



House of Representatives

General Assembly

File No. 297

February Session, 2022

Substitute House Bill No. 5353

House of Representatives, April 5, 2022

The Committee on Labor and Public Employees reported through REP. PORTER of the 94th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

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, 2022*) (a) As used in this section:

2 (1) "Employee" means any person (A) paid on an hourly basis, (B) not
3 exempt from the minimum wage and overtime compensation
4 requirements of the Fair Labor Standards Act of 1938 and the
5 regulations promulgated thereunder, as amended from time to time, (C)
6 suffered or permitted to work by an employer, and (D) employed in an
7 occupation in a retail establishment, food services establishment or a
8 hospitality occupation. An alleged employer bears the burden of proof
9 that the individual is, under applicable law, an independent contractor
10 rather than an employee of the alleged employer;

11 (2) "Employer" means a retail establishment, a food services
12 establishment or a hospitality establishment that is (A) an employer, as
13 defined in section 31-71a of the general statutes, that employs not less

14 than five hundred employees within the United States or globally and,
15 for an employer that is a restaurant where food is prepared, served and
16 consumed on the premises, such employer has not less than thirty
17 restaurant locations within the United States or globally, or (B) a
18 franchisee, as defined in section 42-133e of the general statutes, if the
19 network of franchises within the United States or globally employs not
20 less than five hundred employees in the aggregate;

21 (3) "Food services establishment" means the fixed point of service
22 location for food services contractors, caterers, mobile food services,
23 bars, full service restaurants, limited service restaurants, cafeterias, grill
24 buffets and buffets, and snack and nonalcoholic beverage bars, as
25 defined under section 722 of the 2022 North American Industry
26 Classification System ("NAICS"), or other classification or subsequent
27 edition of the NAICS designated pursuant to regulation adopted by the
28 Labor Commissioner;

29 (4) "Hospitality establishment" means hotel, motel, or casino hotel, as
30 defined under sections 721110 and 721120 of the 2022 North American
31 Industry Classification System ("NAICS"), or other classification or
32 subsequent edition of the NAICS designated pursuant to regulations
33 adopted by the Labor Commissioner;

34 (5) "Regular rate" has the same meaning as provided in section 31-
35 76b of the general statutes;

36 (6) "Retail establishment" means the fixed point of sale location for an
37 establishment defined under sections 4410 through 4599 of the 2022
38 North American Industry Classification System ("NAICS"), or other
39 classification or subsequent edition of the NAICS designated pursuant
40 to regulations adopted by the Labor Commissioner;

41 (7) "Scheduled work hours" means the hours an employee is
42 scheduled to work pursuant to a work schedule;

43 (8) "Shift" means the consecutive hours an employer schedules an
44 employee to work, or to be available to report to work at the request or

45 permission of the employer, except a break of not more than one hour
46 shall not be considered an interruption of consecutive hours;

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

50 (10) "Work schedule change" means any employer-initiated
51 modification to the employee's work schedule, including (A) the
52 addition or reduction of hours, (B) cancellation of a work shift or portion
53 of a work shift, (C) a change in the date, time or location of a work shift,
54 or (D) scheduling the employee for an on-call work shift for which the
55 employee does not need to report to work; and

56 (11) "Whistleblower" means a person with knowledge of an alleged
57 violation of this section, regardless of whether the person is aggrieved
58 by the violation, or a representative of such person. A whistleblower
59 does not include the state or its representatives.

60 (b) Upon hiring an employee, an employer shall: (1) Obtain a written
61 statement of the employee's desired number of weekly work hours and
62 the days and times the employee is available to work. The employer
63 shall notify the employee that the employee may modify such written
64 statement at any time; and (2) provide the employee with a written
65 estimate of the employee's work schedule. Such written estimate shall
66 not be considered a contractual offer binding the employer and shall
67 contain: (A) The average number of work hours the employee can
68 expect to work each week; (B) the minimum and maximum numbers of
69 work hours the employee can expect to work each week; (C) the
70 minimum length of shifts that the employee can expect to work; and (D)
71 the number of days, the amount of time and the number of shifts that
72 the employee can expect to work, and days of the week and times or
73 shifts on which the employee will not be scheduled to work. An estimate
74 made without a basis in good faith shall be a violation of this subsection.
75 The employer shall revise the written estimate of the employee's work
76 schedule if there is a significant change to such schedule due to changes
77 in the employee's availability or to the employer's business needs. An

78 employer is not in violation of any provision of this subsection when an
79 employee's average weekly work hours significantly exceed the number
80 provided in the written estimate if the employer makes every effort to
81 schedule the employee for the employee's desired number of weekly
82 work hours.

83 (c) Not later than the date of an employee's first shift, the employer
84 shall provide to the employee the employee's work schedule for the
85 period commencing on the date of the employee's first shift and ending
86 on the last date of the seven-day period covered by the work schedule
87 posted by the employer pursuant to subsection (d) of this section.
88 Thereafter, the employer shall notify the employee of the employee's
89 work schedule in accordance with the provisions of subsection (d) of
90 this section.

91 (d) Not later than fourteen days prior to the first date of the seven-
92 day period of any work schedule, an employer shall post the work
93 schedule in a conspicuous place that is readily accessible and visible to
94 all employees at the workplace and shall transmit such schedule to each
95 employee. Such transmission may be electronic if electronic means are
96 regularly used to communicate scheduling information to employees.
97 The work schedule shall identify all employees currently employed at
98 the worksite, whether or not such employees are scheduled to work any
99 hours in the work schedule.

100 (e) An employer shall provide to each employee written notice of any
101 work schedule change as soon as possible and prior to such change
102 taking effect. Not later than twenty-four hours after making a change to
103 the work schedule, the employer shall revise the posted work schedule
104 to reflect the change. An employee may decline to work any hours not
105 included in the posted work schedule. If the employee voluntarily
106 consents to work such hours, such consent shall be recorded in writing.

107 (f) (1) Except as provided in subdivision (2) of this subsection, an
108 employer shall pay an employee: (A) One hour of pay at the employee's
109 regular rate for each instance that the employer, less than seven days
110 prior to the commencement of scheduled work hours, adds one or more

111 hours of work or changes the date, time or location of a work shift
112 without a reduction of hours, and (B) one-half of the employee's regular
113 rate for any scheduled work hours the employee does not work due to
114 the employer cancelling or reducing the employee's scheduled work
115 hours: (i) After the employee reports to work such scheduled work
116 hours, or (ii) less than seven days prior to the commencement of such
117 scheduled work hours.

118 (2) The provisions of subdivision (1) of this subsection shall not apply
119 if the employee's scheduled work hours are changed due to: (A) The
120 employee's written request, including, but not limited to, a request to
121 use sick leave, vacation leave or other leave pursuant to the employer's
122 policy; (B) a mutually agreed-upon shift trade or coverage arrangement
123 between employees, subject to an existing employer policy regarding
124 such shift trade or coverage arrangement; or (C) the inability of the
125 employer's operations to begin or continue due to (i) the failure of a
126 public utility or the shutdown of public transportation, (ii) fire, flood or
127 other natural disaster, or (iii) an emergency declaration issued by the
128 President of the United States or the Governor of this state.

129 (g) An employee may decline to work any shift that begins less than
130 eleven hours after the end of the employee's previous day's shift or
131 during the eleven-hour period following the end of a shift that spanned
132 more than one day. If an employee consents to work such shift, such
133 consent shall be in writing and the employee shall be compensated at
134 one and one-half times the employee's regular rate of pay for any hours
135 worked during the shift for which the employee consented.

136 (h) An employee may request adjustments to such employee's work
137 schedule, including, but not limited to, requests: (1) Not to be scheduled
138 for work shifts during certain days or times or at certain locations; (2)
139 for certain hours, days or locations of work; (3) for more or fewer work
140 hours; and (4) to be scheduled consistently for a specified or minimum
141 number of weekly work hours. The employer shall engage in an
142 interactive process to discuss such employee requests, but may grant or
143 deny the request for any bona fide business reason that is not unlawful.

144 (i) Each employer subject to the provisions of this section shall, unless
145 exempted by regulations adopted by the Labor Commissioner pursuant
146 to subsection (k) of this section, keep a true and accurate record for not
147 less than three years of: (1) The shifts worked each day and each week
148 by each of its employees, (2) each employee's work schedule, and (3) any
149 revisions to such work schedule.

150 (j) Nothing in this section shall be construed to prohibit an employer
151 from adopting policies related to employee scheduling that are more
152 favorable to an employee than those required by this section.

153 (k) Prior to hiring a new employee from an external applicant pool or
154 through a contractor, including a temporary help service or an
155 employment agency, as defined in section 31-129 of the general statutes,
156 an employer shall make every effort to schedule existing employees for
157 the desired number of weekly work hours identified in the written
158 statements provided pursuant to subsection (b) of this section, provided
159 the employer may hire a new employee if existing employees lack, and
160 cannot obtain with reasonable training, the qualifications necessary to
161 perform the duties of the position being filled. This section shall not be
162 construed to require any employer to schedule employees to work
163 hours required to be paid at an overtime rate under state or federal law.
164 If an employer fails to offer existing employees opportunities to work
165 their desired number of weekly work hours before hiring a new
166 employee, the employer shall compensate existing employees at the
167 employees' regular hourly rate for hours worked by a newly hired
168 employee that occurred within the existing employees' written
169 availability.

170 (l) The Labor Commissioner may adopt regulations, in accordance
171 with the provisions of chapter 54 of the general statutes, to implement
172 and enforce the provisions of this section, including a process for the
173 commissioner to address complaints.

174 (m) Any person aggrieved by a violation of any provision of this
175 section, the Labor Commissioner, the Attorney General or any entity, a
176 member of which is aggrieved by a violation of this section, may bring

177 a civil action in the Superior Court to recover damages, civil penalties
178 and such equitable and injunctive relief as the court deems appropriate.
179 Any individual who prevails in such civil action shall be awarded
180 reasonable attorney's fees and costs to be taxed by the court. An
181 employer that knowingly violates a provision of subsections (b) to (f),
182 inclusive, of this section or subsection (k) of this section, shall pay a civil
183 penalty of two hundred dollars to the Labor Commissioner for each
184 employee affected by the violation during each pay period the violation
185 continued.

186 (n) In the case of a civil action, the Superior Court may grant the
187 following relief to an employee, or former employee, for a violation of
188 any provision of this section, in addition to, or as an alternative to, any
189 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 the employer to comply with the
193 recordkeeping requirements of subsection (i) of this section; and

194 (3) (A) For each violation of a provision of subsections (c) to (e),
195 inclusive, of this section, two hundred dollars and an order directing
196 compliance with said subsections; (B) for each violation of a provision
197 of subsection (f) of this section, payment of compensation withheld in
198 violation of said subsection, three hundred dollars, and an order
199 directing compliance with said subsection; (C) for each violation of a
200 provision of subsection (b) of this section, two hundred dollars, and an
201 order directing compliance with said subsection; and (D) for each
202 violation of a provision of subsection (k) of this section, the greater of
203 five hundred dollars or such employee's actual damages, and an order
204 directing compliance with said subsection. The relief authorized
205 pursuant to this subsection shall be imposed on a per employee and per
206 instance basis for each violation.

207 (o) (1) (A) A whistleblower may, on behalf of the state, bring a civil
208 action in the Superior Court against an employer who violates any

209 provision of this section to seek equitable remedies or penalties
 210 equivalent to the statutory damages described in subdivision (3) of
 211 subsection (n) of this section. The state may intervene in an action at any
 212 time from the commencement of the action to thirty days after the
 213 commencement of the action. After thirty days, the state may intervene
 214 with permission from the court.

215 (B) Not less than thirty days before the action is filed, the
 216 whistleblower shall give written notice to the Labor Commissioner of
 217 the specific provisions of this section that the whistleblower alleges that
 218 an employer violated. The commissioner may prosecute the action in
 219 the name of the Labor Department or allow the whistleblower to
 220 proceed on behalf of the state.

221 (2) The proceeds of any judgment entered in favor of a whistleblower
 222 pursuant to this section shall be distributed as follows: (A) Seventy-five
 223 per cent to the division for enforcement of this section; and (B) twenty-
 224 five per cent to the first whistleblower who filed the action.

225 (3) In addition to the amount described in subdivision (2) of this
 226 subsection, the court shall award reasonable attorney's fees to a
 227 whistleblower who prevails in an action brought pursuant to
 228 subdivision (1) of this subsection.

229 (4) The right to bring an action under this section is not impaired by
 230 any private contract.

231 (5) An action under this section shall be tried promptly and without
 232 regard to concurrent adjudication of private claims.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2022	New section

Statement of Legislative Commissioners:
 In Section 1(b), the second sentence was divided into two sentences, with the second sentence beginning after the word "time", and the

second sentence was then moved to after Subdiv. (2) for clarity and consistency.

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 23 \$	FY 24 \$
Labor Dept.	GF - Potential Revenue Gain	Minimal	Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill, which establishes requirements regarding employee scheduling for certain employers, results in a potential minimal revenue gain to the extent there are violations and therefore civil penalties paid.

The bill allows aggrieved parties to bring an action before Superior Court over alleged violations, which does not result in any cost impact. The court system disposes of over 400,000 cases annually and the number of cases is not anticipated to be great enough to have a material impact on court operations.

The bill has no cost impact on the state or municipalities as employers because it is not anticipated that any state or municipal employees would be covered under the bill's requirements.

The Out Years

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

OLR Bill Analysis**sHB 5353*****AN ACT CONCERNING A FAIR WORK WEEK SCHEDULE.*****SUMMARY**

This bill generally requires employers with at least 500 employees within the U.S. or globally to pay certain types of employees (i.e., those employed in retail, food service, and hospitality establishments) 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 seven days in advance. The bill specifically applies to (1) restaurants where food is prepared, served, and consumed on the premises if the employer has at least 30 restaurant locations in the U.S. or globally and (2) a franchisee if the network of franchises in the U.S. or globally employs at least 500 employees total. The bill applies to employees who are paid hourly and 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 these hours, but the consent must be recorded in writing.

The bill requires that an employer and new employee take certain steps to establish a work schedule, including the employer (1) obtaining the employee's requested schedule and (2) providing an initial schedule estimate.

Additionally, it authorizes (1) relief to employees or former

employees for violations of the bill and (2) \$200 civil penalties to be paid to the labor commissioner for each employee affected by a violation. The bill authorizes any person aggrieved by a violation of the bill to bring a civil action in Superior Court seeking relief for violations including, among other things, compensatory damages and other relief to make the employee or former employee whole. It also authorizes the labor commissioner, the attorney general, or any entity with a member who is aggrieved by a violation to bring a civil action.

Finally, the bill includes whistleblower provisions that allow a person with knowledge of an alleged violation to bring civil action in court on behalf of the state. It authorizes a whistleblower to seek remedies and penalties equivalent to those allowed under the bill.

EFFECTIVE DATE: October 1, 2022

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 a:

1. “retail establishment,” which is a fixed point of sale location for establishments as defined in the 2022 North American Industry Classification System (NAICS) sections 4410 to 4599 (e.g., auto dealers, grocery stores, department stores, pharmacies, hardware stores, home furnishing stores, and office supply stores);
2. “food service establishment,” which is a fixed point of service location for food services contractors, caterers, mobile food services, bars, full- and limited-service restaurants, cafeterias, grill buffets and buffets, and snack and nonalcoholic beverage bars (NAICS § 722); or
3. “hospitality establishment,” which is a hotel, motel, or casino hotel (NAICS §§ 721110 and 721120).

The bill allows the Labor Commissioner to add other classifications

or use subsequent NAICS editions by adopting regulations.

The bill specifies that an alleged employer bears the burden of proof that an individual is, under applicable law, an independent contractor rather than the employer's employee.

REQUIRED WORK SCHEDULE PROCESS

Employee Schedule Request and Employer Schedule Estimate (§ 1(b))

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, including available days and times. 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 give each employee 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 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 the:

1. average, minimum, and maximum number of work hours the employee can expect to work each week;
2. minimum length of shifts that the employee can expect to work; and
3. number of days, amount of time, and 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 does not violate 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. (The bill doesn't define "significantly exceed" in this context.)

Employee's First Work Schedule (§ 1 (c))

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 day of the seven-day period covered by the employer-posted work schedule as required by the bill (see below). After that, 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 (§ 1(d))

At least 14 days before the first day 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 this 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 (§ 1 (e))

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) adding or reducing hours; (2) cancelling a work shift or part of a work shift; (3)

changing 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 the revised hours, the consent must be recorded in writing.

Work Schedule Adjustment Requests (§ 1(h))

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 requests and may grant or deny them for any lawful, bona fide business reason.

Work Cancellation Pay and Additional Work Hours Pay (§ 1(f))

The bill generally 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 seven 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 generally pay an employee one hour of pay at the employee's regular rate for each instance that the employer, less than seven 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:

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 (§ 1(g))

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 the shift, the bill requires the employer 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"). So, 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 (§ 1(k))

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. These conditions apply to an employer that hires from an external applicant pool or through a contractor, including a temporary help service or an employment agency.

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 (§ 1(m) & (n))

The bill authorizes 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. It also authorizes the labor commissioner or the attorney general to pursue civil action for violations.

It authorizes a court to grant employees or former employees the following relief for violations of the bill:

1. compensatory damages and other relief required to make the employee or former employee whole;
2. an order directing compliance with the bill's recordkeeping requirements; and
3. for each violation of specific provisions, in addition to an order directing compliance, 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>Bill Subsection</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	1(b)	\$200
Failure to provide first work week schedule	1(c)	\$200
Failure to post work schedules 14 days in advance and transmit them to employees	1(d)	\$200
Failure to provide written notice of any work schedule change as promptly as possible and prior to the change taking effect	1(e)	\$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	1(f)	\$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	1(k)	Greater of \$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 that the employer knowingly violates.

Any individual who prevails in the civil action must be awarded reasonable attorney's fees and costs.

Whistleblower Provisions (§ 1(o))

Under the bill, a whistleblower, on behalf of the state, may bring a civil action against an employer who violates any provision of the bill to seek equitable remedies or penalties equivalent to the statutory damages in the bill's enforcement provisions.

The bill defines a "whistleblower" as a person with knowledge of an alleged violation of the bill, regardless of whether the person is aggrieved by the violation, or a representative of an aggrieved person. A whistleblower does not include the state or its representatives.

It allows the state to intervene in an action up to 30 days after the action has begun. After 30 days, the state may intervene with the court's permission.

At least 30 days before the action is filed, the whistleblower must give written notice to the Department of Labor (DOL) commissioner of the specific provisions that the whistleblower alleges an employer violated. The commissioner may prosecute the action in DOL's name or allow the whistleblower to proceed on the state's behalf.

The bill specifies that the proceeds of any judgment entered in favor of a whistleblower must be distributed as follows: (1) 75% to DOL's enforcement division related to the bill and (2) 25% to the first whistleblower who filed the action. The court must award a whistleblower who prevails in an action reasonable attorney's fees and the attorney's fee amount is in addition to the judgment proceeds.

It also specifies (1) that the right to bring an action under the bill cannot be impaired by any private contract and (2) an action under the bill must be tried promptly and without regard to concurrent adjudication of private claims.

More Favorable Employer Policies (§ 1(j))

The bill specifies that it does not prohibit an employer from adopting scheduling policies that are more favorable to employees than those the bill requires.

Regulations and Records Requirement (§ 1(i) & (l))

The bill allows the labor commissioner to adopt regulations to implement and enforce the bill’s provisions, including a process for the commissioner to address complaints. 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 Substitute

Yea 9 Nay 4 (03/22/2022)