

An Act Concerning a Fair Workweek for Hourly Shift Workers

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

Section 1. (NEW) (Effective October 1, 2020) (a) For the purposes of this section:

(1) "Employee" means any person (A) paid on an hourly basis, (B) not exempt from the minimum wage and overtime compensation requirements of the Fair Labor Standards Act of 1938 and the regulations promulgated thereunder, as amended from time to time, and (C) suffered or permitted to work by an employer in:

(i) Any occupation in the mercantile trade, meaning the trade of wholesale or retail selling of groceries or commodities and any operation supplemental or incidental thereto, including, but not limited to, buying, delivery, maintenance, office, stock and clerical work, except repair and service employees having the major portion of their duties unrelated to the mercantile trade;

(ii) A restaurant occupation, including any person engaged in the preparation and serving of food for human consumption or in any operation incidental or supplemental thereto, whether the food is served at or away from the point of preparation, or whether the preparation and serving of food is the sole business of the employing establishment or enterprise, but does not include the preparation and serving of food in a nonprofit educational, charitable or religious organization where the food service is not regularly available to the general public, or the preparation and serving of food in hospitals, convalescent homes or homes for the elderly where the food service is not regularly available to the general public and is incidental to the care of the patient. Restaurant occupation includes, but is not limited to, employees of restaurants, cafeterias, that portion of hotel business involving the preparation and serving of food, commissaries, fast food outlets, grills, coffee shops, luncheonettes, sandwich shops, tearooms, nightclubs, cabarets, automats, caterers, frankfurter stands, operators of food vending machines, and that portion of a business involving the serving of food in department stores, drugstores, candy stores, bakeries, pizzerias, delicatessens, places of amusement and recreation, commercial and industrial establishments and social, recreational, fraternal and professional clubs which either regularly or intermittently serve food;

(iii) An occupation within a hotel, motel or resort with one of the following broad or detailed occupation code numbers and titles, as defined by the federal Bureau of Labor Statistics Standard Occupational Classification system or any successor system: 35-3010 Bartenders; 35-9020 Dishwashers; 35-9030 Hosts and Hostesses, Restaurant, Lounge and Coffee Shop; 37-2010 Building Cleaning Workers; 37-3010 Grounds Maintenance Workers; 39-3030 Ushers, Lobby Attendants and Ticket Takers; 39-6010 Baggage Porters, Bellhops and Concierges; 43-4080 Hotel, Motel and Resort Desk Clerks; 43-4170 Receptionists and Information Clerks; or

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

(2) "Employer" means an employer, as defined in section 31-71a of the general statutes, who employs not less than twenty-five employees. A franchisee, as defined in section 42-133e of the general statutes, is an employer under this section when the network of franchises employs not less than 25 employees in aggregate.

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

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

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

(6) "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.

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

(a) Not later than the time of commencement of employment, an employer shall provide the employee with a written work schedule that runs through the last date of the currently posted schedule. Thereafter, an employer shall provide written notice of work hours pursuant to subsection (1) of this section no later than 14 days prior to the first day of any new schedule. Nothing in this section shall be construed to prohibit an employer from providing greater advance notice of employee's work schedules or changes in schedules than that required by this section.

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

(2) An employer shall provide written notice of any work schedule change as promptly as possible and prior to the change taking effect. The employer shall revise the written work schedule to reflect any work schedule changes within 24 hours of making the change.

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

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

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

(i) After the employee reports to work such scheduled work hours, or

(ii) Less than fourteen days prior to the commencement of such scheduled work hours.

(d) Subsection (c) of this section shall not apply if the employee's scheduled work hours are changed due to:

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

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

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

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

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

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

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

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

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

(1) At the time of hire, an employer shall provide each employee with a written estimate of the employee's work schedule. The employer shall 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. The estimate is not a contractual offer binding the employer, but an estimate made without a basis in good faith is a violation of this section.

(2) The estimate shall contain: (i) The average number of work hours the employee can expect to work each week; (ii) The minimum and maximum numbers of work hours the employee can expect to work each week; (iii) The minimum length of shifts that the employee can expect to work; and (iv) A number of days, the amount of time, and the number of shifts that the employee can expect to work, and days of the week and times or shifts on which the employee will not be scheduled to work.

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

(4) At the time of hire and during employment, the employee has the right to make work schedule requests. The requests protected under this section include but are not limited to: (i) Requests not to be scheduled for work shifts during certain days or times or at certain locations; (ii) Requests for certain hours, days, or locations of work; (iii) Requests for more or fewer work hours; and (iv) Requests to be scheduled consistently for a specified or minimum number of weekly work hours. The employer shall engage in an interactive process to discuss such employee requests, but may grant or deny the request for any bona fide business reason that is not unlawful.

(h) Before hiring new employees from an external applicant pool or contractors, including hiring through the use of a temporary help service or employment agency as defined in § 31-129, an employer shall make every effort to schedule existing employees for the desired number of weekly work hours identified in the written statements provided pursuant to subsection (g) provided that the employer may hire a new employee if existing employees lack, and cannot obtain with reasonable training, the qualifications necessary to perform the work. This section shall not be construed to require any employer to schedule employees to work hours required to be paid at an overtime rate under State or federal law. (i) When an employer fails to offer existing employees opportunities to work their desired number of weekly work hours before hiring a new employee, existing employees shall be compensated at the employee's regular hourly rate for hours worked by a newly hired employee that occurred within the existing employee's written availability.

(i) For violations of this Act, the Labor Commissioner, or, in the case of a civil action, a court, may grant, in addition, or as an alternative, to any other remedies provided by law, the following relief to employees or former employees:

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

(2) An order directing compliance with the recordkeeping requirements set forth in subsection (k); and

(3) For each violation of:

(a) Subsection (b): \$200 and an order directing compliance with subsection (b);

(b) Subsection (c): payment of compensation withheld in violation of subsection (c), \$300, and an order directing compliance with subsection (c);

(c) Subsection (d): payment as required under subsection (d), \$500, and an order directing compliance with subsection (d);

(d) Subsection (g): \$200 and an order directing compliance with subsection (g);

(e) Subsection (h): the greater of \$500 or such employee's actual damages and an order directing compliance with subsection (h);

(f) The relief authorized by this subsection shall be imposed on a per employee and per instance basis for each violation.

(4) For each violation of Sections b, c, d, g, and h, there is established a civil penalty of \$200, payable to the Labor Commissioner, for each employee affected by the violation during each pay period the violation continued.

(j) The Commissioner, the State Attorney General, any person aggrieved by a violation of this Act, or any entity a member of which is aggrieved by a violation of this act may bring a civil action in a court of competent jurisdiction to recover damages, civil penalties, and such equitable and injunctive relief as the court deems appropriate. Any individual who prevails in such civil action shall be awarded reasonable attorney's fees and costs to be taxed by the court.

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

work schedule.

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