



General Assembly

January Session, 2017

Committee Bill No. 747

LCO No. 4877



Referred to Committee on LABOR AND PUBLIC EMPLOYEES

Introduced by:
(LAB)

AN ACT PROHIBITING "ON-CALL" SHIFT 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 Section 31-76b of the general statutes is repealed and the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, 2017*):

3 As used in [sections 31-76b] this section and sections 31-76c to 31-
4 76j, inclusive, and sections 2 and 3 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, or in excess of the employee's normal working hours or regular
37 working hours, as the case may be; (F) extra compensation provided
38 by a premium rate paid for work by the employee on Saturdays,
39 Sundays, holidays or regular days of rest, or on the sixth or seventh
40 day of the workweek, where such premium rate is not less than one
41 and one-half times the rate established in good faith for like work
42 performed in nonovertime hours on other days; or (G) extra
43 compensation provided by a premium rate paid to the employee, in
44 pursuance of an applicable employment contract or collective-
45 bargaining agreement, for work outside of the hours established in
46 good faith by the contract or agreement as the basic, normal or regular
47 workday, not exceeding the maximum workweek applicable to such
48 employee under section 31-76c, where such premium rate is not less
49 than one and one-half times the rate established in good faith by the

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

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

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

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

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

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

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

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

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

114 Sec. 2. (NEW) (*Effective October 1, 2017*) (a) An employer shall
115 provide a work schedule to each of the employer's employees not less
116 than twenty-one days prior to the first day of such work schedule,
117 except, in the case of a new employee, the employer shall provide such
118 new employee with work schedules covering such employees' first
119 twenty-one days of employment prior to the commencement of such
120 employee's employment. The employer shall notify an employee of
121 any change in the employee's work schedule prior to such change
122 taking effect and shall provide the employee with a revised work
123 schedule reflecting such changes not more than twenty-four hours
124 after making such change.

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

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

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

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

143 Sec. 3. (NEW) (*Effective October 1, 2017*) (a) If an employer (1) adds
144 hours to, (2) subtracts hours from, (3) cancels, or (4) changes the start

145 time or end time of an employee's shift less than twenty-one days but
146 more than twenty-four hours prior to the commencement of such shift,
147 the employer shall pay the employee one hour of predictability pay, in
148 addition to wages owed, for each shift that is changed pursuant to
149 subdivisions (1) to (4), inclusive, of this subsection.

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

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

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

172 (d) The provisions of this section shall not apply to any shift
173 changes made at the request of an employee, including requests to
174 work shifts other than those scheduled by the employer or requests to
175 use sick leave, vacation time, personal days or other leave policies
176 offered by the employer, or as required by law.

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

184 Sec. 4. (NEW) (*Effective October 1, 2017*) Any employee aggrieved by
185 a violation of section 2 or 3 of this act may file a complaint with the
186 Labor Commissioner alleging violation of the provisions of said
187 sections. Upon receipt of any such complaint, the commissioner shall
188 hold a hearing. After the hearing, the commissioner shall send each
189 party a written copy of the commissioner's decision. The commissioner
190 may award the employee all appropriate relief, including rehiring or
191 reinstatement to the employee's previous job, payment of back wages
192 or predictability pay, as defined in section 31-76b of the general
193 statutes, as amended by this act, and reestablishment of employee
194 benefits to which the employee otherwise would have been eligible if a
195 violation of this subsection had not occurred. Any party aggrieved by
196 the decision of the commissioner may appeal the decision to the
197 Superior Court in accordance with the provisions of chapter 54 of the
198 general statutes.

199 Sec. 5. (NEW) (*Effective October 1, 2017*) (a) Nothing in section 2 or 3
200 of this act shall be construed to prohibit an employer from adopting
201 policies related to scheduling that are more beneficial to an employee
202 than those required herein.

203 (b) Nothing in section 2 or 3 of this act shall be construed to
204 diminish the obligation of an employer to comply with any contract,
205 collective bargaining agreement, employment benefit plan or other
206 agreement providing policies that are more beneficial to an employee
207 than required herein.

208 (c) The provisions of sections 2 and 3 of this act are severable and, if

209 any provision is determined to contravene state or federal law, the
210 remainder of such provisions shall remain in full force and effect.

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

214 Sec. 6. Section 31-13a of the general statutes is repealed and the
215 following is substituted in lieu thereof (*Effective October 1, 2017*):

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

228 (b) If the record of hours is furnished electronically pursuant to
229 subsection (a) of this section, the employer shall provide a means for
230 each employee to securely, privately and conveniently access and print
231 such record. The employer shall incorporate reasonable safeguards
232 regarding any information contained in the record furnished
233 electronically pursuant to subsection (a) of this section to protect the
234 confidentiality of an employee's personal information.

235 Sec. 7. Section 31-66 of the general statutes is repealed and the
236 following is substituted in lieu thereof (*Effective October 1, 2017*):

237 Each employer subject to the provisions of this part, unless
238 exempted by regulation issued by the commissioner or as hereinafter

239 provided, shall keep at the place of employment for a period of three
240 years a true and accurate record of (1) the name, address and
241 occupation of each employee, (2) the shifts, as defined in section 31-
242 76b, as amended by this act, worked each day and each week by each
243 employee, (3) each work schedule, as defined in section 31-76b, as
244 amended by this act, and any revisions to such work schedule, (4) any
245 predictability pay, as defined in section 31-76b, as amended by this act,
246 paid by him or her to each employee, and (5) the hours worked by, and
247 the wages paid by him or her to, each employee, as required by the
248 applicable regulations issued by the Labor Commissioner, and shall
249 furnish to the commissioner or [his] the commissioner's authorized
250 representative, upon demand, a sworn statement of the same provided
251 if the place of employment is designed primarily as an establishment
252 for the housing and use of coin-operated service or vending machines,
253 such records may be kept by the employer in some location approved
254 by the commissioner other than at the place of employment. Such
255 records shall be open to inspection by the commissioner or his or her
256 authorized representative at any reasonable time. Each employer
257 subject to the provisions of this part, unless exempted by regulation
258 issued by the commissioner or as hereinafter provided, shall allow an
259 employee to inspect the records kept under this section pertaining to
260 such employee at a reasonable time and place. An employer who fails
261 to keep true and accurate records or fails to furnish a record in a timely
262 fashion, or who falsifies records required under this section, shall have
263 violated this section and be punished by civil penalties as provided in
264 section 31-69a. Each day there is a failure to keep a record or to furnish
265 a record or other information required for the proper enforcement of
266 this section shall constitute a separate violation under said section.
267 Each employer subject to this part or to a minimum fair wage order
268 shall keep a copy of such order and the regulations issued by the Labor
269 Commissioner posted at the place of employment where it can be read
270 easily by the employees. Employers shall be furnished copies of orders
271 and regulations on request, without charge.

272 Sec. 8. Section 31-76i of the general statutes is repealed and the

273 following is substituted in lieu thereof (*Effective October 1, 2017*):

274 The provisions of sections 31-76b to 31-76j, inclusive, as amended
275 by this act, and sections 2 and 3 of this act shall not apply with respect
276 to (a) any driver or helper, excluding drivers or helpers employed by
277 exempt employers, with respect to whom the Interstate Commerce
278 Commission or its successor agency or the Secretary of Transportation
279 has power to establish qualifications and maximum hours of service
280 pursuant to the provisions of applicable federal law or regulation of
281 any employee of a carrier by air subject to the Railway Labor Act or
282 any employee of any employer subject to said Railway Labor Act; (b)
283 any employee employed as a seaman; (c) any employee employed as
284 an announcer, a news editor or chief engineer by a radio station or
285 television station; (d) repealed by 1972, P.A. 116, S. 3, 6; (e) any person
286 employed in a bona fide executive, administrative or professional
287 capacity as defined in the regulations of the Labor Commissioner
288 issued pursuant to section 31-60; (f) any person employed in the
289 capacity of outside salesman as defined in the regulations of the
290 Federal Fair Labor Standards Act; (g) any inside salesperson whose
291 sole duty is to sell a product or service (1) whose regular rate of pay is
292 in excess of two times the minimum hourly rate applicable to him or
293 her under section 31-58, (2) more than half of whose compensation for
294 a representative period, being not less than one month, represents
295 commissions on goods or services, and (3) who does not work more
296 than fifty-four hours during a [work week] workweek of seven
297 consecutive calendar days. In determining the proportion of
298 compensation representing commissions, all earnings resulting from
299 the application of a bona fide commission rate shall be deemed
300 commissions on goods or services without regard to whether the
301 computed commissions exceed the draw or guarantee; (h) any person
302 employed as a taxicab driver by any employer engaged in the business
303 of operating a taxicab, if such driver is paid forty per cent or more of
304 the fares recorded on the meter of the taxicab operated by him or her;
305 (i) any person employed in the capacity of a household delivery route
306 salesman engaged in delivering milk or bakery products to consumers

307 and who is paid on a commission basis as defined in the regulations of
308 the Labor Commissioner issued pursuant to section 31-60; (j) any
309 [salesman] salesperson primarily engaged in selling automobiles. For
310 the purposes of this subdivision, ["salesman"] "salesperson" includes
311 any person employed by a licensed new car dealer (1) whose primary
312 duty is to sell maintenance and repair services, (2) whose regular rate
313 of pay is in excess of two times the minimum hourly rate applicable to
314 him or her under the provisions of section 31-58, (3) more than half of
315 whose compensation for a representative period, being not less than
316 one month, represents commissions on goods or services, and (4) who
317 does not work more than fifty-four hours during a [work week]
318 workweek of seven consecutive calendar days. In determining the
319 proportion of compensation representing commissions, all earnings
320 resulting from the application of a bona fide commission rate shall be
321 deemed commissions on goods or services without regard to whether
322 the computed commissions exceed the draw or guarantee; (k) any
323 person employed in agriculture; (l) any permanent paid members of
324 the uniformed police force of municipalities and permanent paid
325 members of the uniformed firefighters of municipalities; (m) any
326 person employed as a firefighter by a private nonprofit corporation
327 which on May 24, 1984, has a valid contract with any municipality to
328 extinguish fires and protect its inhabitants from loss by fire; (n) any
329 person, except a person paid on an hourly basis, employed as a beer
330 delivery truck driver by a licensed distributor, as defined in section 12-
331 433; (o) any person employed as a mechanic primarily engaged in the
332 servicing of motor vehicles, as defined in section 14-1, or farm
333 implements, as defined in section 14-1, by a nonmanufacturing
334 employer primarily engaged in the business of selling such vehicles or
335 implements to consumers, to the extent that such employees are
336 exempt under the federal Wage-Hour and Equal Pay Act, 29 USC 201
337 et seq. and 29 USC 213(b)(10), provided such person's actual weekly
338 earnings exceed an amount equal to the total of (1) such person's basic
339 contractual hourly rate of pay times the number of hours such person
340 has actually worked plus (2) such person's basic contractual hourly

341 rate of pay times one-half the number of hours such person has
342 actually worked in excess of forty hours in such week. For the
343 purposes of this section, "basic contractual hourly rate" means the
344 compensation payable to a person at an hourly rate separate from and
345 exclusive of any flat rate, incentive rate or any other basis of
346 calculation; or (p) any mortgage loan originator, as defined in section
347 36a-485, who is a highly compensated employee, as defined in 29 CFR
348 541.601, provided this subdivision shall not apply to an individual
349 who performs the functions of a mortgage loan originator solely from
350 the office of such mortgage loan originator's employer. For purposes of
351 this subdivision, an office in the mortgage loan originator's home shall
352 not be considered the office of such mortgage loan originator's
353 employer. Beginning on October 1, 2012, the total annual
354 compensation for purposes of Subsection (a) of 29 CFR 541.601 shall be
355 increased annually, effective October first of each year, based on the
356 percentage increase, from year to year, in the average of all workers'
357 weekly earnings as determined by the Labor Commissioner pursuant
358 to subdivision (1) of subsection (b) of section 31-309.

359 Sec. 9. Section 31-68 of the general statutes is repealed and the
360 following is substituted in lieu thereof (*Effective October 1, 2017*):

361 (a) If any employee is paid by his or her employer less than the
362 minimum fair wage or overtime wage to which he or she is entitled
363 under sections 31-58, 31-59 and 31-60 or by virtue of a minimum fair
364 wage order, or is not paid predictability pay to which he or she is
365 entitled under section 3 of this act, he or she shall recover, in a civil
366 action, (1) twice (A) the full amount of such minimum wage or
367 overtime wage less any amount actually paid to him or her by the
368 employer, or (B) the amount of such predictability pay, with costs and
369 such reasonable attorney's fees as may be allowed by the court, or (2) if
370 the employer establishes that the employer had a good faith belief that
371 the underpayment of such wages or the failure to pay such
372 predictability pay was in compliance with the law, (A) the full amount
373 of such minimum wage or overtime wage less any amount actually

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

399 (b) All wages and other payments collected by the commissioner for
400 an employee whose whereabouts are unknown to the commissioner
401 shall be held by the commissioner for three months and thereafter the
402 commissioner may, in [his] the commissioner's discretion, pay the
403 same, on application, to the husband or wife or, if none, to the next of
404 kin of such employee. As a condition of such payment, the
405 commissioner or [his] the commissioner's authorized representative
406 shall require proof of the relationship of the claimant and the execution
407 of a bond of indemnity and a receipt for such payment.

408 Notwithstanding the provisions of section 3-60b, any such wages and
409 payments held by the commissioner for two years without being
410 claimed shall escheat to the state, subject to the provisions of sections
411 3-66a to 3-71a, inclusive.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2017</i>	31-76b
Sec. 2	<i>October 1, 2017</i>	New section
Sec. 3	<i>October 1, 2017</i>	New section
Sec. 4	<i>October 1, 2017</i>	New section
Sec. 5	<i>October 1, 2017</i>	New section
Sec. 6	<i>October 1, 2017</i>	31-13a
Sec. 7	<i>October 1, 2017</i>	31-66
Sec. 8	<i>October 1, 2017</i>	31-76i
Sec. 9	<i>October 1, 2017</i>	31-68

Statement of Purpose:

To prohibit the unfair employment practice of on-call shift scheduling.

[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.]

Co-Sponsors: SEN. KENNEDY, 12th Dist.

S.B. 747