



General Assembly

January Session, 2019

Committee Bill No. 764

LCO No. 4943



Referred to Committee on LABOR AND PUBLIC EMPLOYEES

Introduced by:
(LAB)

AN ACT PROHIBITING "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 commodities and any operation
9 supplemental or incidental thereto, including, but not limited to,
10 buying, delivery, maintenance, office, stock and clerical work, except
11 repair and service employees having the major portion of their duties
12 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, who employs not less than twenty-five employees;

51 (3) "Regular rate" has the same meaning as provided in section 31-
52 76b of the general statutes;

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

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

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

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

65 (1) After the employee reports to work such scheduled work hours,
66 or

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

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

72 (1) The employee's written request, including, but not limited to, a
73 request to use sick leave, vacation leave or other leave pursuant to
74 employer policy;

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

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

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

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

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

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

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

102 (g) Nothing in this section shall prohibit an employer from
103 scheduling an employee for a shift with less than seventy-two hours'
104 notice, provided such scheduling is mutually agreed upon in writing
105 by the employee and employer.

106 (h) Each employer subject to the provisions of this section, unless
107 exempted by regulations adopted by the Labor Commissioner

108 pursuant to subsection (i) of this section, shall keep a true and accurate
109 record for not less than three years of: (1) The shifts worked each day
110 and each week by each employee, (2) each employee's work schedule,
111 and (3) any revisions to such work schedule.

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

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

Statement of Purpose:

To prohibit the 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.]

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