

SB 828 A -14 STAFF MEASURE SUMMARY

Senate Committee On Rules

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Meeting Dates: 6/14

WHAT THE MEASURE DOES:

Establishes requirements related to employee work schedules for 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 an integrated enterprise for purposes of counting employees. Requires employer to provide written good faith estimates of employee's work schedule, including an objective standard for when employee may be expected to be available for on-call shifts, and requires an interactive process between employer and employee to discuss significant changes from estimate. Requires employer to provide 14-days advanced written notice of an employee's work schedule. Allows employee to decline work hours not included in schedule, and requires employer to compensate employees for schedule changes with less than 14-days advanced notice, unless exceptions apply. Establishes a right to rest between work shifts, including hours following end of on-call shift, and requires employer to provide extra compensation for hours worked when fewer than 10 hours separate shifts. Prohibits employer from engaging in systemic pattern or practice of significant under-scheduling.

Establishes notice and rulemaking requirements, including requirement that employer retain records documenting delivery of original and modified work schedules to each employee. Establishes unlawful employment practice to interfere with, restrain, deny, or attempt to deny exercise of rights protected by Act, or to retaliate or discriminate against individual inquiring about Act. Provides private right of action and administrative remedies for violations. Clarifies that measure is not intended to provide employees with additional wages or a cause of action for voluntarily trading shifts, or a cause of action for work schedule changes necessary for employee accommodation under certain state or federal laws. 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.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-14 Beginning July 1, 2018, requires certain retail, hospitality and food service employers with 500 or more employees worldwide to provide good faith estimates of employees' work schedules at the time of hire. Requires certain retail, hospitality and food service employers with 500 or more employees worldwide to provide employee with advanced written notice of work schedule seven days prior to first day of work schedule. Beginning July 1, 2020 requires certain retail, hospitality and food service employers with 500 or more employees worldwide to provide employee with advanced written notice of work schedule 14-days prior to first day of work schedule. Permits employer to maintain standby list that includes employees who have agreed to work additional hours. Provides criteria for use of standby list. Permits employee to request additional work shifts. Exempts requested additional shifts from work schedule notice requirements. Requires employer to compensate employee at one and one-half times the regular rate of pay if employee works during prescribed rest period. Permits employee to request not to be scheduled during specific times or at certain locations, and allows employer to request reasonable verification of need for such a request. Defines key terms. Establishes penalties for violations of work scheduling requirements. Declares emergency, effective on passage.

BACKGROUND:

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In 2015, San Francisco implemented the nation's first set of work scheduling protections. In 2016, Seattle became the second city in the country to pass a comprehensive set of scheduling policies for retail and food service workers. The City of Emeryville, California has adopted fair workweek regulations. The State of Connecticut has also considered predictive work scheduling legislation.

During the 2015 legislative session, the Oregon Legislative Assembly's House Committee on Business and Labor heard House Bill 2010 and House Bill 3377 Related to predictive work scheduling. Although neither measure passed out of committee, a work group was subsequently formed which held meetings throughout the 2016 interim to discuss proposed policies regarding predictive scheduling and to receive input from San Francisco and Seattle city officials and an academic researcher.

Senate Bill 828-A establishes the Fair Work Week Act, which provides scheduling standards for hourly workers at large retail, food service, and hospitality establishments. The measure requires certain employers with 100 or more employees in the state to provide good faith estimates of employees' work schedules, 14-days advanced written notice of work schedules, predictability pay when schedules change, a right to rest between shifts, and extra compensation for hours worked when fewer than 10 hours separate shifts. The measure also establishes notice and rulemaking requirements for employers and prohibits employers from engaging in a systematic pattern or practice of significant under-scheduling.

Senate Bill 828-A provides the following exceptions to requirements for predictability pay:

- Employee mutually agrees with another employee to employee-initiated work shift swaps or coverage;
- Employer requests an employee to work additional hours because another employee failed to provide timely notice of unavailability;
- Employee consents to work additional hours consecutive to the employee's current work shift to address present and unanticipated customer needs;
- Employee requests changes to his or her work schedule, and the employer documents the request in writing;
- Employer subtracts hours from an employee's work schedule for disciplinary reasons for just cause;
- Employee's work shift or on-call shift cannot continue due to threats to employees or property or due to recommendation of a public official;
- Operations cannot begin or continue due to problems with public utilities or sewer system; and
- Operations cannot begin or continue due to natural disaster or similar cause not within employer's control.

Senate Bill 828-A permits a worker who asserts a violation to file a complaint with the Oregon Bureau of Labor and Industries (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. Senate Bill 828-A extends the preemption of local laws that regulate employee work schedules until July 2, 2022.