



General Assembly

February Session, 2020

Raised Bill No. 5275

LCO No. 1738



Referred to Committee on LABOR AND PUBLIC EMPLOYEES

Introduced by:
(LAB)

AN ACT CONCERNING A FAIR WORK WEEK SCHEDULE.

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

1 Section 1. (NEW) (*Effective October 1, 2020*) (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 and
5 the regulations promulgated thereunder, as amended from time to time,
6 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 incidental or supplemental thereto, including, but not limited
10 to, 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, includes 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 care
24 of the patient. Restaurant occupation includes, but is not limited to,
25 employees of restaurants, cafeterias, that portion of hotel businesses
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 of
29 food vending machines, and that portion of a business involving the
30 serving of food in department stores, drugstores, candy stores, bakeries,
31 pizzerias, delicatessens, places of amusement and recreation,
32 commercial and industrial establishments and social, recreational,
33 fraternal and professional clubs which either regularly or intermittently
34 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 Occupational
38 Classification system or any successor system: 35-3010 Bartenders; 35-
39 9020 Dishwashers; 35-9030 Hosts and Hostesses, Restaurant, Lounge
40 and Coffee Shop; 37-2010 Building Cleaning Workers; 37-3010 Grounds
41 Maintenance Workers; 39-3030 Ushers, Lobby Attendants and Ticket
42 Takers; 39-6010 Baggage Porters, Bellhops and Concierges; 43-4080
43 Hotel, Motel and Resort Desk Clerks; 43-4170 Receptionists and
44 Information Clerks; or

45 (iv) Any occupation in long-term health care services as defined as
46 both (a) in the 2012 North American Industry Classification System
47 under code 623110 for nursing homes and (b) under the CT Department
48 of Labor classification (T) 31-1012 for nursing aides, orderlies and
49 attendants.

50 (2) "Employer" means an employer, as defined in section 31-71a of the
51 general statutes, who employs not less than twenty-five employees. A
52 franchisee, as defined in section 42-133e of the general statutes, is an
53 employer under this section when the network of franchises employs
54 not less than twenty-five employees in aggregate;

55 (3) "Regular rate" has the same meaning as provided in section 31-
56 76b of the general statutes;

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

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

63 (6) "Work schedule" means a written notice of an employee's regular
64 and on-call hours, including specific start and end times for each shift,
65 during a consecutive seven-day period; and

66 (7) "Work schedule change" means any employer-initiated
67 modification to the employee's work schedule, including: (A) The
68 addition or reduction of hours; (B) cancellation of a work shift or portion
69 of a work shift; (C) a change in the date, time or location of a work shift;
70 or (D) scheduling the employee for an on-call work shift for which the
71 employee does not need to report to work.

72 (b) Not later than the time of commencement of employment, an
73 employer shall provide the employee with a written work schedule that
74 runs through the last date of the currently posted schedule. Thereafter,
75 an employer shall provide written notice of work hours pursuant to
76 subdivision (1) of this subsection not later than fourteen days prior to
77 the first day of any new schedule. Nothing in this section shall be
78 construed to prohibit an employer from providing greater advance
79 notice of employee's work schedules or changes in schedules than
80 required by this section.

81 (1) Written notice of the work schedule shall be provided by posting
82 the work schedule in a conspicuous place that is readily accessible and
83 visible to all employees at the workplace and the posted work schedule
84 shall be transmitted to each employee. Such transmission may be done
85 electronically if electronic means are regularly used to communicate
86 scheduling information to employees. The posted work schedule shall
87 identify all employees currently employed at that worksite, whether or
88 not they are scheduled to work any hours in the current schedule.

89 (2) An employer shall provide written notice of any work schedule
90 change as promptly as possible and prior to the change taking effect.
91 The employer shall revise the written work schedule to reflect any work
92 schedule changes within twenty-four hours of making the change.

93 (3) An employee may decline to work any hours not included in the
94 posted work schedule. If the employee voluntarily consents to work
95 such hours, such consent shall be recorded in writing.

96 (c) (1) An employer shall pay an employee one hour of pay at the
97 employee's regular rate for each instance when the employer, less than
98 fourteen days prior to the commencement of scheduled work hours,
99 adds hours of work or changes the date, time or location of a work shift
100 without loss of hours.

101 (2) An employer shall pay an employee one-half of the employee's
102 regular rate for any scheduled work hours the employee does not work
103 due to the employer cancelling or reducing the employee's scheduled
104 work hours: (A) After the employee reports to work such scheduled
105 work hours, or (B) less than fourteen days prior to the commencement
106 of such scheduled work hours.

107 (d) Subsection (c) of this section shall not apply if the employee's
108 scheduled work hours are changed due to: (1) The employee's written
109 request, including, but not limited to, a request to use sick leave,
110 vacation leave or other leave pursuant to employer policy; (2) a
111 mutually agreed upon shift trade or coverage arrangement between
112 employees, subject to an existing employer policy regarding such shift

113 trade or coverage arrangement; or (3) the inability of the employer's
114 operations to begin or continue due to (A) the failure of a public utility
115 or the shutdown of public transportation, (B) fire, flood or other natural
116 disaster, (C) a state of emergency declared by the President of the United
117 States or the Governor of this state.

118 (e) (1) An employee may decline to work a shift that begins less than
119 eleven hours after the end of the employee's previous day's shift or
120 during the eleven-hour period following the end of the employee's shift
121 that spanned two days.

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

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

127 (f) Nothing in this section shall prohibit an employer from adopting
128 policies related to employee scheduling that are more beneficial to an
129 employee than those required by this section.

130 (g) Nothing in this section shall be construed to diminish the
131 obligation of an employer to comply with any contract, collective
132 bargaining agreement, employment benefit plan or other agreement,
133 provided such compliance by the employer is more beneficial to an
134 employee than complying with the provisions of this section.

135 (h) Upon hiring an employee, an employer shall obtain a written
136 statement of the employee's desired number of weekly work hours and
137 the days and times the employee is available to work. The employer
138 shall notify the employee that this written statement may be modified
139 in writing by the employee at any time during employment.

140 (1) At the time of hire, an employer shall provide each employee with
141 a written estimate of the employee's work schedule. The employer shall
142 revise the estimate when there is a significant change to the employee's

143 work schedule due to changes in the employee's availability or to the
144 employer's business needs. The estimate shall not be considered a
145 contractual offer binding the employer. An estimate made without a
146 basis in good faith shall be a violation of this section.

147 (2) The estimate shall contain: (A) The average number of work hours
148 the employee can expect to work each week; (B) the minimum and
149 maximum numbers of work hours the employee can expect to work
150 each week; (C) the minimum length of shifts that the employee can
151 expect to work; and (D) a number of days, the amount of time, and the
152 number of shifts that the employee can expect to work, and days of the
153 week and times or shifts on which the employee will not be scheduled
154 to work.

155 (3) An employer does not violate the requirements of this section
156 when an employee's average weekly work hours significantly exceed
157 the number provided in the good faith estimate if the employer is
158 making every effort to schedule the employee for the employee's
159 desired number of weekly work hours.

160 (4) At the time of hire and during employment, the employee may
161 make work schedule requests. Such requests include, but are not limited
162 to, requests: (A) Not to be scheduled for work shifts during certain days
163 or times or at certain locations; (B) for certain hours, days or locations of
164 work; (C) for more or fewer work hours; and (D) to be scheduled
165 consistently for a specified or minimum number of weekly work hours.
166 The employer shall engage in an interactive process to discuss such
167 employee requests, but may grant or deny the request for any bona fide
168 business reason that is not unlawful.

169 (i) Before hiring a new employee from an external applicant pool or
170 via a contractor, including hiring through the use of a temporary help
171 service or employment agency, as defined in section 31-129 of the
172 general statutes, an employer shall make every effort to schedule
173 existing employees for the desired number of weekly work hours
174 identified in the written statements provided pursuant to subsection (h)

175 of this section, provided the employer may hire a new employee if
176 existing employees lack, and cannot obtain with reasonable training, the
177 qualifications necessary to perform their work. This section shall not be
178 construed to require any employer to schedule employees to work
179 hours required to be paid at an overtime rate under state or federal law.

180 (j) If an employer fails to offer existing employees opportunities to
181 work their desired number of weekly work hours before hiring a new
182 employee, the employer shall compensate existing employees at the
183 employees' regular hourly rate for hours worked by a newly hired
184 employee that occurred within the existing employees' written
185 availability.

186 (k) The Labor Commissioner, or, in the case of a civil action, a court
187 may grant the following relief to employees or former employees for
188 any violation of the provisions of this section, in addition, or as an
189 alternative to, any other remedies provided by law:

190 (1) All compensatory damages and other relief required to make the
191 employee or former employee whole;

192 (2) An order directing compliance with the recordkeeping
193 requirements of this section; and

194 (3) (A) For each violation of subsection (b) of this section, two
195 hundred dollars and an order directing compliance with said
196 subsection; (B) for each violation of subsection (c) of this section,
197 payment of compensation withheld in violation of said subsection, three
198 hundred dollars, and an order directing compliance with said
199 subsection; (C) for each violation of subsection (d) of this section,
200 payment as required pursuant to said subsection, five hundred dollars,
201 and an order directing compliance with said subsection; (D) for each
202 violation of subsection (h) of this section, two hundred dollars and an
203 order directing compliance with said subsection; (E) for each violation
204 of subsection (i) of this section, the greater of five hundred dollars or
205 such employee's actual damages, and an order directing compliance
206 with said subsection. The relief authorized pursuant to this subsection

207 shall be imposed on a per employee and per instance basis for each
208 violation.

209 (4) For each violation of subsection (b), (c), (d), (h) or (i) of this section,
210 the employer shall pay a civil penalty of two hundred dollars to the
211 Labor Commissioner, for each employee affected by the violation
212 during each pay period the violation continued.

213 (l) The Labor Commissioner, the Attorney General, any person
214 aggrieved by a violation of this section, or any entity a member of which
215 is aggrieved by a violation of this section, may bring a civil action to
216 recover damages, civil penalties and such equitable and injunctive relief
217 as the court deems appropriate. Any individual who prevails in such
218 civil action shall be awarded reasonable attorney's fees and costs to be
219 taxed by the court.

220 (m) Each employer subject to the provisions of this section, unless
221 exempted by regulations adopted by the Labor Commissioner pursuant
222 to subsection (n) of this section, shall keep a true and accurate record for
223 not less than three years of: (1) The shifts worked each day and each
224 week by each of its employees, (2) each employee's work schedule, and
225 (3) any revisions to such work schedule.

226 (n) The Labor Commissioner may adopt regulations, in accordance
227 with the provisions of chapter 54 of the general statutes, to implement
228 and enforce the provisions of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2020</i>	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.]