

SB 828 -9 STAFF MEASURE SUMMARY

Senate Committee On Workforce

Prepared By: Debra Maryanov, LPRO Analyst

Meeting Dates: 2/27, 4/3, 4/17

WHAT THE MEASURE DOES:

All Employers: Requires all employers to pay employee for minimum hours of on-call duty in certain situations. Establishes employee right to request specific work schedules. Establishes unlawful employment practice of discriminating or retaliating against employee who exercises rights under Act. Provides private right of action and administrative remedies for violations.

Certain large Employers: Adds requirements for employee scheduling by retail, hospitality, and food services establishments with 100 or more employees in the United States and 25 or more employees in Oregon.

Requires employees of certain large employers to make reasonable efforts to make scheduling requests in writing, and requires employers to document those requests. Requires employer to enter into interactive process to discuss requests.

Absent bona fide business reason for denial, requires certain large employers to grant requests based on employee's serious health condition, caregiving responsibilities for family member, additional employment commitment, changes in access to workplace due to changes in employee's transportation or housing arrangements, or participation career-related educational or training program. Requires certain large employers to provide written explanation for denial based on bona fide business reason. Allows certain large employers to grant or deny requests based on other circumstances for any reason that is not unlawful.

Requires certain large employers to provide employee written good faith estimate of employee's work schedule at time of hire and to revise annually and for significant changes due to employee availability or employer business needs. Requires interactive process when significant change from good faith estimate is made.

Requires certain large employers to provide 14-days advanced written notice of work schedule. Allows employee to decline work hours not included in schedule. Requires certain large employers to compensate employees for employer-requested work schedule changes with less than 14-days advance notice, unless exceptions apply.

Establishes right to rest between work shifts for employee of certain large employers. Requires certain large employer to provide extra compensation for hours worked when fewer than 10 hours separate shifts.

Prohibits certain large employers from engaging in pattern or practice of underscheduling employee work hours where employees actually work significantly above hours in written schedule.

Requires certain large employers to offer additional hours to existing employees before hiring new employees or subcontractors.

Requires Labor Commissioner to create and distribute a poster giving notice of rights in this Act.

ISSUES DISCUSSED:

- Comparison of proposed amendments
- Impact of measure on collective bargaining agreements
- Impact of current scheduling practices on employees
- Other jurisdictions with predictable scheduling legislation

EFFECT OF AMENDMENT:

-9 Replaces measure. Limits application of measure to large private employers in retail, hospitality or food service industries that employ at least 100 employees in this state. Requires Labor Commissioner to adopt rules to determine when separate entities form integrated enterprise for purposes of counting employees.

Removes definitions of "career-related educational or training program" and "family member." Removes provisions concerning on-call pay, employee right to input into work schedule, and access to hours for existing employees.

Removes some employer recordkeeping requirements. Clarifies that Act is not intended to provide employees additional wages or cause of action for voluntarily trading shifts, or cause of action for work schedule changes necessary for employee accommodation under certain state or federal laws.

Adds requirement that good faith estimate of work schedule includes objective standard for when employee may be expected to be available to work on-call shifts. Clarifies that right to rest between work shifts includes hours following end of work shift or on-call shift. Adds recordkeeping requirement for employer to retain records that document delivery of original and modified work schedules to each employee. Establishes name Fair Work Week Act.

Establishes operative date of Act is July 1, 2018. Extends sunset date of existing preemption on local scheduling laws until July 2, 2022.

Declares emergency; effective upon passage.

BACKGROUND:

In 2015, San Francisco implemented the nation's first set of scheduling protections. Connecticut also considered a predictive scheduling bill that year. In 2016, Seattle became the second city in the country to pass a comprehensive set of scheduling policies for retail and food service workers. Emeryville, CA also adopted a fair workweek bill.

In Oregon, the House Committee on Business and Labor heard House Bills 2010 and 3377 (2015) concerning predictive scheduling. Though neither bill passed out of committee, a work group met throughout the 2016 interim to discuss the proposed policy and receive input from San Francisco and Seattle city officials and an academic researcher.

For all employers, SB 828 establishes a right of workers to express a schedule preference free from fear of retaliation or discrimination, but does not require employers to honor all schedule requests. It also requires all employers to compensate workers who report to work when their shift is cancelled or reduced within 24 hours of scheduled start.

SB 828 provides that employers with 25 or more employees in Oregon or 100 nationwide who are in the retail, food establishments and hotel/motel industry sections ("certain large employers") are subject to additional provisions, including good faith estimates of average hours per week and expectations for on-call shifts, advance notice of schedules, predictability pay when schedules change, employee rights to discuss scheduling preferences with employer and to rest between shifts, and access to additional hours before new employees are hired.

For certain large employers, good faith estimates of employee's work schedules and posted work schedules must be provided in English and in the predominant language or languages of the employees.

Employees of certain large employees receive predictability pay in the following circumstances, unless exceptions apply:

- When employer subtracts scheduled hours, the employee is paid for half of the hours not worked;
- When the employer adds hours, the employee is paid for one additional hour;
- When the employer does not ask an on-call employee to report for duty, the employee is paid for half of the hours not worked.

SB 828 -9 STAFF MEASURE SUMMARY

SB 828 provides exceptions to predictability pay when an employee requests a schedule change or finds a replacement in a shift swap, and when an employer provides notice of available hours through a mass communication and receives a volunteer to work the hours.

Absent a bona fide business reason, certain large employers must grant an employee's scheduling request if it is based on a serious health condition of the employee, the employee's caregiving responsibilities for a family member, an additional employment commitment of the employee, changes in the employee's access to the workplace due to changes in the employee's transportation or housing arrangements, or the employee's participation in a career-related educational or training program. SB 828 defines family member broadly to include anyone related by blood or affinity to the employee.,

A worker asserting a violation under SB 828 can file a complaint with BOLI or file a civil action. BOLI may assess a statutory penalty payable to the aggrieved party that is \$500 for first violation and \$1,000 for subsequent violations.