



Senate

General Assembly

File No. 518

January Session, 2019

Substitute Senate Bill No. 764

Senate, April 8, 2019

The Committee on Labor and Public Employees reported through SEN. KUSHNER of the 24th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT LIMITING "ON-CALL" SHIFT SCHEDULING.

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

- 1 Section 1. (NEW) (*Effective October 1, 2019*) (a) For the purposes of
2 this section: (1) "Employee" means any person (A) paid on an hourly
3 basis, (B) not exempt from the minimum wage and overtime
4 compensation requirements of the Fair Labor Standards Act of 1938
5 and the regulations promulgated thereunder, as amended from time to
6 time, and (C) suffered or permitted to work by an employer in:
- 7 (i) Any occupation in the mercantile trade, meaning the trade of
8 wholesale or retail selling of groceries or commodities and any
9 operation supplemental or incidental thereto, including, but not
10 limited to, buying, delivery, maintenance, office, stock and clerical
11 work, except repair and service employees having the major portion of
12 their duties unrelated to the mercantile trade;
- 13 (ii) A restaurant occupation, including any person engaged in the

14 preparation and serving of food for human consumption or in any
15 operation incidental or supplemental thereto, whether the food is
16 served at or away from the point of preparation, or whether the
17 preparation and serving of food is the sole business of the employing
18 establishment or enterprise, but does not include the preparation and
19 serving of food in a nonprofit educational, charitable or religious
20 organization where the food service is not regularly available to the
21 general public, or the preparation and serving of food in hospitals,
22 convalescent homes or homes for the elderly where the food service is
23 not regularly available to the general public and is incidental to the
24 care of the patient. Restaurant occupation includes, but is not limited
25 to, employees of restaurants, cafeterias, that portion of hotel business
26 involving the preparation and serving of food, commissaries, fast food
27 outlets, grills, coffee shops, luncheonettes, sandwich shops, tearooms,
28 nightclubs, cabarets, automats, caterers, frankfurter stands, operators
29 of food vending machines, and that portion of a business involving the
30 serving of food in department stores, drugstores, candy stores,
31 bakeries, pizzerias, delicatessens, places of amusement and recreation,
32 commercial and industrial establishments and social, recreational,
33 fraternal and professional clubs which either regularly or
34 intermittently serve food;

35 (iii) An occupation within a hotel, motel or resort with one of the
36 following broad or detailed occupation code numbers and titles, as
37 defined by the federal Bureau of Labor Statistics Standard
38 Occupational Classification system or any successor system: 35-3010
39 Bartenders; 35-9020 Dishwashers; 35-9030 Hosts and Hostesses,
40 Restaurant, Lounge and Coffee Shop; 37-2010 Building Cleaning
41 Workers; 37-3010 Grounds Maintenance Workers; 39-3030 Ushers,
42 Lobby Attendants and Ticket Takers; 39-6010 Baggage Porters,
43 Bellhops and Concierges; 43-4080 Hotel, Motel and Resort Desk Clerks;
44 43-4170 Receptionists and Information Clerks; or

45 (iv) An occupation within a nursing or residential care facility
46 defined by the federal Bureau of Labor Statistics Standard
47 Occupational Classification system or any successor system: 31-1130

48 Nursing Assistants, Orderlies, and Psychiatric Aides;

49 (2) "Employer" means an employer, as defined in section 31-71a of
50 the general statutes, including, but not limited to, a franchisee, as
51 defined in section 42-133e of the general statutes, who employs not less
52 than twenty-five employees aggregated across all locations operated
53 by such employer;

54 (3) "Regular rate" has the same meaning as provided in section 31-
55 76b of the general statutes;

56 (4) "Scheduled work hours" means the hours an employee is
57 scheduled to work pursuant to a work schedule;

58 (5) "Shift" means the consecutive hours an employer schedules an
59 employee to work, or to be available to report to work at the request or
60 permission of the employer, except that a break of not more than one
61 hour shall not be considered an interruption of consecutive hours; and

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

64 (b) An employer shall pay an employee one-half of the employee's
65 regular rate for any scheduled work hours the employee does not
66 work due to the employer cancelling or reducing the employee's
67 scheduled work hours:

68 (1) After the employee reports to work such scheduled work hours,
69 or

70 (2) Less than seventy-two hours prior to the commencement of such
71 scheduled work hours.

72 (c) An employer shall not owe an employee pay pursuant to
73 subsection (b) of this section if the employee's scheduled work hours
74 are canceled or reduced due to:

75 (1) The employee's written request, including, but not limited to, a
76 request to use sick leave, vacation leave or other leave pursuant to

77 employer policy;

78 (2) A mutually agreed upon shift trade or coverage arrangement
79 between employees, subject to an existing employer policy regarding
80 such shift trade or coverage arrangement; or

81 (3) The inability of the employer's operations to begin or continue
82 due to (A) threats to the employer's employees or to the employer's
83 property, (B) the failure of a public utility or the shutdown of public
84 transportation, (C) fire, flood or other natural disaster, (D) a state of
85 emergency declared by the President of the United States or the
86 Governor of this state, or (E) severe weather conditions that pose a
87 threat to employee safety.

88 (d) (1) An employee may decline to work a shift that begins less
89 than eleven hours after the end of the employee's previous day's shift
90 or during the eleven-hour period following the end of the employee's
91 shift that spanned two days.

92 (2) If an employee consents to work a shift described in subdivision
93 (1) of this subsection, such consent shall be in writing.

94 (3) An employee who works a shift described in subdivision (1) of
95 this subsection shall be compensated at one and one-half times the
96 employee's regular rate of pay for any hours worked during such shift.

97 (e) Nothing in this section shall prohibit an employer from adopting
98 policies related to employee scheduling that are more beneficial to an
99 employee than those required by this section.

100 (f) Nothing in this section shall be construed to diminish the
101 obligation of an employer to comply with any contract, collective
102 bargaining agreement, employment benefit plan or other agreement,
103 provided such compliance by the employer is more beneficial to an
104 employee than complying with the provisions of this section.

105 (g) Nothing in this section shall prohibit an employer from
106 scheduling an employee for a shift with less than seventy-two hours'

107 notice, provided such scheduling is mutually agreed upon, freely and
 108 without coercion, in writing and on a case-by-case basis, by the
 109 employee and employer. An employer shall not require an employee
 110 to sign a prospective agreement prior to or at any time during the
 111 employee's employment.

112 (h) Each employer subject to the provisions of this section, unless
 113 exempted by regulations adopted by the Labor Commissioner
 114 pursuant to subsection (i) of this section, shall keep a true and accurate
 115 record for not less than three years of: (1) The shifts worked each day
 116 and each week by each employee, (2) each employee's work schedule,
 117 and (3) any revisions to such work schedule.

118 (i) The Labor Commissioner may adopt regulations, in accordance
 119 with the provisions of chapter 54 of the general statutes, to provide for
 120 the implementation and enforcement of the provisions of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2019	New section

LAB *Joint Favorable Subst.*

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 20 \$	FY 21 \$
Labor Dept.	GF - Cost	52,985	75,425
State Comptroller - Fringe Benefits ¹	GF - Cost	21,825	31,068

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill, which establishes compensation requirements for employers with at least 25 employees in the event of certain shift cancellations or reductions, results in a General Fund cost of \$74,810 in FY 20 (partial year funding) and \$106,493 in FY 21 to the Department of Labor (DOL).

It is estimated that the bill's provisions would extend to over 5,000 firms covering up to approximately 500,000 employees, complaints from whom would require investigations and potential administrative hearings. In order to accommodate this, it is anticipated that the DOL would require one Wage Enforcement Agent at a cost of \$74,810 in FY 20 and \$106,493 in FY 21 for salary and fringe benefit costs.

The bill has no fiscal impact to the state or municipalities as employers. It is not anticipated that either the state or municipalities employ workers that are both covered by the bill and subject to on-call shift scheduling.

¹The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 41.19% of payroll in FY 20 and FY 21.

The Out Years

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

Sources: United States Census Bureau 2015 County Business Patterns

OLR Bill Analysis**sSB 764*****AN ACT LIMITING "ON-CALL" SHIFT SCHEDULING.*****SUMMARY**

This bill generally requires employers with at least 25 employees to pay certain types of employees (i.e., those in wholesale or retail occupations, restaurant occupations, and certain occupations in hotels or residential care facilities) half of their regular pay rate for any scheduled hours that the employer cancels or reduces (1) after the employee reports to work the scheduled hours or (2) less than 72 in advance. The bill provides exceptions to this requirement under certain circumstances, such as mutually agreed upon shift swapping by employees, power outages, or severe weather conditions that pose a threat to employee safety.

If an employer schedules such an employee to work with less than 72 hours' notice, the bill requires the scheduling to be (1) mutually agreed to, freely and without coercion; (2) in writing; and (3) done on a case-by-case basis. It prohibits an employer from requiring an employee to sign a prospective agreement before or during the employee's employment.

The bill also requires these employers to pay these employees a time-and-a-half rate for working a shift that begins less than 11 hours after the employee's previous shift ended.

The bill allows the labor commissioner to adopt regulations to implement and enforce its provisions. It requires employers, unless they are exempted by the regulations, to keep true and accurate records, for at least three years, of each employee's (1) daily and weekly shifts worked and (2) work schedule and schedule revisions.

It also specifies that it does not (1) prohibit an employer from adopting scheduling policies that are more beneficial to employees than those required by the bill or (2) diminish an employer's obligation to comply with any contract, collective bargaining agreement, employment benefit plan, or other agreement if it is more beneficial to an employee than the bill.

EFFECTIVE DATE: October 1, 2019

COVERED EMPLOYERS AND EMPLOYEES

Employers

Employers subject to the bill's provisions are those with at least 25 employees, aggregated across all locations operated by the employer. They include any individual; partnership; association; joint stock company; trust; corporation; the administrator or executor of a deceased person's estate, the conservator of the estate of someone deemed incompetent by the court, or their receivers, trustees, successors, or assignees; a franchisee; and the state and any of its political subdivisions.

Employees

Employees under the bill are those who are paid on an hourly basis and not exempt from the minimum wage and overtime pay requirements of the federal Fair Labor Standards Act and its regulations. To be covered by the bill, an employee must also work in (1) any occupation in the mercantile trade; (2) a restaurant occupation; (3) certain occupations in a hotel, motel, or resort; or (4) certain occupations within a nursing or residential care facility.

Mercantile Trade Occupations. Under the bill, the mercantile trade is the wholesale or retail selling of groceries or commodities and any supplemental or incidental operations. Occupations in it include buying, delivery, maintenance, office, stock, and clerical work. They do not include repair and service employees if the major portion of their duties is unrelated to the mercantile trade.

Restaurant Occupations. Under the bill, restaurant occupations

include anyone who prepares or serves food for human consumption or any incidental or supplemental operations, regardless of (1) where the food is served or (2) whether preparing and serving food is the employer's sole business. However, they do not include preparing and serving food in (1) a nonprofit education, charitable, or religious organization where food service is not regularly available to the general public or (2) hospitals, convalescent homes, or homes for the elderly where food service is incidental to patient care but is not regularly available to the general public.

The bill specifies that restaurant occupations include employees of restaurants; cafeterias; the portion of hotels that prepares and serves food; commissaries; fast food outlets; grills; coffee shops; luncheonettes; sandwich shops; tearooms; nightclubs; cabarets; automats; caterers; frankfurter stands; food vending machine operators; the portion of department stores that serves food; drugstores; candy stores; bakeries; pizzerias; delicatessens; places of amusement and recreation; commercial and industrial establishments; and social, recreational, fraternal and professional clubs which serve food regularly or intermittently.

Hotel, Motel, and Resort Occupations. Hotel, motel, and resort occupations covered by the bill have one of the following broad or detailed occupation code numbers and titles, as defined by the federal Bureau of Labor Statistics (BLS): 35-3010 bartenders; 35-9020 dishwashers; 35-9030 hosts and hostesses, restaurant, lounge, and coffee shop; 37-2010 building cleaning workers; 37-3010 grounds maintenance workers; 39-3030 ushers, lobby attendants, and ticket takers; 39-6010 baggage porters, bellhops, and concierges; 43-4080 hotel, motel, and resort, desk clerks; or 43-4170 receptionists and information clerks.

Nursing or Residential Care Facility Occupations. Nursing or residential care facility occupations covered by the bill have the BLS occupation code number and title 31-1130 nursing assistants, orderlies, and psychiatric aides.

WORK CANCELLATION PAY

The bill requires an employer to pay an employee one-half of the employee's regular pay rate for any of the employee's scheduled work hours that the employer cancels or reduces (1) after the employee reports to work the scheduled hours or (2) less than 72 hours before the start of the scheduled work hours. Under the bill, "scheduled work hours" are the hours an employee is scheduled to work under a written notice of the employee's regular and on-call hours over a consecutive seven-day period.

Exceptions

Under the bill, an employer does not have to pay an employee for cancelling or reducing the employee's scheduled work hours if it was due to any of the following reasons:

1. the employee's written request, including requests to use sick, vacation, or other leave provided by the employer;
2. a mutually agreed on shift trade or coverage arrangement between employees, subject to an applicable existing employer policy; or
3. the employer's inability to operate due to (a) threats to the employees or employer's property, (b) a public utility failure or public transportation shutdown, (c) fire, flood, or other natural disaster, (d) a state of emergency declared by the President or governor, or (e) severe weather conditions that threaten employee safety.

WORKING WITH LESS THAN 11 HOURS BETWEEN SHIFTS

The bill allows an employee to decline to work a shift that begins less than 11 hours after the employee's previous shift ended. But if the employee agrees to work such a shift, the bill requires the employee to consent in writing and the employer to pay the employee one and one-half times the employee's regular pay rate for working the shift.

Under the bill, a "shift" is the consecutive hours, excluding breaks

of one hour or less, that an employer schedules an employee to work. It also includes the hours an employer schedules an employee to be available to work at the employer's request or permission (i.e., "on-call"). Thus, the bill also requires employers to pay employees time-and-a-half when they are on-call for work less than 11 hours after their previous shift ended.

BACKGROUND

Related Bill

HB 6924, reported favorably by the Labor and Public Employees Committee, is identical to this bill.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 9 Nay 4 (03/21/2019)