who
323 does not work more than fifty-four hours during a [work week]
324 workweek of seven consecutive calendar days. In determining the
325 proportion of compensation representing commissions, all earnings
326 resulting from the application of a bona fide commission rate shall be
327 deemed commissions on goods or services without regard to whether
328 the computed commissions exceed the draw or guarantee; (k) any
329 person employed in agriculture; (l) any permanent paid members of
330 the uniformed police force of municipalities and permanent paid
331 members of the uniformed firefighters of municipalities; (m) any
332 person employed as a firefighter by a private nonprofit corporation
333 which on May 24, 1984, has a valid contract with any municipality to
334 extinguish fires and protect its inhabitants from loss by fire; (n) any
335 person, except a person paid on an hourly basis, employed as a beer

336 delivery truck driver by a licensed distributor, as defined in section 12-
337 433; (o) any person employed as a mechanic primarily engaged in the
338 servicing of motor vehicles, as defined in section 14-1, or farm
339 implements, as defined in section 14-1, by a nonmanufacturing
340 employer primarily engaged in the business of selling such vehicles or
341 implements to consumers, to the extent that such employees are
342 exempt under the federal Wage-Hour and Equal Pay Act, 29 USC 201
343 et seq. and 29 USC 213(b)(10), provided such person's actual weekly
344 earnings exceed an amount equal to the total of (1) such person's basic
345 contractual hourly rate of pay times the number of hours such person
346 has actually worked plus (2) such person's basic contractual hourly
347 rate of pay times one-half the number of hours such person has
348 actually worked in excess of forty hours in such week. For the
349 purposes of this section, "basic contractual hourly rate" means the
350 compensation payable to a person at an hourly rate separate from and
351 exclusive of any flat rate, incentive rate or any other basis of
352 calculation; or (p) any mortgage loan originator, as defined in section
353 36a-485, who is a highly compensated employee, as defined in 29 CFR
354 541.601, provided this subdivision shall not apply to an individual
355 who performs the functions of a mortgage loan originator solely from
356 the office of such mortgage loan originator's employer. For purposes of
357 this subdivision, an office in the mortgage loan originator's home shall
358 not be considered the office of such mortgage loan originator's
359 employer. Beginning on October 1, 2012, the total annual
360 compensation for purposes of Subsection (a) of 29 CFR 541.601 shall be
361 increased annually, effective October first of each year, based on the
362 percentage increase, from year to year, in the average of all workers'
363 weekly earnings as determined by the Labor Commissioner pursuant
364 to subdivision (1) of subsection (b) of section 31-309.

365 Sec. 10. Section 31-68 of the general statutes is repealed and the
366 following is substituted in lieu thereof (*Effective October 1, 2015*):

367 (a) If any employee is paid by his or her employer less than the
368 minimum fair wage or overtime wage to which he or she is entitled

369 under sections 31-58, 31-59 and 31-60, or by virtue of a minimum fair
370 wage order, [he may] or is not paid predictability pay to which he or
371 she is entitled under section 3 of this act, he or she shall recover, in a
372 civil action, [twice] three times the full amount of such minimum wage
373 less any amount actually paid to him or her by the employer, with
374 costs and such reasonable attorney's fees as may be allowed by the
375 court, and any agreement between [him and his] the employee and
376 employer to work for less than such minimum fair wage or overtime
377 wage or to not receive predictability pay to which he or she is entitled
378 under section 3 of this act shall be no defense to such action. The
379 commissioner [may] shall collect the full amount of unpaid minimum
380 fair wages, [or] unpaid overtime wages or unpaid predictability pay to
381 which an employee is entitled under said sections or order, as well as
382 interest calculated in accordance with the provisions of section 31-265
383 from the date the wages or predictability pay should have been
384 received, had they been paid in a timely manner. In addition, the
385 commissioner [may] shall bring any legal action necessary to recover
386 [twice] three times the full amount of the unpaid minimum fair wages
387 or unpaid overtime wages or unpaid predictability pay to which the
388 employee is entitled under said sections or under an order, and the
389 employer shall be required to pay the costs and such reasonable
390 attorney's fees as may be allowed by the court. [The] Upon collecting
391 three times the full amount of unpaid wages or predictability pay, the
392 commissioner shall distribute half of the recovered amount to the
393 employee and retain the remaining half for the purposes of
394 administering this section and sections 2 and 3 of this act. The
395 commissioner shall distribute any wages or interest collected pursuant
396 to this section to the employee or in accordance with the provisions of
397 subsection (b) of this section.

398 (b) All wages and other payments collected by the commissioner for
399 an employee whose whereabouts are unknown to the commissioner
400 shall be held by the commissioner for three months and thereafter the
401 commissioner may, in [his] the commissioner's discretion, pay the

402 same, on application, to the husband or wife or, if none, to the next of
 403 kin of such employee. As a condition of such payment, the
 404 commissioner or [his] the commissioner's authorized representative
 405 shall require proof of the relationship of the claimant and the execution
 406 of a bond of indemnity and a receipt for such payment.
 407 Notwithstanding the provisions of section 3-60b, any such wages and
 408 payments held by the commissioner for two years without being
 409 claimed shall escheat to the state, subject to the provisions of sections
 410 3-66a to 3-71a, inclusive.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2015</i>	31-76b
Sec. 2	<i>October 1, 2015</i>	New section
Sec. 3	<i>October 1, 2015</i>	New section
Sec. 4	<i>October 1, 2015</i>	New section
Sec. 5	<i>October 1, 2015</i>	New section
Sec. 6	<i>October 1, 2015</i>	31-13a
Sec. 7	<i>October 1, 2015</i>	31-66
Sec. 8	<i>October 1, 2015</i>	31-76c
Sec. 9	<i>October 1, 2015</i>	31-76i
Sec. 10	<i>October 1, 2015</i>	31-68

Statement of Purpose:

To provide stability to workers in the state by requiring employers to publish work schedules twenty-one days in advance and to compensate their employees if the employer amends such schedules.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]