



House of Representatives

General Assembly

File No. 233

February Session, 2016

House Bill No. 5371

House of Representatives, March 29, 2016

The Committee on Labor and Public Employees reported through REP. TERCYAK of the 26th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING A MINIMUM WORKWEEK FOR PERSONS PERFORMING BUILDING MAINTENANCE SERVICES.

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

1 Section 1. (NEW) (*Effective October 1, 2016*) (a) For purposes of this
2 section:

3 (1) "Building maintenance service" means work performed in
4 connection with the care or maintenance of buildings, including, but
5 not limited to, work customarily performed by cleaners, porters,
6 janitors, handypersons and security guards;

7 (2) "Covered employee" means any person performing building
8 maintenance service in or about a covered location. "Covered
9 employee" does not include any person providing building
10 maintenance service in or about a covered location on a temporary
11 basis to replace another covered employee who is taking covered
12 leave;

13 (3) "Covered employer" means any person, firm, business,
14 educational institution, nonprofit agency, corporation, limited liability

15 company or other entity, including the state or any political
16 subdivision thereof, that (A) directly employs at least one covered
17 employee, (B) contracts or subcontracts for the services of at least one
18 covered employee, (C) owns or operates a covered location, or (D)
19 leases any portion of a covered location and (i) directly employees at
20 least one covered employee, or (ii) contracts or subcontracts for the
21 services of at least one covered employee;

22 (4) "Covered leave" means any paid or unpaid temporary leave
23 voluntarily taken by a covered employee pursuant to (A) any
24 applicable state or federal law, (B) any written employee handbook, or
25 (C) written request initiated by the covered employee;

26 (5) "Covered location" means (A) an office building having an area
27 of not less than one hundred thousand square feet, (B) a private or
28 public institution of higher education, or (C) a museum, as defined in
29 section 11-80 of the general statutes;

30 (6) "Minimum workweek" means the minimum number of
31 compensated hours provided to a covered employee in any workweek,
32 except for weeks in which the covered employee is taking covered
33 leave;

34 (7) "Office building" means (A) an industrial, commercial or
35 business facility, (B) a continuous, commonly owned office park, or (C)
36 a group of office buildings that (i) have common ownership or
37 management, and (ii) are contiguous or have consecutive address; and

38 (8) "Workweek" means a fixed, regularly recurring period of one
39 hundred sixty-eight hours or seven consecutive twenty-four-hour
40 periods.

41 (b) On and after January 1, 2017, the minimum workweek for a
42 covered employee shall be thirty hours per workweek.

43 (c) Each covered employer shall provide notice to each covered
44 employee (1) of the entitlement to a minimum workweek, and (2) that
45 the covered employee has a right to file a complaint with the Labor

46 Commissioner for any violation of this section. A covered employer
47 may comply with the provisions of this section by displaying a poster
48 in a conspicuous place, accessible to covered employees, at the covered
49 location and the covered employer's place of business that contains the
50 information required by this section in both English and Spanish. The
51 Labor Commissioner may adopt regulations, in accordance with
52 chapter 54 of the general statutes, to establish additional requirements
53 concerning the means by which covered employers shall provide such
54 notice.

55 (d) Any covered employee aggrieved by a violation of the
56 provisions of subsection (b) or (c) of this section may file a complaint
57 with the Labor Commissioner. Upon receipt of any such complaint,
58 said commissioner may hold a hearing. After the hearing, any covered
59 employer who is found by the Labor Commissioner, by a
60 preponderance of the evidence, to have violated the provisions of
61 subsection (b) of this section shall be liable to the Labor Department for
62 a civil penalty of up to five hundred dollars for the first violation and
63 up to one thousand dollars for any subsequent violation. Any covered
64 employer who is found by the Labor Commissioner, by a
65 preponderance of the evidence, to have violated the provisions of
66 subsection (c) of this section shall be liable to the Labor Department for
67 a civil penalty of up to one hundred dollars for each day that such
68 covered employer fails to post notice, provided such penalty shall not
69 exceed five hundred dollars. The Labor Commissioner may award the
70 covered employee all appropriate relief, including, but not limited to,
71 reinstatement, payment of back wages, any medical costs incurred
72 during the period of time the covered employee was entitled to and
73 denied the minimum workweek, liquidated damages in an amount not
74 to exceed one hundred dollars per day for each day the covered
75 employer was in violation of the provisions of this section and
76 reasonable attorney's fees. Any party aggrieved by the decision of the
77 commissioner may appeal the decision to the Superior Court in
78 accordance with the provisions of chapter 54 of the general statutes.

79 (e) It shall be a violation of this section for any covered employer to

80 discharge or cause to be discharged, or in any other manner
 81 discriminate against any covered employee because such covered
 82 employee has (1) filed any charge, or has instituted or caused to be
 83 instituted any proceeding, under or related to this section, (2) given, or
 84 is about to give, any information in connection with any inquiry or
 85 proceeding relating to any right provided under this section, or (3)
 86 testified, or is about to testify, in any inquiry or proceeding relating to
 87 any right provided under this section.

88 (f) It shall be a violation of this section for any covered employer to
 89 (1) hinder or delay the commissioner or the commissioner's authorized
 90 representative in the performance of the commissioner's or the
 91 commissioner's authorized representative's duties in the enforcement
 92 of this section, or (2) refuse to submit to the commissioner or the
 93 commissioner's authorized representative any reports or refuse to
 94 make available to the commissioner or the commissioner's authorized
 95 representative any records required by him or her in investigating the
 96 covered employer for purposes of this section.

97 (g) The Labor Commissioner shall administer this section within
 98 available appropriations.

99 (h) The provisions of this section shall not apply to any covered
 100 employee performing building maintenance service at a covered
 101 location pursuant to a contract for building maintenance service that
 102 (1) is intended to create janitorial work job opportunities for persons
 103 with a disability, as defined in section 4a-82 of the general statutes, and
 104 (2) is in conformity with state and federal statutes and regulations
 105 regarding the employment of persons with a disability.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2016	New section

LAB *Joint Favorable*

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 17 \$	FY 18 \$
Labor Dept.	GF - Potential Revenue Gain	Up to 5,000	Up to 10,000
Various State Agencies	Various Funds - Cost	See Below	See Below
Higher Education Constituent Units	Various Funds - Cost	5 million to 10 million	5 million to 10 million

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 17 \$	FY 18 \$
Various Municipalities	STATE MANDATE - Cost	Potential	Potential

Explanation

The bill requires certain employers to provide a 30-hour minimum work week for employees performing maintenance work. This results in a cost to various state agencies, as well as a potential cost to municipalities. This also results in a potential revenue gain of up to \$5,000 in FY 17 and up to \$10,000 annually thereafter.

The Department of Administrative Services (DAS) is currently responsible for about 10% of the square footage owned or leased by the state and has approximately 70 custodial contracts through Connecticut Community Providers Association (CCPA) that would be affected by the bill. In FY 15, CCPA contracts totaled \$4,822,196. Although the bill exempts individuals with disabilities, not all workers on CCPA contracts have disabilities. Other state agencies that have

care and control over their own buildings would experience similar costs and are not included in the FY 15 CCPA contract total.

For any covered workers that are not working 30 hours per week, their hours would have to be increased. To the extent that an employer will be required to offer health insurance coverage under the federal Affordable Care Act and chooses to do so, the cost to provide health coverage and the additional hours worked would most likely be passed onto agencies in the form of higher maintenance and janitorial contract costs.

The bill specifies that a building maintenance worker aggrieved by an employer's failure to comply with the bill's provisions may file a complaint with the Department of Labor. An employer found to be in violation must pay up to a \$500 civil penalty for a first violation and \$1,000 for subsequent violations. It is anticipated that there will be fewer than 10 violations annually.

The bill results in a cost ranging from \$5,000,000 to \$10,000,000 to the constituent units of higher education in FY 17 and each year thereafter. The constituent units employ students to handle many "building maintenance services" as defined in the bill. The students do not currently work a 30 hour week and are unable to do so. This results in the constituent units having to replace the student workers with full-time employees. Additionally some constituent units operate Technical High School Apprentice Programs which would have to be discontinued as those students do not work a thirty hour week. The cost range above is calculated based on the amount currently paid to students and the amount which would be paid to full-time employees.

It is not known how many municipal maintainers would be affected by the bill. It is anticipated that many municipalities do not own a building which 1) is 100,000 square feet; and 2) is an office building. For those that do own such buildings, there is potential cost if any of their custodians do not currently work for 30 hours per week.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**HB 5371*****AN ACT CONCERNING A MINIMUM WORKWEEK FOR PERSONS PERFORMING BUILDING MAINTENANCE SERVICES.*****SUMMARY:**

Beginning January 1, 2017, this bill requires certain employers to provide a 30-hour minimum workweek for their employees who perform building care or maintenance work, including work customarily performed by cleaners, porters, janitors, handypersons, and security guards (i.e., "building maintenance service"). The requirement does not apply to (1) temporary employees, (2) people with disabilities who participate in the state's janitorial work program for people with disabilities, or (3) employees on voluntary leave.

The bill requires employers to provide notice to their affected employees of (1) the 30-hour minimum workweek entitlement and (2) their right to file a complaint with the Department of Labor (DOL) for any violation of the bill.

The bill authorizes DOL to impose civil penalties on employers that violate workweek and notice provisions. It also prohibits employers from (1) retaliating against an employee for filing a complaint under the bill or (2) hindering or delaying the labor commissioner's efforts to enforce the bill.

It requires the labor commissioner to administer this law within available appropriations.

EFFECTIVE DATE: October 1, 2016

COVERED EMPLOYERS AND LOCATIONS

The bill applies to employers, including any person, firm, business, educational institution, or nonprofit agency, and the state and its

municipalities, that:

1. directly employ at least one covered employee,
2. contract or subcontract for the services of at least one covered employee,
3. own or operate a covered location, or
4. lease any portion of a covered location and directly employ at least one covered employee or contract or subcontract with at least one covered employee.

The "covered locations" are:

1. office buildings with at least 100,000 square feet;
2. private or public higher education institutions; or
3. museums, as defined in statute.

The bill further defines an "office building" as (1) an industrial, commercial, or business facility; (2) a continuous, commonly owned office park; or (3) a group of office buildings that have common ownership or management and are contiguous or have consecutive addresses.

COVERED EMPLOYEES' WORKWEEK

The bill requires, beginning January 1, 2017, a covered employee's minimum workweek to be 30 hours. Under the bill, a "workweek" is a fixed, regularly recurring 168-hour period or seven consecutive 24-hour periods. (Presumably, the law would not supersede union contracts already in place on January 1, 2017. In those cases, it would take effect after the current contract expired.)

Covered employees are people performing building maintenance service in or about a covered location. The requirement does not apply to employees who (1) only perform building maintenance service temporarily to replace another covered employee on leave or (2) work

under a contract (a) for people with disabilities who are eligible to participate in the state's janitorial work program for people with a disability or a disadvantage and (b) that conforms with state and federal laws regarding employing people with disabilities.

Voluntary Leaves

The 30-hour minimum workweek requirement does not apply to weeks in which an employee is voluntarily taking any paid or unpaid temporary leave under (1) federal or state law, (2) a written employee handbook, or (3) a written request from the worker.

NOTICE

The bill requires covered employers to provide notice about the 30-hour minimum work week and the workers' right to file a complaint with DOL. An employer can comply by displaying a poster in a conspicuous, accessible place at the work site and his or her place of business. The poster must contain the information in English and Spanish. The bill allows the labor commissioner to adopt regulations for additional notice requirements.

ENFORCEMENT

The bill allows a worker aggrieved by an employer's failure to meet any of the bill's requirements to file a complaint with the labor commissioner, who can hold a hearing. After a hearing, an employer found in violation of the minimum work week requirement by a preponderance of the evidence must pay DOL a civil penalty of up to (1) \$500 for the first violation and (2) \$1,000 for any subsequent violation. An employer found in violation of the notice requirement by a preponderance of the evidence must pay DOL a civil penalty of up to \$100 for each day of the violation, up to a \$500 maximum.

The labor commissioner may also award a covered employee all appropriate relief, including reinstatement, back pay, medical costs incurred during the time the employee was entitled to and denied the minimum workweek, liquidated damages up to \$100 per day for each day the employer violated the bill, and reasonable attorney's fees.

Any party aggrieved by the commissioner's decision may appeal to the Superior Court under the Uniform Administrative Procedure Act.

The bill's definition of covered employers includes (1) employers who contract with another party to provide building maintenance services for a covered location and (2) contractors who provide such services. In situations where a contractor is providing maintenance service for a building, it is unclear whether the bill's employer provisions apply to the party paying for the service or the contractor who provides it. Presumably only one or the other would be considered the employer for enforcement purposes.

EMPLOYER PROHIBITIONS

The bill also prohibits employers from (1) retaliating against employees who file complaints, provide information, or testify in connection with an inquiry or proceeding under the law or (2) hindering or delaying the labor commissioner's efforts to enforce the law, including refusing to submit reports or records. A violation of either of these prohibitions is a violation of the bill, although the bill does not specify the penalties for these violations.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable

Yea 7 Nay 6 (03/10/2016)