
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1802 Session of
2021

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INNAMORATO, AUGUST 31, 2021

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, AUGUST 31, 2021

AN ACT

1 Providing for fair workweek employment standards and for powers
2 and duties of the Department of Labor and Industry; and
3 imposing penalties.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Fair Workweek
8 Employment Standards Act.

9 Section 2. Definitions.

10 The following words and phrases when used in this act shall
11 have the meanings given to them in this section unless the
12 context clearly indicates otherwise:

13 "Chain." A set of establishments that do business under the
14 same trade name or service mark and that are characterized by
15 standardized options for decor, marketing, packaging, products
16 and services, regardless of the type of ownership of each
17 individual establishment.

1 "Covered employer." A retail establishment, hospitality
2 establishment or food services establishment that, worldwide,
3 employs 250 or more employees and has 20 or more locations
4 regardless of where the employees perform work, including, but
5 not limited to, chain establishments or franchises associated
6 with a franchisor or network of franchises that employ more than
7 250 employees in aggregate. The term includes an individual,
8 partnership, association, corporation or business trust or any
9 person or group of persons, or a successor of such, that employs
10 another person in a retail establishment, hospitality
11 establishment or food services establishment, including a person
12 acting directly or indirectly in the interest of the employer in
13 relation to the employee.

14 "Department." The Department of Labor and Industry of the
15 Commonwealth.

16 "Employee." An individual employed or permitted to work at
17 or for a covered employer within the geographic boundaries of
18 this Commonwealth who is required under Federal or State law to
19 be paid at an overtime rate for hours in excess of a maximum
20 number per workweek, including, but not limited to, full-time
21 employees, part-time employees and seasonal and temporary
22 workers and whose job duties involve the provision of retail
23 trade services, food services or hospitality services at or for
24 a covered employer.

25 "Food services establishment." A food services contractor,
26 caterer, mobile food service, drinking place, full-service
27 restaurant, limited-service restaurant, cafeteria, grill buffet,
28 buffet or snack and nonalcoholic beverage bar, as defined under
29 the 2017 NAICS 722.

30 "Hospitality establishment." A hotel or motel as defined

1 under the 2017 NAICS 721110 or other classification.

2 "NAICS." The North American Industry Classification System.

3 "On-call shift." Any time that a covered employer requires
4 an employee to be available to work, or to contact the covered
5 employer or the covered employer's designee or wait to be
6 contacted by the covered employer or its designee, to determine
7 whether the employee must report to work at that time.

8 "Posted work schedule." The written work schedule that a
9 covered employer is required to provide to employees under
10 section 3(c) and post under section 3(d).

11 "Retail establishment." The fixed point-of-sale location of
12 a retail business as defined under the 2017 NAICS 441 through
13 448 and 451 through 454.

14 "Secretary." The Secretary of Labor and Industry of the
15 Commonwealth.

16 "Service mark." As defined in 54 Pa.C.S. § 1102 (relating to
17 definitions).

18 "Shift." The consecutive hours a covered employer requires
19 an employee to work or to be on call to work, provided that
20 breaks totaling two hours or less may not be considered an
21 interruption of consecutive hours.

22 "Successor." A person to whom a covered employer that quits,
23 sells out, exchanges or disposes of a business sells or
24 otherwise conveys in bulk and not in the ordinary course of the
25 covered employer's business a major part of the property,
26 whether real or personal, tangible or intangible, of the covered
27 employer's business.

28 "Ticketed event." A sporting, entertainment, civic,
29 charitable or other event that requires a ticket for admission.
30 The ticket may be electronic, physical or a name on a list held

1 by the event organizer.

2 "Trade name." As defined in 54 Pa.C.S. § 1102.

3 "Work schedule." All of an employee's shifts and on-call
4 shifts, including specific start and end times for each shift,
5 during a workweek.

6 "Workweek." A period of seven consecutive days beginning on
7 a designated day.

8 "Written communication." Communication by print or
9 electronic means, including e-mail, text messages, use of
10 scheduling applications or other forms of communication that can
11 be saved in their original format.

12 Section 3. Advance notice of work schedules.

13 (a) General rule.--Upon hiring an employee, a covered
14 employer shall provide the employee with a written, good faith
15 estimate of the employee's work schedule. The covered employer
16 shall revise the good faith estimate when there is a significant
17 change to the employee's work schedule due to changes in the
18 employee's availability or to the covered employer's business
19 needs. The good faith estimate is not a binding contractual
20 offer binding the covered employer. An estimate made without a
21 good faith basis shall be a violation of this section. The good
22 faith estimate shall contain:

23 (1) The average number of work hours the employee can
24 expect to work each week over a typical 90-day period.

25 (2) Whether the employee can expect to work any on-call
26 shifts.

27 (3) A subset of days and a subset of times or shifts
28 that the employee can typically expect to work or days of the
29 week and times or shifts on which the employee will not be
30 scheduled to work.

1 (b) Work schedule requests.--At the time of hire and during
2 employment, an employee has the right to make work schedule
3 requests. A covered employer may grant or deny the request for
4 any reason that is not unlawful. The work schedule requests may
5 include, but are not limited to:

6 (1) Requests not to be scheduled for work shifts during
7 certain days or times or at certain locations.

8 (2) Requests not to work on-call shifts.

9 (3) Requests for certain hours, days or locations of
10 work.

11 (4) Requests for more or fewer work hours.

12 (c) Written work schedule.--At the commencement of
13 employment, a covered employer shall provide an employee with a
14 written work schedule that runs through the last date of the
15 currently posted schedule. Thereafter, a covered employer shall
16 provide advanced written notice of work hours as provided under
17 subsection (d). Nothing under this section shall be construed to
18 prohibit a covered employer from providing greater advance
19 notice of employees' work schedules and changes in schedules as
20 required by this section.

21 (d) Advanced notice.--Written notice of the work schedule
22 shall be provided in a conspicuous and accessible location where
23 employee notices are customarily posted. If a covered employer
24 posts the notice in electronic format, all employees in the
25 workplace shall have access to the notice onsite. The posted
26 work schedule shall include the employees' shifts at that work
27 site, whether or not employees are scheduled to work or be on
28 call, and shall be posted no later than 14 days before the first
29 day of the new schedule beginning January 1, 2022.

30 (e) Changes to work schedule.--If the covered employer

1 requests changes to the written work schedule after the advanced
2 notice required under subsection (d) has been posted, the
3 following shall apply:

4 (1) The covered employer shall provide the employee with
5 timely notice of the change by in-person conversation,
6 telephone call, e-mail, text message or other accessible
7 electronic or written format.

8 (2) The employee may decline to work any shifts not
9 included in the employee's written work schedule. If the
10 employee voluntarily consents to work the hours, the consent
11 shall be recorded by written communication. A written
12 communication of an employee's desire to work shifts made
13 available under section 6 shall constitute written consent.

14 Section 4. Compensation for changed work schedules.

15 (a) General rule.--For each covered employer-initiated
16 change to the posted work schedule that occurs after the
17 advanced notice required under section 3(d) has been posted, a
18 covered employer shall pay an employee predictability pay at the
19 following rates, in addition to the employee's regular pay for
20 hours actually worked by the employee:

21 (1) One hour at the employee's regular rate of pay when
22 the covered employer adds time to a work shift or changes the
23 date, time or location of a work shift, with no loss of
24 hours.

25 (2) No less than one-half of the employee's regular rate
26 of pay per hour for any scheduled hours the employee does not
27 work for the following reasons:

28 (i) hours are subtracted from a regular or on-call
29 shift; or

30 (ii) a regular or on-call shift is canceled.

1 (3) No less than two-thirds of the employee's regular
2 rate of pay per hour if a regular or on-call shift is
3 canceled or reduced two days or less prior to the start of
4 the shift.

5 (b) Exception.--A covered employer is not required to pay
6 additional compensation under subsection (a) to an employee
7 under this section or obtain written consent under section 3(d)
8 if:

9 (1) An employee requests a shift change by written
10 communication, including, but not limited to, voluntary
11 additions or subtractions of hours that are initiated by the
12 employee or the use of sick leave, vacation leave or other
13 leave policies offered by the covered employer.

14 (2) A schedule change is the result of a mutually
15 agreed-upon shift trade or coverage arrangement between
16 employees, subject to any covered employer's policy regarding
17 required conditions for employees to exchange shifts.

18 (3) The covered employer's operations cannot begin or
19 continue due to:

20 (i) threats to the employees or the covered
21 employer's property;

22 (ii) the failure of a public utility or the shutdown
23 of public transportation;

24 (iii) a fire, flood or other natural disaster;

25 (iv) a state of emergency declared by the President
26 of the United States or the Governor; or

27 (v) severe weather conditions that disrupt
28 transportation or pose a threat to employee safety.

29 (4) An employee begins or ends work no more than 20
30 minutes before or after the scheduled start or end time of

1 the shift.

2 (5) An employee volunteers to work additional hours in
3 response to a mass written communication from the covered
4 employer about the availability of additional hours, provided
5 that the mass communication is only used for additional hours
6 that are the result of another employee being unable to work
7 scheduled hours, and the communication makes clear that
8 accepting the hours is voluntary and the employee has the
9 right to decline the hours.

10 (6) Employee hours are subtracted due to termination of
11 employment or the covered employer subtracts hours from an
12 employee's work schedule for disciplinary reasons under a
13 multiday suspension, provided the employer documents in
14 writing the incident leading to the disciplinary action.

15 (7) A ticketed event is canceled, rescheduled,
16 postponed, delayed, increases in expected attendance by 20%
17 or more or changes in duration due to circumstances that are
18 outside the covered employer's control and that occur after
19 the covered employer provides the posted work schedule with
20 the advanced notice required under section 3(d). Additional
21 hours due to a change in a ticketed event's duration that
22 fall within this exemption shall also be fully exempt from
23 section 3(d).

24 Section 5. Right to rest between work shifts.

25 (a) General rule.--

26 (1) An employee may decline, without penalty, any work
27 hours that are scheduled or otherwise occur:

28 (i) less than eleven hours after the end of the
29 previous day's shift; or

30 (ii) during the eleven hours following the end of a

1 shift that spanned two days.

2 (2) An employee may consent to work shifts under
3 paragraph (1). Consent shall be provided by written
4 communication, either for each shift or for multiple shifts
5 and may be revoked by written communication at any time
6 during employment.

7 (b) Compensation.--A covered employer shall compensate the
8 employee for each instance that the employee works a shift
9 described under subsection (a) in the amount of \$40 for each
10 shift.

11 Section 6. Offer of work to existing employees.

12 (a) General rule.--Before hiring a new employee from an
13 external applicant pool or a subcontractor, including hiring
14 through the use of temporary services or staffing agencies, a
15 covered employer shall offer work shifts to existing employees
16 as provided under this section.

17 (b) Notice.--The covered employer shall provide written
18 notice of available work shifts for at least 72 hours unless a
19 shorter period is necessary in order for the work to be timely
20 performed. The following shall apply:

21 (1) The notice shall be in English and in the primary
22 language of the employees at the particular workplace and
23 posted in a conspicuous location at the workplace that is
24 readily accessible and visible to all employees. The notice
25 shall also be provided electronically to each employee if the
26 covered employer customarily communicates scheduling
27 information in an electronic form to employees.

28 (2) The notice shall include a description of the
29 position and its required qualifications, the schedule of
30 available shifts, the length of time the covered employer

1 anticipates requiring coverage of the additional hours and
2 the process by which an employee may notify the covered
3 employer of the employee's desire to work the offered shifts.

4 (3) The covered employer may provide the notice
5 concurrently at the location where the shifts described in
6 the notice will be worked, locations other than the location
7 where the work is to be performed and to external candidates.

8 (c) Existing employees.--A covered employer shall distribute
9 shifts, in accordance with the criteria contained in the notice
10 required under subsection (b) (2) to one or more existing
11 employees who have accepted the shifts and who, to a reasonable
12 covered employer acting in good faith, are qualified to perform
13 the work, provided that:

14 (1) A covered employer shall distribute shifts to
15 employees whose regular workplace is the location where the
16 shifts described in the notice will be worked or, if no
17 employee accepts the shifts within the time as provided under
18 this section and it is a regular practice of the covered
19 employer to schedule employees across multiple locations, to
20 employees whose regular workplace is a covered location other
21 than the location where the shifts will be worked. If it is
22 not a regular practice of the covered employer, offering
23 additional shifts to employees at a different location shall
24 be at the option of the covered employer.

25 (2) The covered employer's system for distribution of
26 hours may not discriminate on the basis of race, color,
27 creed, religion, ancestry, national origin, sex, sexual
28 orientation, gender identity, disability, age, marital or
29 familial status or on the basis of family caregiving
30 responsibilities or status as a student, and the covered

1 employer may not distribute hours in a manner intended to
2 avoid application of the Patient Protection and Affordable
3 Care Act (Public Law 111-148, 124 Stat. 119).

4 (d) External applicants.--A covered employer may hire
5 individuals from an external applicant pool or subcontractors to
6 perform the work described in, and in accordance with the
7 criteria provided in, the notice posted under subsection (b) (2)
8 if the covered employer provides notice of available work shifts
9 as required under this section and:

10 (1) no employee accepts the offer of available work
11 shifts within 24 hours of the end of the 72-hour-posting
12 period;

13 (2) the covered employer receives written confirmation
14 from eligible employees that they are not interested in
15 accepting the available work shifts; or

16 (3) existing employees have accepted a subset of the
17 offered work shifts, in which case the existing employees
18 shall be awarded that subset of work shifts, and external
19 applicants may be offered the remaining shifts.

20 (e) Construction.--This section shall not be construed to
21 require a covered employer to offer employees work hours paid at
22 a premium rate under Federal or State law or to prohibit a
23 covered employer from offering the work hours.

24 (f) Notice of policy.--A covered employer shall notify an
25 employee by written communication of the covered employer's
26 policy for offering and distributing work shifts under this
27 section at the time of hire and within 24 hours of any change in
28 the policy and shall post the notice in an accessible location
29 in the workplace. The notice shall include:

30 (1) Where an employee can access written notices of

1 available work shifts.

2 (2) The process by which an employee may notify the
3 covered employer of the employee's desire to work the
4 available work shifts.

5 (3) The criteria for distribution of work shifts among
6 qualified and interested employees.

7 (g) Rules and regulations.--The department shall promulgate
8 rules and regulations limiting the applicability of this section
9 with regard to trainees who work for a limited time at a
10 particular location.

11 Section 7. Exercise of rights protected and retaliation
12 prohibited.

13 (a) General rule.--It shall be unlawful for a covered
14 employer or any other person to interfere with, restrain or deny
15 the exercise of, or the attempt to exercise, any right under
16 this act.

17 (b) Adverse action prohibited.--No person shall take any
18 adverse action that penalizes an employee for, or is reasonably
19 likely to deter the employee from, exercising or attempting to
20 exercise any right under this act.

21 (c) Applicability.--Protections under this section shall
22 apply to any individual who mistakenly but in good faith alleges
23 violations of this act.

24 (d) Rebuttable presumption.--It shall be considered a
25 rebuttable presumption of retaliation if the covered employer or
26 any other person takes an adverse action against an employee
27 within 90 calendar days of the employee's exercise of rights
28 protected under this section unless due to disciplinary reasons
29 for just cause, provided the covered employer documents in
30 writing the incident relating to the employee's discipline. In

1 the case of seasonal employment that ended before the close of
2 the 90-calendar-day period, the presumption also applies if the
3 covered employer fails to rehire a former employee at the next
4 opportunity for work in the same position.

5 (e) Definition.--As used in this section, the term "adverse
6 action" means the following:

7 (1) Threatening, intimidating, disciplining,
8 discharging, demoting, suspending or harassing an employee.

9 (2) Assigning an employee to a lesser position in terms
10 of job classification, job security or other condition of
11 employment.

12 (3) Reducing the hours or pay of an employee or denying
13 the employee additional hours.

14 (4) Discriminating against the employee, including
15 actions or threats related to perceived immigration status or
16 work authorization.

17 Section 8. Enforcement.

18 (a) Duties of secretary.--The secretary shall have the duty
19 to:

20 (1) Enforce and administer the provisions of this act.

21 (2) Investigate any alleged violations of this act.

22 (3) Institute prosecutions and actions as provided under
23 this act.

24 (b) Prohibition.--Nothing in this act shall authorize the
25 secretary to initiate a civil action for unpaid wages which are
26 subject to disposition under grievance and arbitration
27 procedures of a collective bargaining agreement.

28 (c) Rules and regulations.--The department may promulgate
29 rules and regulations necessary to administer this act.

30 Section 9. Notice.

1 (a) Posting requirement.--Each covered employer shall post
2 and keep posted, in conspicuous and accessible places on the
3 premises of the covered employer where notices to employees and
4 applicants for employment are customarily posted, a notice, to
5 be prepared or approved by the department, providing the rights
6 and privileges provided under this act, stating that retaliation
7 against employees for exercising rights under this act is
8 prohibited and providing other information as the department may
9 require. The notice shall be posted in English and in the
10 primary language of the employees at the particular worksite.

11 (b) Notice of right to report improper suspension.--An
12 employee who receives reduced hours due to a multiday
13 disciplinary suspension under section 4(b)(6) shall be given
14 written notice. If the employee believes the suspension was
15 improperly imposed to manipulate or reduce the employee's
16 schedule in violation of this act, the employee may report the
17 suspension to the department to investigate.

18 Section 10. Covered employer records.

19 (a) General rule.--A covered employer shall keep records
20 necessary to demonstrate compliance with this act, including,
21 but not limited to, good faith estimates of work schedules and
22 any modifications, written consent for work shifts as required
23 by this act, offers of work shifts to existing employees and
24 responses to those offers and payroll records that specify the
25 amount of additional compensation paid to employees under
26 sections 4 and 5. Covered employers shall retain the records for
27 a period of two years and shall allow the department access to
28 the records, with appropriate notice and at a mutually agreeable
29 time, to monitor compliance with the requirements of this act.
30 When an issue arises as to a covered employer's compliance with

1 this act, if the covered employer does not maintain or retain
2 adequate records documenting compliance or does not allow the
3 department reasonable access to the records within 30 days of
4 the department's request, it shall be presumed that the covered
5 employer has violated this act, absent clear and convincing
6 evidence otherwise.

7 (b) Work schedules.--Upon request by an employee, and in
8 accordance with the rules and regulations of the department, a
9 covered employer shall provide the employee with work schedules
10 for all employees at the location in writing for any previous
11 week for the past two years, including the originally posted and
12 modified versions of work schedules.

13 Section 11. Collective bargaining.

14 Any provisions of this act may be waived in a bona fide
15 collective bargaining agreement, but only if the waiver is
16 explicitly provided in the agreement in clear and unmistakable
17 terms and only if the agreement is in effect contractually.
18 Unilateral implementation of terms and conditions of employment
19 by either party to a collective bargaining relationship shall
20 not constitute, or be permitted, as a waiver of any part of the
21 provisions of this act.

22 Section 12. Enforcement and penalties.

23 (a) Reporting.--An employee or other individual may report
24 to the department any suspected violation of this act.

25 (b) Duties of department.--The department shall take steps
26 as it deems appropriate to resolve complaints and enforce this
27 act, including, but not limited to, establishing a system to
28 receive complaints regarding noncompliance with this act and
29 investigating alleged violations in a timely manner. The
30 department may open an investigation on its own initiative.

1 (c) Filing complaint.--An individual alleging a violation of
2 this act shall file a complaint with the department within two
3 years of the date the individual knew or should have known of
4 the alleged violation. The identity of a complainant shall
5 remain confidential unless disclosure of the complainant's
6 identity is necessary for resolution of any investigation by the
7 department or otherwise required by law. The department shall,
8 to the extent practicable, notify the complainant that the
9 department will be disclosing the complainant's identity prior
10 to the disclosure.

11 (d) Investigation.--Upon receiving a complaint alleging a
12 violation of this act, the department shall investigate the
13 complaint. The department may designate representatives to
14 inspect worksites and access records required to be maintained
15 under section 10. The department shall keep complainants
16 reasonably notified regarding the status of the complaint and a
17 resulting investigation.

18 (e) Subpoena power.--The department shall have the power to
19 subpoena records and testimony from any party to a complaint.
20 The records shall be provided to the department within 30 days
21 after receipt of the subpoena.

22 (f) Penalties and fines.--The department shall have the
23 power to impose penalties and fines for a violation of this act
24 and to provide or obtain appropriate relief. Remedies may
25 include reinstatement and full restitution to the employee for
26 lost wages and benefits, including predictability pay required
27 under section 4. A covered employer that violates this act shall
28 be fined:

29 (1) For a violation of section 9:

30 (i) For a first violation, \$500.

- 1 (ii) For a second violation, \$1,000.
- 2 (iii) For a third or subsequent violation, \$2,000.
- 3 (2) For a violation of any other provision of this act:
- 4 (i) For a first violation, \$1,000.
- 5 (ii) For a second violation, \$1,500.
- 6 (iii) For a third or subsequent violation, \$3,000.

7 (g) Civil action.--The department, an individual aggrieved
8 by a violation of this act or an entity, a member of which is
9 aggrieved by a violation of this act, may bring a civil action
10 in a court of competent jurisdiction against a covered employer
11 that has violated this act. The following shall apply:

12 (1) If during the pendency of a determination by the
13 department, prior to the issuance of a final decision, an
14 employee brings a private action under this act in a court of
15 competent jurisdiction seeking relief based upon the same
16 facts and allegations as the employee's complaint under this
17 act, or affirmatively or by consent opts to participate in
18 litigation, that employee's complaint to the department shall
19 be deemed withdrawn with respect to any respondent covered
20 employer named as a defendant in a court action.

21 (2) Nothing in this act or its implementing regulations
22 shall be construed to require a complaint to be filed with
23 the department before bringing an action in court or before
24 another governmental agency.

25 (3) Upon prevailing in an action brought under this
26 section, an aggrieved individual shall recover the full
27 amount of unpaid compensation, including predictability pay,
28 to which the individual would have been entitled under this
29 act, any wages and benefits lost, presumed damages under
30 subsection (f) and department regulations, other damages

1 suffered as the result of the covered employer's violation of
2 this act and an equal amount, up to a maximum of \$2,000, as
3 liquidated damages. An aggrieved individual shall also be
4 entitled to an award of reasonable attorney fees and costs.

5 (4) Upon prevailing in an action brought under this
6 section, an aggrieved individual shall be entitled to any
7 legal or equitable relief as may be appropriate to remedy the
8 violation, which may not be duplicative of relief provided to
9 the individual in administrative proceedings, including,
10 without limitation, reinstatement in employment, back pay and
11 injunctive relief.

12 (h) Statute of limitations.--The statute of limitations for
13 a civil action brought under this section shall be two years
14 from the date the alleged violation occurred.

15 Section 13. Applicability.

16 This act shall not apply to a covered employer in a city of
17 the first class.

18 Section 14. Effective date.

19 This act shall take effect in 90 days.