

# Employment Law Daily Wrap Up, STATE LEGISLATION—OREGON—Workplace scheduling bill sent to governor's desk (Jul. 5, 2017)

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The Oregon Legislature has finalized a bill that, if signed by Governor Kate Brown as widely expected, would add substantial work scheduling stability to employees working in the retail, hospitality, and food services industries. Many of the workers in these industries are paid low wages and often do not know until the last minute whether they will be expected to work a particular shift. [Senate Bill 828](#) cleared the Oregon Senate on June 22 with a 23-6 vote, and the House on June 29 with a 46-13 ballot.

**Covered employees.** S.B. 828 would cover workers defined as "employees" in ORS 652.310 who are employed in retail, hospitality, food services establishments, and who are engaged in providing services relating to the retail trade (as that term is used in the 2012 North American Industry Classification System under code 44-45), hotels and motels (code 721110), casino hotels (code 721120), or food services (code 722).

Covered employees would *not* include a salaried employee (as described in ORS 653.020 (3)), a worker supplied to an employer by a worker leasing company (as defined in ORS 656.850), or an employee of a business that provides services to or on behalf of an employer.

The requirements of S.B. 828 would apply only to an employee who is employed by an employer (as defined in ORS 652.310) that is a retail, hospitality, or food services establishment employing 500 or more employees worldwide, including chains and integrated enterprises.

**Good faith scheduling.** Among other things, the legislation would require covered employers to provide new employees with a written "good faith estimate" of their work schedules at the time they are hired. The good faith estimate would:

- State the median number of hours the employee can expect to work in an average one-month period;
- Explain the "voluntary standby list" that would be implemented under the legislation and provide written notice required in conjunction with the list;
- Indicate whether an employee who is not on the voluntary standby list can expect to work on-call shifts and, if so, set forth an objective standard for when an employee not listed on the voluntary standby list may be expected to be available to work on-call shifts; and
- May be based on a prior year schedule if it is a good faith estimate of seasonal or episodic work.

The employer would be required to include the good faith estimate in the language the employer typically uses to communicate with the employee.

**Voluntary standby list.** Under S.B. 828, employers would be permitted to maintain a standby list of employees whom the employer would request to work additional hours to address unanticipated customer needs or unexpected employee absences *if* the listed employees have requested or agreed in writing to be included on the list *and* the employer notifies each employee in writing:

- That the list is voluntary and how an employee may request to be removed from the list;
- How the employer will notify a standby list employee of additional hours available and how an employee may accept the additional hours;
- That the employee is not required to accept the additional hours offered; and
- That an employee on the standby list is not eligible for additional compensation for the changes to the employee's written work schedule resulting from his or her acceptance of additional hours offered as a result of being on the standby list.

Employers would be required to provide employees on the standby list with notice of additional hours available by in-person conversation, telephone call, electronic mail, text message, or other accessible electronic or written format. Employees who receive notice of additional hours available under the standby list provisions would be permitted to decline the additional hours offered. Employees who consent to work additional hours in response to an employer's request would not be eligible for any additional compensation for the resulting changes to their written work schedules. Employees would be able to request that they be removed from the standby list at any time.

Notably, the standby list would *not* be a list of employees scheduled for on-call shifts, and employers would not be required to include a list of employees on the standby list in the written work schedule required under SB 828.

Employers would be prohibited from retaliating against employees who do not request or agree to be added to the standby list, request to be removed from the standby list, or decline a request that they work additional hours as a result of being on the standby list.

**Penalties.** In addition to any other penalty provided by law, a civil penalty of not more than \$2,000 may be assessed against an employer found to have coerced an employee into requesting or agreeing to be added to the standby list in violation of S.B. 828. Each violation would be considered a separate and distinct offense. In the case of a continuing violation, each day's continuance would be a separate and distinct violation.

**Advance notice of written work schedule.** Under S.B. 828, employers would be required to provide employees with a work schedule in writing at least seven calendar days before the first day of the work schedule under the version of the legislation that would be operative July 1, 2018. An amendment increases the advance notice to 14 calendar days, operative July 1, 2020. The written work schedule must be posted in a conspicuous and accessible location, in English and in the language the employer typically uses to communicate with the employees. Employers

would be required to provide a written work schedule that runs through the last date of the posted work schedule in effect at the time of delivery to a new employee on or before the employee's first day of work; or to an existing employee on the employee's first day of work after a leave of absence.

The written work schedule would be required to include all work shifts and on-call shifts for the work period. If the employer requests changes to the written work schedule after the required advance notice (generally 14 days), the employer must provide the employee with timely notice of the change by in-person conversation, telephone call, electronic mail, text message or other accessible electronic or written format. The employee may decline any work shifts not included in the employee's written work schedule.

At any time after the required advance notice of written work schedule, an employee may request in writing that the employer add the employee to one or more work shifts or on-call work shifts. Any changes to the employee's written work schedule resulting from these employee-requested work schedule changes are *not* subject to the advance notice requirements.

**Rest between work shifts.** Absent an employee's request or consent to work such hours, an employer may not schedule or require an employee to work during the following "rest periods": the first 10 hours following the end of the previous calendar day's work shift or on-call shift; or the first 10 hours following the end of a work shift or on-call shift that spanned two calendar days.

Employers would be required to compensate employees for each hour or portion of an hour that the employee works during the rest periods at one and one-half times the employee's regular rate of pay. This compensation provision would *not* apply to any hour or portion of an hour an employee works during the "rest periods" where the employee is engaged in providing roadside assistance services. As used in this subsection, "roadside assistance" means offsite repair assistance rendered to a motorist with a disabled vehicle.

**Compensation for employer-requested work schedule changes.** S.B. 828 would require that employers provide the following compensation for each employer-requested change to an employee's written work schedule without the required advance notice:

- One hour of pay at the employee's regular rate of pay, in addition to wages earned, when the employer adds more than 30 minutes of work to the employee's work shift; changes the date or start or end time of the employee's work shift with no loss of hours; or schedules the employee for an additional work shift or on-call shift.
- One-half times the employee's regular rate of pay per hour for each scheduled hour that the employee does not work when the employer subtracts hours from the employee's work shift before or after the employee reports for duty; changes the date or start or end time of the employee's work shift, resulting in a loss of work shift hours; cancels the employee's work shift; or does not ask the employee to perform work when the employee is scheduled for an on-call shift.

**Exceptions to additional compensation.** The requirements for additional compensation would *not* apply when:

- The employer changes the start or end time of an employee's work shift by 30 minutes or less;
- The employee mutually agrees with another employee to employee-initiated work shift swaps or coverage. The employer could require that it approve work shift swaps or coverage. The employer would be able to assist employees in finding such arrangements, provided that any employer assistance is limited to helping an employee identify other employees who may be available to provide work shift swaps or coverage, and may not include the employer arranging the work shift swap or coverage;
- The employee requests changes to the his or her written work schedule, including adding or subtracting hours, and the employee documents the request in writing;
- The employer makes changes to an employee's written work schedule at the employee's request under section 5(6) of this Act (employee requests that the employer add him or her to one or more work shifts or on-call work shifts);
- The employer subtracts hours from an employee's work schedule for disciplinary reasons for just cause, provided the employer documents the incident leading to the employee's discipline in writing;
- The employee's work shift or on-call shift cannot begin or continue due to threats to employees or property, or due to the recommendation of a public official;
- Operations cannot begin or continue because public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities or sewer system;
- Operations cannot begin or continue due to a natural disaster or a similar cause not within the employer's control, including when the natural disaster or similar cause physically affects the work site;
- Operations hours change or are substantially altered because a ticketed event is cancelled, rescheduled, or changes in duration due to circumstances that are outside the employer's control and that occur after the employer provides the required written work schedule;
- The employer requests that an employee on a voluntary standby list work additional hours and the employee consents to work the additional hours; or
- The employer requests that an employee work additional hours to address unanticipated customer needs or unexpected employee absence; the employee consents in writing to work the additional hours; where the employer maintains a voluntary standby list and the employer has contacted all of the employees listed on the voluntary standby list and requires additional employee coverage; and where the employee is working a shift at the time the employer makes the request, the employer makes the request either individually or as part of a group communication, or if the employee is not working a shift at the time the employer makes the request, the employer makes the request through a group communication.

**Other provisions.** S.B. 828 includes several other provisions aimed at protecting employees, including the right to identify limitations or changes in work schedule availability, requests not to be scheduled for work shifts during certain times or at certain locations, anti-retaliation protections, and actions for retaliation.

**Operative dates.** If enacted, the provisions related to good faith scheduling, the voluntary standby list, advance notice of written work schedule (except for the noted amendment), rest before work shifts, and compensation for work schedule changes summarized above would be operative July 1, 2018.

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