

HB 2193 -2 STAFF MEASURE SUMMARY

House Committee On Business and Labor

Prepared By: Jan Nordlund, LPRO Analyst

Meeting Dates: 3/6, 4/17

WHAT THE MEASURE DOES:

All Employers: Requires all employers to pay employee who reports to work but does not work entire shift or when shift is canceled or shortened with fewer than 24 hours notice. 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 scheduling requirements for employer in retail, hospitality, and food services sector with 100 or more employees in the United States and 25 or more employees in Oregon. Requires employer and employee to enter into interactive process to discuss employee's schedule requests.

Absent bona fide business reason for denial, requires certain large employers to grant schedule 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-day 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 shifts for employee of certain large employers. Requires certain large employer to provide extra pay for hours worked when fewer than 10 hours separate shifts over two days.

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

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

Requires Labor Commissioner to create and distribute a poster describing rights in this Act.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-2 Replaces measure. Limits application of measure to private employers in retail, hospitality or food service industries that employ at least 100 employees in this state.

Removes provisions concerning on-call pay, employee right to request a schedule, and access to hours for existing employees.

Removes some employer recordkeeping requirements but adds requirement that employer retain records that document delivery of original and modified work schedules to each employee. (Continued on page 2)

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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.

Becomes operative July 1, 2018. Extends sunset date of existing preemption on local scheduling laws until July 1, 2022. Declares emergency; effective upon passage.

- No revenue impact
- Fiscal statement issued for purpose of referring bill to House Rules

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 held hearings on bills concerning predictable scheduling (House Bills 2010 and 3377). Though neither bill passed out of committee, a work group of stakeholders meet 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, House Bill 2193 establishes a right of workers to request a schedule preference free from fear of retaliation or discrimination, but does not require employers to honor all requests. It requires all employers to compensate workers who report to work or are notified with fewer than 24-hour notice that their shift is canceled or reduced.

HB 2193 provides that employers with 25 or more employees in Oregon and 100 nationwide who are in the retail, food service, and hotel/motel industry sectors ("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.

Employees of certain large employers receive additional pay in these 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 call an on-call employee to work, the employee is paid for half of the hours not worked.

House Bill 2193 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.

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A worker asserting a violation 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.