



April 3, 2017

To: Senate Committee on Workforce
From: Anthony K. Smith, State Director, NFIB/Oregon
Re: Oregon Small Businesses Oppose SB 828

Chair Taylor, Vice-chair Knopp, 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 SB 828, 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 a majority of our members have fewer than 25 employees, several hundred NFIB members in Oregon employ 25 or more, accounting for thousands of jobs for Oregonians.

In a 2016 survey of NFIB members in Oregon, an overwhelming 92% of respondents opposed restrictive scheduling mandates on private sector employers, including requirements that employers provide work schedules at least two weeks in advance as well as requiring them to pay "predictability pay" if a work shift is changed or cancelled under certain circumstances – provisions in the -3 amendments that still apply to employers with just 25 employees *located anywhere in the state.*

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 or owners of small, regional chains. The large employer provisions in Section 3 of the -3 amendments lump those small businesses in with big corporations if they employ 25 or more employees *anywhere in the state*. While these businesses may externally appear to be part of a large national chain, they are often independently owned and operated. Many, if not most of these small businesses are locally owned and they may have far fewer than 25 employees working at each business location.

Imagine a retail business that has three locations – one in Portland, one in Medford and one in Bend – each with 9 employees. Each one of these locations operates like a single small business, but they share a common owner. Due to the distance between locations, the employees that work at each location take shifts at their home store location only and thus, there is a limited number of co-workers with which to trade shifts, yet the employer has a total of 27 employees in the state and would be considered a "large employer" under the definitions of the -3 amendments.

National Federation of Independent Business

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Another major concern for small businesses is that many sections of the bill, and the -3's, 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 11 of the -3's, coupled with the provisions in Section 9 that apply to all employers in the state, large and small, would present employers with an immense challenge to be in compliance with every requirement, all of the time. For every one of these requirements, an employer's failure to retain adequate records creates a rebuttable presumption that the employer committed a violation. These section, enforceable under Section 13, 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, SB 828 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 SB 828.

Thank you for your consideration,

A handwritten signature in blue ink, appearing to read "Anthony K. Smith". The signature is fluid and cursive.

Anthony K. Smith
NFIB/Oregon State Director