

S-921/A-2548, introduced 1/27/20, sponsored by Sen. Loretta Weinberg (D-Bergen) and Asw. Britnee Timberlake (D-Essex)

- Definitions

- “Covered employer”-250 employees worldwide, including chain establishments or franchises that employ 250 employees in aggregate. Includes workers placed through a labor contractor. Number shall be determined for the current calendar year based on the average number employed per week during the preceding calendar year.
 - “Chain” means a set of establishments, including franchises, “that do business under the same trade name or brand or that are characterized by standardized options for décor, marketing, packaging, products, and services, regardless of the type of ownership of each individual establishment.”
 - “Covered establishment” means a “mercantile establishment” [retailer], restaurant, hospitality establishment, warehouse establishment, or the owner of one of these types of businesses.
 - “Restaurant” is a business that prepares food in its premises or caters, and has 30 or more locations worldwide
 - “Franchise” means “a written arrangement for a definite or indefinite period, in which a person grants to another person a license to use a trade name, trade mark, service mark, or related characteristics, and in which there is a community of interest in the marketing of goods or services at wholesale, retail, by lease, agreement, or otherwise.”
 - Employer is defined so that more than one entity can be the employer, such as both the franchisor and franchisee
- “Employee” must be a worker entitled to overtime, or a worker paid on an hourly basis at a “hospitality establishment”
 - “hospitality establishment”-a place where sleeping accommodations are provided with at least 15 rooms available for rental
 - If a claim is made that an employee is an independent contractor, burden of proof is on employer
- “On-call” means that employer requires employee be available to work and makes contact to determine if needed
- “Shift” is consecutive hours employer requires the employee to work or be on-call to work, breaks of 2 hours or less are not interruptions
- “work schedule” schedule of the regular and on-call shifts of the employees, including specific start and end times for each shift, during a seven-day period
- “work schedule change” is an employer-initiated change to the employee’s work schedule
- “written” includes electronic, like email or text

- When hiring an employee

- Employer shall obtain a written statement of the employee’s desired number of weekly hours and the days and times they are available to work.

- Employer must give employee written notification that employee is able to change this at any time
- Changes include: not to be scheduled for certain shifts, more or fewer hours, certain days and hours, consistent scheduling, a different minimum number of hours
- The employer may deny the request after an “interactive process” and only for a “bona fide business reason”
 - “Interactive process” means a “timely, good faith process that includes a discussion between” the employer and employee to arrive at a “mutually beneficial arrangement of a work schedule that meets the needs” of the employee and employer. May include the proposal of alternatives by the employer and employee.
 - “Bona fide business reason” means
 - “significant and quantifiable burden of additional costs”
 - The action is needed to comply with another law
 - “significant and quantifiable insufficiency of work during the periods the employee proposes to work”
 - “significant and quantifiable detrimental effect” on the employer’s ability to meet organizational demands including inability to reorganize work among existing employees, detrimental effect on business performance, or inability to meet customer needs (all “significant and quantifiable”)
- Employer shall provide employee a written estimate of the employee’s work schedule
 - Employer shall revise the estimate when there is a significant change to the employee’s availability or the employer’s business needs.
 - This estimate is not a contract binding the employer
 - Estimate must contain
 - Average number of hours the employee can expect to work each week
 - Minimum and maximum number of hours they can expect to work each week
 - Minimum length of shifts
 - Number of days, amount of time, and number of shifts they can expect to work, and the days of the week, times, and shift they will NOT be scheduled to work
 - It is not a violation if the employee’s average weekly work hours “significantly exceed” the number provided in the estimate if the employer has a “bona fide business reason” and has made “every effort” to schedule employee for their desired weekly hours
- Schedule
 - Employer shall provide each employee a schedule of work hours no later than 14 days prior to the first day of any new schedule.
 - Schedule must be posted in a conspicuous place at workplace readily visible to all employees, in addition to transmitting it to each employee. Schedule must identify all employees, even if they are not working any hours on that schedule

- Employer shall provide affected employee written notice of a revision to a work schedule “as promptly as possible”, must be within 24 hours of the change taking effect, and prior to the change taking effect
- Employee may decline to work any hours not included on posted work schedule without any retaliation, if they do decide to work those extra hours they must record their consent in writing
- For any change to a schedule after the advance notice required, employer shall pay an affected employee “predictability pay”
 - “Excess Time Predictability Pay”: One hour pay at regular hourly wage for each instance the employer adds hours or changes date/time/location without a loss of hours
 - “Short Time Predictability Pay”: One-half times the regular hourly wage for scheduled hours the employee doesn’t work when the employer cancels or shortens from a regular or on-call shift; provided the employee be paid at least 4 hours of regular pay in combined regular wages and predictability pay. Examples:
 - Employee at \$15 an hour scheduled to work 8 hours gets changed to 6 hours is paid \$90 reg wages and \$15 pred. pay (\$105)
 - Employee at \$15 an hour scheduled to work 8 hours gets changed to 4 hours is paid \$60 reg wages and \$30 pred. pay (\$90)
 - Employee at \$15 an hour scheduled to work 8 hours gets cut is paid \$0 reg wages and \$60 pred. pay
 - Employee at \$15 an hour scheduled to work 4 hours gets cut is paid \$0 reg wages and \$60 pred. pay
 - Employee at \$15 an hour on-call for a shift of 8 hours and not needed is paid \$0 reg wages and \$60 pred. pay
 - Employer not required to pay predictability pay or get written consent to schedule change if
 - Employee requests and is granted a shift change related to the use of sick, vacation, or other leave granted by employer, or
 - Schedule change is the result of mutually agreed upon shift trade or change made between employees
- Employee may decline without retaliation any work hours scheduled less than 12 hours after the end of their most recent shift. Employee may consent to work such a shift if consent is provided in writing for each shift; may revoke that consent in writing at any time.
 - Employer must pay “Rest Shortfall Pay” at 1.5x regular rate of pay for any hours worked less than 12 hours after the end of most recent shift. Example:
 - Gas pumper who closes up at 10pm and has a shift starting 8am the next day can only work it if they provide written consent each time, are paid time and a half for the first 2 hours.
- Before hiring new employees, employer shall make “every effort” to schedule existing employees for the hours they desired in their written requests (unless current employees lack qualifications necessary and can’t be reasonably trained).
 - Not required if scheduling the current employee would require them be paid overtime

- If an employer doesn't offer an employee the opportunity to work their desired hours before hiring a new employee, the existing employee shall be paid "Retention Pay"-their regular hourly wage for each hour the new employee works that occur within the existing employee's written availability.
- "Minimum Weekly Pay Adjustment" for all employees
 - At least 9x the employee's regular hourly wage per week
 - An employee must be paid the equivalent of 9 hours of work every week, whether they work or not.
 - They likely picked 9x to ensure that one 8 hour shift per week was not enough.
 - An employee may waive this requirement in writing
- Extensive recordkeeping for employers, of everything mentioned (including all written consents), kept for 6 years. Lack of records means a presumption of the employer's guilt absent clear evidence otherwise
 - An employee can request to see their records at any time
- Any of the excess payments required by bill must be included in regular paycheck for that period, pay stub must identify under which of the 5 new types of pay they are getting
- For violations of this or any other State wage and hour law, DOL may grant to employees damages equal to those available under a civil action
 - For each violation a penalty between \$200-\$500, depending on which section is violated
 - Penalties applied per instance and per employee
 - DOL or AG may bring a civil action, as can an affected employee or "a representative nonprofit or labor organization" designated by the employee
 - 17.5% of the penalties collected go to grants for "community organizations for outreach and education"
 - 30% goes to the employees affected, including an award to the organization that reflects the "burdens and risks" it assumed
 - Any person who prevails in a civil action shall be entitled to reasonable attorney's fees and costs