



House of Representatives

General Assembly

File No. 223

January Session, 2017

House Bill No. 6914

House of Representatives, March 27, 2017

The Committee on Labor and Public Employees reported through REP. PORTER of the 94th 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 JANITORIAL OR BUILDING MAINTENANCE SERVICES.

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

1 Section 1. (NEW) (*Effective October 1, 2017*) (a) For purposes of this
2 section:

3 (1) "Covered employee" means any person performing janitorial or
4 building maintenance services in or about a covered location. "Covered
5 employee" does not include any person providing janitorial or
6 building maintenance service in or around any part of a covered
7 location solely to temporarily replace a covered employee who is
8 taking covered leave;

9 (2) "Covered employer" means any person, firm, business,
10 educational institution, nonprofit agency, corporation, limited liability
11 company or other entity, including the state or any political
12 subdivision thereof, that (A) directly employs at least one covered

13 employee or contracts or subcontracts for the services of at least one
14 covered employee, (B) owns or operates a covered location, or (C)
15 leases any portion of a covered location, and (i) directly employs at
16 least one covered employee, or (ii) contracts or subcontracts for the
17 services of at least one covered employee;

18 (3) "Covered leave" means any paid or unpaid temporary leave
19 voluntarily taken by a covered employee pursuant to (A) any
20 applicable state or federal law, (B) any written employee handbook, or
21 (C) any written request initiated by the covered employee;

22 (4) "Covered location" means (A) a covered office location having an
23 area of not less than one hundred thousand square feet, (B) a private or
24 public institution of higher education, or (C) a museum, as defined in
25 section 11-80 of the general statutes, except where the janitorial
26 contract for that location is intended to create work opportunities for
27 people with disabilities, and where the procurement and award for
28 such contracts is in conformity with state and federal statutes and
29 regulations specific to that purpose, including, but not limited to,
30 public acts 77-405, 13-233 and 14-188 and 41 USC Chapter 85, as
31 amended from time to time;

32 (5) "Covered office location" means (A) an industrial, commercial or
33 business facility, (B) a continuous, commonly owned office park, or (C)
34 a group of office buildings that (i) have common ownership or
35 management, and (ii) are contiguous or have consecutive addresses,
36 except where the janitorial contract for that location is intended to
37 create work opportunities for people with disabilities, and where the
38 procurement and award for such contracts is in conformity with state
39 and federal statutes and regulations specific to that purpose, including,
40 but not limited to, public acts 77-405, 13-233 and 14-188 and 41 USC
41 Chapter 85, as amended from time to time;

42 (6) "Janitorial work or building maintenance services" means work
43 performed in connection with the care or maintenance of buildings,
44 including, but not limited to, work customarily performed by cleaners,
45 porters, janitors and handypersons and security guards;

46 (7) "Minimum workweek" means the minimum number of
47 compensated hours provided to a covered employee in any workweek,
48 except for weeks in which the covered employee is taking covered
49 leave; and

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

53 (b) On and after January 1, 2018, the minimum workweek for a
54 covered employee shall be thirty hours per workweek.

55 (c) Each covered employer shall provide notice to each covered
56 employee (1) of the entitlement to a minimum workweek, and (2) that
57 the covered employee has a right to file (A) a complaint with the Labor
58 Commissioner, or (B) a civil suit against the employer for any violation
59 of this section. A covered employer may comply with the provisions of
60 this section by displaying a poster in a conspicuous place, accessible to
61 covered employees, at the covered location and the covered employer's
62 place of business that contains the information required by this section
63 in both English and Spanish. The Labor Commissioner may adopt
64 regulations, in accordance with chapter 54 of the general statutes, to
65 establish additional requirements concerning the means by which
66 covered employers shall provide such notice.

67 (d) Any covered employee aggrieved by a violation of the
68 provisions of subsection (b) or (c) of this section may file a complaint
69 with the Labor Commissioner. Upon receipt of any such complaint,
70 said commissioner may hold a hearing. After the hearing, any covered
71 employer who is found by the Labor Commissioner, by a
72 preponderance of the evidence, to have violated the provisions of
73 subsection (b) of this section shall be liable to the Labor Department for
74 a civil penalty of up to five hundred dollars for the first violation and
75 up to one thousand dollars for any subsequent violation. Any covered
76 employer who is found by the Labor Commissioner, by a
77 preponderance of the evidence, to have violated the provisions of
78 subsection (c) of this section shall be liable to the Labor Department for

79 a civil penalty of up to one hundred dollars for each day that such
80 covered employer fails to post notice, provided such penalty shall not
81 exceed five hundred dollars. The Labor Commissioner may award the
82 covered employee all appropriate relief, including, but not limited to,
83 reinstatement, payment of back wages, any medical costs incurred
84 during the period of time the covered employee was entitled to and
85 denied the minimum workweek, liquidated damages in an amount not
86 to exceed one hundred dollars per day for each day the covered
87 employer was in violation of the provisions of this section and
88 reasonable attorney's fees. Any party aggrieved by the decision of the
89 commissioner may appeal the decision to the Superior Court in
90 accordance with the provisions of chapter 54 of the general statutes.

91 (e) The Labor Commissioner shall administer this section within the
92 available appropriations.

93 (f) It shall be a violation of this section for any covered employer to:
94 (1) Violate any provisions of subsection (b) or (c) or this section; (2)
95 discharge or in any other manner discriminate against any covered
96 employee because that employee filed a complaint or instituted or
97 caused to be instituted any proceeding under or related to this section,
98 or has testified or is about to testify or otherwise cooperate in any such
99 proceeding; (3) hinder or delay the commissioner or the
100 commissioner's authorized representative in the enforcement of this
101 section; (4) refuse to admit the commissioner or the commissioner's
102 authorized representative to any place of employment upon demand;
103 or (5) refuse to make available to the commissioner or the
104 commissioner's authorized representative any records required by him
105 or her in investigating the covered employer for purposes of this
106 section.

107 (g) Nothing in this section shall prohibit a covered employee from
108 filing a civil suit against an employer in a court of competent
109 jurisdiction to recover such legal or equitable relief as may be
110 appropriate, including, but not limited to: (1) Reinstatement, (2) back
111 pay of not less than the hourly rate of pay received by the covered

112 employee immediately prior to the violation of this section multiplied
 113 by the number of compensated hours below the minimum workweek
 114 the covered employee was provided each workweek in which a
 115 violation occurred, as well as interest calculated in accordance with the
 116 provisions of section 31-265 of the general statutes from the date the
 117 wages should have been received had the wages been paid in a timely
 118 manner, (3) actual medical costs incurred during the period of time the
 119 employee was entitled to and denied the minimum number of hours
 120 required by this section and during any period in which the employee
 121 is not working due to a violation by a covered employer described in
 122 subsection (f) of this section, and (4) liquidated damages in the amount
 123 of one hundred dollars per day.

124 (h) An action to recover damages under this section may be
 125 maintained in any court of competent jurisdiction in the state by any
 126 one or more persons aggrieved by a violation of this section, for or on
 127 behalf of the covered employee and other covered employees who are
 128 similarly situated.

129 (i) If any provision of this section is determined to be invalid or
 130 incapable of being enforced, such provision shall be excluded to the
 131 extent of such invalidity or unenforceability. All other provisions of
 132 this section shall remain in full force and effect.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2017	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 18 \$	FY 19 \$
Constituent Units of Higher Education	Various - Cost	5 million to 10 million	5 million to 10 million
Labor Dept.	GF - Potential Revenue Gain	5,000	5,000
Various State Agencies	Various - Cost	See Below	See Below

Note: Various=Various; GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 18 \$	FY 19 \$
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.

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 64 custodial contracts¹ which could be affected by the bill. DAS is responsible for coordinating and paying for janitorial work and security at facilities it manages. To the extent that workers covered by the bill are not working 30 hours per week

¹ DAS has these contracts with The Alliance, an organization representing over 500 non-profits.

their hours would have to be increased resulting in a cost proportionate to the increase in hours. Other state agencies that have care and control over their own buildings would experience similar cost increases.

Currently, existing janitorial and security contracts do not specify the number of workers and hours worked at each location. Restructuring future contracts as a result of the bill's requirements will result in higher costs to state agencies as the vendors would likely pass along the costs associated with the increase in required hours in the form of higher fees.

The bill results in a cost ranging from \$5 million to \$10 million to the constituent units of higher education in FY 18 and each year thereafter. The constituent units employ students to handle some "janitorial work and building maintenance services" as defined in the bill. The students do not currently work a 30 hour week due to work-study program recommendations. 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 30 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.

The bill specifies that complaints may be filed with the labor department. If the department finds an employer is in violation of the provisions of this bill, the employer will be fined up to \$500 for the first offense and up to \$1,000 for every subsequent expense. To the extent that complaints are heard and that violations are found, the fines would serve as a potential new source of revenue for the state. It is anticipated that there will be ten or fewer violations per year.

It is not known how many municipal maintainers would be affected by the bill. It is anticipated that most 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 6914*****AN ACT CONCERNING A MINIMUM WORKWEEK FOR PERSONS PERFORMING JANITORIAL OR BUILDING MAINTENANCE SERVICES.*****SUMMARY**

Beginning January 1, 2018, this bill requires certain employers to provide a 30-hour minimum workweek for any employee who performs building care or maintenance work in certain locations, including work customarily performed by cleaners, porters, janitors, handypersons, and security guards (“covered employees”). The requirement does not apply to (1) people with disabilities providing service under certain contracts, (2) temporary employees, or (3) employees on voluntary leave.

The bill requires employers to provide notice to their covered employees of (1) the 30-hour minimum workweek entitlement and (2) their right to file a (a) complaint with the Department of Labor (DOL) or (b) civil lawsuit against an employer for any violation of the bill. The bill authorizes both the labor commissioner and a court of appropriate jurisdiction to award relief. The administrative and civil court paths for redress of a violation can be pursued at the same time.

The bill requires the labor commissioner to administer these provisions within available appropriations.

EFFECTIVE DATE: October 1, 2017

COVERED EMPLOYEES, EMPLOYERS, AND LOCATIONS

Covered employees are people performing building maintenance service in or about a covered location. They do not include 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.

A "covered employer" is any person, firm, business, educational institution, nonprofit agency, and the state and its municipalities, that:

1. directly employs at least one covered employee,
2. contracts or subcontracts for the services of at least one covered employee,
3. owns or operates a covered location, or
4. leases any portion of a covered location and directly employs at least one covered employee or contracts or subcontracts with at least one covered employee.

The "covered location" is:

1. a covered office location with at least 100,000 square feet;
2. a private or public higher education institution; or
3. a museum, as defined in statute.

The bill further defines a "covered office location" 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. The bill excludes any location where the janitorial contract is intended to create work opportunities for people with disabilities and the contract procurement process conforms with state and federal law for that purpose.

COVERED EMPLOYEES' WORKWEEK

The bill requires, beginning January 1, 2018, 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, 2018. In those cases, it would take effect after the current contract expired.)

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 (1) a complaint with the labor commissioner or (2) a civil suit against an employer for any violation of the bill. 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.

DOL COMPLAINTS

The bill allows a worker aggrieved by a 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, a covered 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.

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.

The bill's definition of covered employers includes (1) employers

who contract with another party to provide building maintenance services for a covered location, (2) contractors who provide such services, and (3) covered location owners. In situations where a contractor is providing maintenance service for a building, it is unclear whether the bill's minimum workweek provisions apply to the party paying for the service, the contractor who provides it, or the property owner. Presumably, only one of these parties would be considered the employer for enforcement purposes.

A covered 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.

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

CIVIL COURT ACTION

The bill specifies that it does not prohibit a covered employee from seeking relief in a court of competent jurisdiction, which may order relief including reinstatement, back pay, medical costs incurred during the time the employee was entitled to and denied the minimum workweek, and damages in the amount of up to \$100 a day. It is not clear how a court would handle a complaint if the employee seeking relief also had a pending complaint with the labor department and there is the potential for the employee to be awarded relief from both authorities.

EMPLOYER PROHIBITIONS

It also prohibits covered employers from (1) retaliating against an employee for filing a complaint, instituting any proceeding, or cooperating with a proceeding under the bill or (2) hindering or delaying the labor commissioner's efforts to enforce the bill, including refusing to make available to the commissioner any records that he requires for an investigation. A violation of either of these prohibitions is a violation of the bill, although the bill does not specify penalties for these violations.

SEVERABILITY

The bill specifies that if any provision of the bill is found to be invalid or incapable of being enforced, that provision will be excluded and all other aspects of the bill will remain in full force and effect.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable

Yea 7 Nay 6 (03/09/2017)