
OLR Bill Analysis

sSB 668

AN ACT CONCERNING A FAIR WORK WEEK SCHEDULE.

SUMMARY

This bill generally requires employers with at least 250 employees to pay certain types of employees (i.e., those in wholesale, retail, or 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 for the scheduled hours or (2) less than 14 days in advance. The bill also applies to (1) a franchisee if the network of franchises employs 250 employees in total and (2) nursing homes that employ at least 100 or are operated by a management company that employs at least 100. The bill applies to employees who are paid by the hour and are not exempt from minimum wage or overtime rules.

The bill provides exceptions to this requirement under certain circumstances, such as an employee's written request for leave pursuant to the employer's leave policy; mutually agreed upon shift swapping by employees; power outages; or a declared state of emergency.

It also allows an employee to decline to work any hours not included in the posted work schedule. An employee may voluntarily consent to working such hours, but the consent must be recorded in writing.

Additionally, the bill details the required steps that an employer and new employee must take to establish a work schedule, including the employer (1) obtaining the employee's requested schedule and (2) providing an initial schedule estimate. It also specifies how an employer must post schedules and notify employees of schedule changes.

Finally, it authorizes (1) relief to employees or former employees for violations of the bill and (2) civil penalties of \$200 to be paid to the labor commissioner for each employee affected by a violation. The bill authorizes the labor commissioner, or, in the case of a civil action, a court to grant the relief to employees or former employees for violations including, among other things, all compensatory damages and other relief required to make the employee or former employee whole.

EFFECTIVE DATE: October 1, 2021

EMPLOYEE DEFINITION

Under the bill an employee is a person paid by the hour who is not exempt from minimum wage and overtime pay rules and is employed in:

1. any wholesale or retail occupation (i.e., mercantile) which includes selling of groceries or commodities and anything incidental or supplemental to those such as buying, delivering, or maintaining groceries or commodities; and any office, stock or clerical work, except repair and service employees whose major duties are unrelated to the mercantile trade;
2. a restaurant occupation, including any person engaged in food preparation and service or any incidental role; includes employees of restaurants, cafeterias, the portion of hotel businesses involving food, fast food outlets, coffee shops, sandwich shops, operators of food vending machines, and the portion of a business involving serving food in department stores; places of amusement and recreation, commercial and industrial establishments, and social, fraternal, and professional clubs that either regularly or intermittently serve food, but excluding food preparation and service in a nonprofit educational, charitable, or religious organization or hospital or nursing home where the food service is not regularly available to the public and, in the case of hospitals or nursing homes, is related to patient care;

3. specified occupations within a hotel, motel, or resort, as defined by the federal Standard Occupational Classification system (i.e., bartenders; dishwashers; hosts and hostesses (restaurant, lounge and coffee shop)); building cleaning workers; grounds maintenance workers; ushers, lobby attendants and ticket takers; baggage porters, bellhops, and concierges; desk clerks; and receptionists and information clerks); or
4. any occupation in long-term health care services, as defined in both the North American Industry Classification System (2012) under the code for nursing homes and under the Labor Department classification for nursing aides, orderlies, and attendants.

REQUIRED WORK SCHEDULE PROCESS

Employee Schedule Request and Employer Schedule Estimate

Upon hiring an employee, the bill requires an employer to obtain a written statement from the employee of his or her desired weekly work hours and the days and times the employee is available. The employer must notify the employee that this written statement may be modified in writing by the employee at any time during employment.

At the time of hire, an employer must provide each employee with a written estimate of the employee's work schedule. The employer must revise the estimate when there is a significant change to the employee's work schedule due to changes in the employee's availability or to the employer's business needs. Under the bill, the estimate is not considered a contractual offer binding the employer and an estimate made without a basis in good faith will be a violation of this requirement.

The employee's work schedule estimate that the employer is required to provide must include:

1. the average, minimum, and maximum number of work hours the employee can expect to work each week;
2. the minimum length of shifts that the employee can expect to

work; and

3. the number of days, the amount of time, and the number of shifts that the employee can expect to work, plus the days of the week and times or shifts the employee will not be scheduled to work.

Under the bill, an employer is not in violation of the schedule request and schedule estimate provisions when an employee's average weekly work hours significantly exceed the number provided in the written estimate if the employer makes every effort to schedule the employee for the employee's desired number of weekly work hours.

Employee's First Work Schedule

No later than the date of an employee's first shift, the employer must provide an employee with his or her work schedule. The schedule must cover the period starting on the date of that first shift and ending on the last date of the seven-day period covered by the employer-posted work schedule as required by the bill (see below). Thereafter, the employer must notify the employee of the employee's work schedule in accordance with the bill's requirements.

Under the bill "work schedule" means a written notice of an employee's regular and on-call hours, including specific start and end times for each shift during a consecutive seven-day period.

Posting Work Schedules

At least 14 days before the first date of any work schedule's seven-day period, an employer must post the work schedule in a conspicuous place that is readily accessible and visible to all employees at the workplace. The employer must also transmit the schedule to each employee, which may be by electronic means if that is the regular way scheduling information is communicated to employees. The work schedule must identify all employees currently employed at the worksite, whether or not they are scheduled to work any hours in the work schedule.

Notice of Work Schedule Changes

Under the bill, an employer must provide each employee with written notice of any work schedule change as promptly as possible and before the change takes effect.

The bill defines a "work schedule change" as any employer-initiated modification to the employee's work schedule, including: (1) the addition or reduction of hours; (2) cancellation of a work shift or portion of a work shift; (3) a change in the date, time, or location of a work shift; or (4) scheduling the employee for an on-call work shift for which the employee is subsequently not needed to report to work.

Within 24 hours after making a change to the work schedule, the employer must revise the posted schedule to reflect the change. An employee may decline to work any hours not included in the posted schedule (presumably, this is meant to say "not included in the posted schedule before it was revised"). If the employee voluntarily consents to work such hours, the consent must be recorded in writing.

Work Schedule Adjustment Requests

The bill permits employees to request adjustments to their work schedule, including requests:

1. not to be scheduled for shifts during certain days or times or at certain locations;
2. for certain hours, days, or work locations;
3. for more or fewer work hours; and
4. to be scheduled consistently for a specified or minimum number of weekly work hours.

The employer must engage in an interactive process to discuss the employee requests but may grant or deny them for any bona fide business reason that is not unlawful.

WORK CANCELLATION PAY AND ADDITIONAL WORK HOURS 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 14 days 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.

Also, an employer must pay an employee one hour of pay at the employee's regular rate for each instance that the employer, less than 14 days before the scheduled work, adds one or more hours of work or changes the date, time, or location of a work shift without a reduction of hours. Under the bill, an employee's "regular rate" of pay includes all remuneration for employment paid to the employee, but it does not include, among other things, (1) sums paid as gifts or (2) irrevocable employer contributions to a plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees.

Exceptions

Under the bill, an employer does not have to pay an employee for cancelling, reducing, or adding to 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) a public utility failure or public transportation shutdown; (b) fire, flood, or other natural disaster; or (c) a state of emergency declared by the President or governor.

DECLINING SHIFTS 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 includes the hours an employer schedules an employee to be available to work at the employer's request or permission (i.e., "on-call"). Therefore, 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.

LIMIT ON HIRING NEW EMPLOYEES

Under the bill, before hiring a new employee, an employer must make every effort to schedule existing employees for the desired number of weekly work hours that each employee identifies in the written scheduling requests the bill requires. An employer may hire a new employee if existing employees lack the qualifications necessary to perform the duties of the position being filled and cannot obtain them with reasonable training. The bill provides that this requirement does not require an employer to schedule employees to work hours that would require overtime pay under state or federal law.

If an employer fails to offer existing employees the opportunity to work their desired number of weekly hours before hiring a new employee, the employer must pay the existing employees at their regular hourly rate for hours worked by a newly hired employee that occurred within the existing employees' written availability.

ENFORCEMENT AND REMEDIES

The bill authorizes (1) relief to employees or former employees for violations of the bill and (2) civil penalties to be paid to the labor commissioner for the same violations.

It authorizes the labor commissioner, or, in the case of a lawsuit, a court to grant to employees or former employees the following relief

for violations of the bill:

1. all compensatory damages and other relief required to make the employee or former employee whole;
2. an order directing compliance with this section's recordkeeping requirements; and
3. for each violation of specific provisions, in addition to an order directing compliance with the violated provision, the monetary penalties shown in Table 1.

This relief must be (1) imposed on a per employee and per instance basis for each violation and (2) in addition to, or as an alternative to, any other remedies provided by law.

Table 1. Work Scheduling Violations and Penalty Amounts

<i>Violation</i>	<i>Amount for Each Violation</i>
Failure to obtain employee schedule request, provide employee with estimate of work schedule, and notify employee that they may modify the schedule request at any time	\$200
Failure to provide first work week schedule	\$200
Failure to post work schedules 14 days in advance and transmit them to employees	\$200
Failure to provide written notice of any work schedule change as promptly as possible and prior to the change taking effect	\$200
Failure to provide additional pay for (1) cancelling or reducing scheduled hours or (2) adding hours or changing the date, time, or location of a shift without reducing hours	\$300, plus any unpaid compensation
Failure to schedule existing employees for their designed number of weekly hours before hiring new employees, as provided under the bill	Greater or \$500 or the employee's actual damages

In addition, the bill requires employers to pay a civil penalty of \$200 to the labor commissioner for each employee affected by a violation of any of the five provisions in the table.

The bill authorizes the labor commissioner, the attorney general, any person aggrieved by a violation of the bill, or any entity with a member aggrieved by a violation, to bring a civil action to recover damages, civil penalties and any equitable and injunctive relief as the court deems appropriate. Any individual who prevails in the civil action must be awarded reasonable attorney's fees and costs.

MORE BENEFICIAL EMPLOYER POLICIES

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.

REGULATIONS AND RECORDS REQUIREMENT

The bill allows the labor commissioner to adopt regulations to implement and enforce the bill's 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.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable
Yea 9 Nay 4 (03/23/2021)