



General Assembly

February Session, 2022

Raised Bill No. 5353

LCO No. 1906



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, 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 the mercantile trade, a restaurant occupation 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 globally and, for an employer that is a
15 restaurant where food is prepared, served and consumed on the

16 premises, such employer has not less than thirty restaurant locations
17 globally, or (B) a franchisee, as defined in section 42-133e of the general
18 statutes, if the global network of franchises employs not less than five
19 hundred employees in the aggregate;

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

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

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

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

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

42 (8) "Shift" means the consecutive hours an employer schedules an
43 employee to work, or to be available to report to work at the request or
44 permission of the employer, except a break of not more than one hour
45 shall not be considered an interruption of consecutive hours;

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

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

55 (11) "Whistleblower" means a person with knowledge of an alleged
56 violation of this section, regardless of whether the person is aggrieved
57 by the violation, or a representative of such person.

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

79 effort to schedule the employee for the employee's desired number of
80 weekly work hours.

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

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

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

105 (f) (1) Except as provided in subdivision (2) of this subsection, an
106 employer shall pay an employee: (A) One hour of pay at the employee's
107 regular rate for each instance that the employer, less than seven days
108 prior to the commencement of scheduled work hours, adds one or more
109 hours of work or changes the date, time or location of a work shift
110 without a reduction of hours, and (B) one-half of the employee's regular

111 rate for any scheduled work hours the employee does not work due to
112 the employer cancelling or reducing the employee's scheduled work
113 hours: (i) After the employee reports to work such scheduled work
114 hours, or (ii) less than seven days prior to the commencement of such
115 scheduled work hours.

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

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

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

142 (i) Each employer subject to the provisions of this section shall, unless

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

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

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

168 (l) The Labor Commissioner may adopt regulations, in accordance
169 with the provisions of chapter 54 of the general statutes, to implement
170 and enforce the provisions of this section.

171 (m) Any person aggrieved by a violation of any provision of this
172 section, the Labor Commissioner, the Attorney General or any entity, a
173 member of which is aggrieved by a violation of this section, may bring
174 a civil action in the Superior Court to recover damages, civil penalties

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

183 (n) The Labor Commissioner, or, in the case of a civil action, the
184 Superior Court, may grant the following relief to an employee or former
185 employee for a violation of any provision of this section, in addition to,
186 or as an alternative to, any other remedies provided by law:

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

189 (2) An order directing the employer to comply with the
190 recordkeeping requirements of subsection (i) of this section; and

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

204 (o) (1) (A) A whistleblower may, on behalf of the state, bring a civil
205 action in the Superior Court against an employer who violates any
206 provision of this section to seek equitable remedies or penalties

207 equivalent to the statutory damages described in subdivision (3) of
208 subsection (n) of this section. The state may intervene in an action at any
209 time from the commencement of the action to thirty days after the
210 commencement of the action. After thirty days, the state may intervene
211 with permission from the court.

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

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

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

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

228 (5) An action under this section shall be tried promptly and without
229 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 Purpose:

To require certain employers to provide advance notice to certain employees of the employees' work schedule.

[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.]