



March 6, 2016

To: House Committee on Business and Labor
From: Anthony K. Smith, State Director, NFIB/Oregon
Re: Oregon Small Businesses Oppose HB 2193

Chair Holvey, Vice-chairs Bynum and Barreto, Members of the Committee,

On behalf of nearly 7,000 Oregon small business members of the National Federation of Independent Business (NFIB), I urge you to oppose HB 2193, a proposal to impose restrictions on workplace scheduling that would impact both employers *and* employees.

Please keep in mind that NFIB represents small businesses in every industry of Oregon's private sector, and while 70 percent of NFIB/Oregon businesses have fewer than 10 employees and 90 percent have fewer than 25 employees, our small business-members employ over 60,000 Oregonians.

In a 2016 survey of NFIB members in Oregon, an overwhelming 92% of respondents opposed any new laws that would require employers to pay "predictability pay" if a work shift is changed or cancelled in certain circumstances – provisions in HB 2193 that apply to *all* employers.

Small businesses, especially startups and growing businesses, must constantly reevaluate their operating costs based on their revenue. When sales are good, and warrant additional staffing, labor costs necessarily rise, but when sales are down, sometimes unexpectedly and many times for reasons beyond the control of the small business owner (like weather), a small business may need to quickly lower its labor costs in order to maintain a sustainable business operation.

NFIB also represents small business members who are franchisees. The large employer provisions in Sections 6 through 12 of the bill lump those small businesses in with big corporations if their franchisor has 100 or more employees in the United States and 25 or more employees in the Oregon. While these businesses may externally appear to be part of a large national chain, they are actually independently owned and operated. Many, if not most of these small businesses are locally owned.

Among the many requirements of these sections of the bill, employers would have to accommodate individual requests by employees, taking into account their caregiving responsibilities, other employment commitments, and changes in transportation or housing arrangements – all of which must be documented by the employer, whether the requests are written or oral, and if denied, provide a written explanation citing the bona fide reason for the decision. Aside from the burdens of documenting each individual request, employers that have enacted strict nondiscrimination policies will find themselves in a precarious situation where they will be forced to weigh the appearance of preferential treatment with the individual circumstances of individuals, either of which could result in a lawsuit.

National Federation of Independent Business

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Many sections of the bill rely on consent, or voluntary decisions, made by an employee to trigger whether additional compensation would be due. Every change in the work schedule, even the adding of an additional hour to the shift or slightly changing the start or end time of the shift, would necessarily need to be meticulously documented by the employer. For even the most diligent small business, this will be challenging, and ironically enough, during times of peak sales (where business is busiest) the task of properly documenting shift changes that occur in response to customer demand will be incredibly problematic.

The recordkeeping provisions in Section 14 of the bill apply to all Oregon businesses, large and small, and include references to “other records that are substantially related to compliance” in addition to employee requested schedule changes, good faith estimates of employee work schedules, request denials, original and modified schedules, incident documentation resulting in disciplinary reductions in hours, notices of additional hours available, and confirmations notices from employees indicating that they are not interested in those additional hours. For every one of these requirements, an employer’s failure to retain adequate records creates a rebuttable presumption that the employer committed a violation. This section, coupled with the retaliation and enforcement provisions of Sections 15 and 16, will undoubtedly result in a deluge of wage claim cases against employers – cases where employers may have paid their employees appropriately, but are unable to overcome the burden of proof provided by the rebuttable presumption.

From a small business perspective, HB 2193 fails to account for far too many circumstances that are completely beyond the control of an owner or a manager. Our members’ primary responsibility is to keep the doors open for business – and that means being responsive to customer demand. Without the flexibility for small business owners and managers to adjust labor costs based on actual sales and customer needs, small business employers *and* employees will find themselves under even greater pressure to keep the business sustainable.

Again, Oregon small businesses overwhelmingly oppose the state’s involvement in workplace scheduling. On behalf of the thousands of NFIB member-businesses in Oregon, and the tens of thousands of jobs that depend on them, we urge you to oppose HB 2193.

Thank you for your consideration,

A handwritten signature in blue ink, appearing to read "Anthony K. Smith", is positioned above the typed name.

Anthony K. Smith
NFIB/Oregon State Director