

SB 828 A STAFF MEASURE SUMMARY

Senate Committee On Workforce

Action Date: 04/17/17

Action: Do pass with amendments and requesting referral to Rules. (Printed A-Engrossed.)

Vote: 4-1-0-0

Yeas: 4 - Gelser, Knopp, Monnes Anderson, Taylor

Nays: 1 - Hansell

Fiscal: Fiscal impact issued

Revenue: No revenue impact

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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 any 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 underscheduling. 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:

- Comparison of proposed amendments
- Impact of measure on collective bargaining agreements
- Impact of current scheduling practices on employees
- Predictable scheduling legislation in other jurisdictions

EFFECT OF AMENDMENT:

Replaces original measure.

BACKGROUND:

In 2015, San Francisco implemented the nation's first set of scheduling protections. Connecticut also considered a predictive scheduling measure 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, California also adopted a fair workweek measure.

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In Oregon, the House Committee on Business and Labor heard House Bill 2010 (2015) and House Bill 3377 (2015) concerning predictive scheduling. Though neither measure 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.

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.

A worker asserting a violation under Senate Bill 828-A can 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.