



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB4881

Introduced 2/18/2020, by Rep. Aaron M. Ortiz

SYNOPSIS AS INTRODUCED:

New Act

Creates the Fair Workweek Act. Requires certain employers to provide employees with a good faith estimate of the employee's work schedule. Sets forth the contents of the estimate, including the median number of hours the employee can expect and the manner in which standby lists will be utilized. Requires written work schedules to be provided to employees 14 days in advance. Specifies minimum periods of rest between shifts. Provides for administration by the Department of Labor. Establishes remedies.

LRB101 16746 JLS 66136 b

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Fair
5 Workweek Act.

6 Section 5. Definitions. In this Act:

7 "Chain" means an establishment that is part of an
8 affiliation of 2 or more establishments within the United
9 States, each of which is owned by the same person or entity and
10 operates under identical or substantially similar trade names
11 or service marks.

12 "Department" means the Department of Labor.

13 "Employee" means a person employed or permitted to work or
14 perform a service for remuneration who is employed in a retail
15 establishment, a hospitality establishment, or a food services
16 establishment and is engaged in providing services relating to:

17 (1) retail trade, as that term is used in the 2017
18 North American Industry Classification System under code
19 44-45;

20 (2) hotels and motels, as those terms are used in the
21 2017 North American Industry Classification System under
22 code 721110, or casino hotels, as that term is used in the
23 2017 North American Industry Classification System under

1 code 721120; or

2 (3) food services, as that term is used in the 2017
3 North American Industry Classification System under code
4 722.

5 "Employee" does not include:

6 (1) a salaried employee;

7 (2) a worker supplied to an employer by a worker
8 leasing company, as defined in Section 206.1 of the
9 Unemployment Insurance Act; or

10 (3) an employee of a business that provides services to
11 or on behalf of an employer.

12 "Employer" means an employer, or a successor to an
13 employer, described in Section 10.

14 "Food services establishment" means the fixed point of sale
15 location for establishments defined in the 2017 North American
16 Industry Classification System under code 722 as food services
17 and drinking places.

18 "Hospitality establishment" has the meaning provided in
19 the 2017 North American Industry Classification System under
20 code 721110 for hotels and motels and code 721120 for casino
21 hotels.

22 "On-call shift" means any time that an employer requires an
23 employee to be available to work or to contact the employer or
24 wait to be contacted by the employer for the purpose of
25 determining whether the employee must report to work. During
26 the shift, on-call status applies regardless of whether the

1 employee is located on or off the employer's premises.

2 "Regular rate of pay" means the regular hourly rate or
3 hourly equivalent that an employer must pay an employee for
4 each hour the employee works during a given work shift,
5 including any shift differential pay. "Regular rate of pay"
6 does not include:

7 (1) tips;

8 (2) bonuses or other incentive payments;

9 (3) overtime, holiday pay or other premium rate; or

10 (4) any additional compensation an employer is
11 required to pay an employee under Section 35 or 45.

12 "Retail establishment" means the fixed point of sale
13 location for an establishment defined in the 2017 North
14 American Industry Classification System under codes 441110 to
15 453998 as a retail trade establishment.

16 "Shift differential pay" means a pay differential meant to
17 compensate an employee for work performed under differing
18 conditions, such as for working at night. "Shift differential
19 pay" does not include any additional compensation an employer
20 is required to pay an employee under Section 35 or 45.

21 "Successor" means a business or enterprise that is
22 substantially the same entity as the predecessor employer
23 according to criteria adopted by the Department by rule and
24 consistent with federal law.

25 "Time of hire" means the period after an offer of
26 employment and acceptance of the offer of employment and on or

1 before the commencement of employment.

2 "Work schedule" means the hours, days, and times, including
3 regular work shifts and on-call shifts, when an employee is
4 required by an employer to perform duties of employment for
5 which the employee will receive compensation.

6 "Work shift" means the specific and consecutive hours the
7 employer requires the employee to work.

8 "Workweek" means a fixed period of time established by an
9 employer that reflects a regularly recurring period of 168
10 hours or 7 consecutive 24-hour periods. A workweek may begin on
11 any day of the week and any hour of the day and need not
12 coincide with a calendar week. The beginning of a workweek may
13 be changed if the change is intended to be permanent.

14 "Writing" or "written" means a printed or printable
15 communication in physical or electronic format including a
16 communication that is transmitted through electronic mail,
17 text message or a computer system or is otherwise sent and
18 stored electronically.

19 "Year" means any fixed, consecutive 12-month period.

20 Section 10. Covered employees.

21 (a) This Act applies to an employee who is employed by an
22 employer, as defined in Section 205 of the Unemployment
23 Insurance Act, that is also one or more of the following:

24 (1) A retail establishment that employs 500 or more
25 employees worldwide, including but not limited to a chain

1 or an integrated enterprise.

2 (2) A hospitality establishment that employs 500 or
3 more employees worldwide, including but not limited to a
4 chain or an integrated enterprise.

5 (3) A food services establishment that employs 500 or
6 more employees worldwide, including but not limited to a
7 chain or an integrated enterprise.

8 (b) To determine the number of employees employed by an
9 employer, the calculation shall be based upon the average
10 number of employees employed on each working day during each of
11 20 or more workweeks in the current calendar year or
12 immediately preceding calendar year.

13 (c) Separate entities that form an integrated enterprise
14 are considered a single employer under this Act. Separate
15 entities shall be considered an integrated enterprise and a
16 single employer under this Act when a separate entity controls
17 the operation of another entity. The factors to consider in
18 determining whether separate entities form an integrated
19 enterprise include, but are not limited to:

20 (1) the degree of interrelation between the operations
21 of multiple entities;

22 (2) the degree to which the entities share common
23 management;

24 (3) the degree to which the entities have centralized
25 control of labor relations; and

26 (4) the degree of common ownership or financial control

1 over the entities.

2 (d) The Department shall adopt rules in accordance with the
3 provisions of subsection (c) regarding how to determine when
4 separate entities form an integrated enterprise for the
5 purposes of this Act.

6 Section 15. Good faith estimate of work schedule.

7 (a) An employer shall provide a new employee with a written
8 good faith estimate of the employee's work schedule at the time
9 of hire. The good faith estimate:

10 (1) shall state the median number of hours the employee
11 can expect to work in an average one-month period;

12 (2) shall explain the voluntary standby list described
13 in Section 20 and provide the written notice required in
14 Section 20;

15 (3) shall indicate whether an employee who is not on
16 the voluntary standby list can expect to work on-call
17 shifts and, if so, set forth an objective standard for when
18 an employee not listed on the voluntary standby list may be
19 expected to be available to work on-call shifts; and

20 (4) may be based on a prior year schedule if it is a
21 good faith estimate of seasonal or episodic work.

22 (b) The employer shall include the good faith estimate in
23 the language the employer typically uses to communicate with
24 the employee.

1 Section 20. Voluntary standby list.

2 (a) An employer may maintain a standby list of employees
3 whom the employer will request to work additional hours to
4 address unanticipated customer needs or unexpected employee
5 absences if the listed employees have requested or agreed in
6 writing to be included on the standby list and the employer
7 notifies each employee in writing:

8 (1) that the list is voluntary and how an employee may
9 request to be removed from the list;

10 (2) how the employer will notify a standby list
11 employee of additional hours available and how an employee
12 may accept the additional hours;

13 (3) that the employee is not required to accept the
14 additional hours offered; and

15 (4) that an employee on the standby list is not
16 eligible for additional compensation under Section 40 for
17 the changes to the employee's written work schedule
18 resulting from the employee's acceptance of additional
19 hours offered to the employee as a result of being on the
20 standby list.

21 (b) An employer shall provide an employee on the standby
22 list with notice of additional hours available by in-person
23 conversation, telephone call, electronic mail, text message,
24 or other accessible electronic or written format.

25 (c) An employee who receives notice of additional hours
26 available under this Section may decline to accept the

1 additional hours offered.

2 (d) An employee who consents to work additional hours in
3 response to an employer's request under this Section is not
4 eligible for any additional compensation under Section 7 for
5 the resulting change to the employee's written work schedule.

6 (e) An employee may request to be removed from the standby
7 list at any time.

8 (f) An employer may not retaliate against an employee who:

9 (1) does not request or agree to be added to the
10 standby list;

11 (2) requests to be removed from the standby list; or

12 (3) declines an employer's request that the employee
13 work additional hours as a result of the employee being on
14 the standby list.

15 (g) In addition to any other penalty provided by law, the
16 Department may assess a civil penalty not to exceed \$2,000
17 against an employer that it finds has coerced an employee into
18 requesting or agreeing to be added to the standby list in
19 violation of this Section. Each violation is a separate and
20 distinct offense. In the case of a continuing violation, each
21 day's continuance is a separate and distinct violation.

22 (h) The standby list is not a list of employees scheduled
23 for on-call shifts and the employer is not required to include
24 a list of employees on the standby list in the written work
25 schedule described in Section 25.

1 Section 25. Advance notice of work schedule.

2 (a) An employer shall provide an employee with a work
3 schedule in writing at least 14 calendar days before the first
4 day of the work schedule.

5 (b) The employer shall post the written work schedule in a
6 conspicuous and accessible location, in English and in the
7 language the employer typically uses to communicate with the
8 employees.

9 (c) The employer shall provide a written work schedule that
10 runs through the last date of the posted work schedule in
11 effect at the time of delivery to:

12 (1) a new employee on or before the employee's first
13 day of work; or

14 (2) an existing employee on the employee's first day of
15 work after a leave of absence.

16 (d) The written work schedule shall include all work shifts
17 and on-call shifts for the work period.

18 (e) If the employer requests changes to the written work
19 schedule after the advance notice required in this Section:

20 (1) the employer shall provide the employee with timely
21 notice of the change by in-person conversation, telephone
22 call, electronic mail, text message or other accessible
23 electronic or written format; and

24 (2) the employee may decline any work shifts not
25 included in the employee's written work schedule.

26 (f) At any time after the advance notice of written work

1 schedule required in this Section, an employee may request in
2 writing that the employer add the employee to one or more work
3 shifts or on-call work shifts. Any changes to the employee's
4 written work schedule resulting from such employee-requested
5 work schedule changes are not subject to the advance notice
6 requirements of this Section.

7 Section 30. Right to rest between work shifts.

8 (a) Unless the employee requests or consents to work such
9 hours, an employer may not schedule or require an employee to
10 work during the following rest periods:

11 (1) the first 10 hours following the end of the
12 previous calendar day's work shift or on-call shift; or

13 (2) the first 10 hours following the end of a work
14 shift or on-call shift that spanned 2 calendar days.

15 (b) Except as provided in subsection (c), an employer shall
16 compensate an employee for each hour or portion of an hour that
17 the employee works during a rest period described in subsection
18 (a) at one and one-half times the employee's regular rate of
19 pay.

20 (c) Subsection (b) does not apply to any hour or portion of
21 an hour an employee works during the rest period described in
22 subsection (a) during which the employee is engaged in
23 providing roadside assistance services. As used in this
24 subsection, "roadside assistance" means offsite repair
25 assistance rendered to a motorist with a disabled vehicle.

1 Section 35. Employee right to input into work schedule.

2 (a) At the time of hire and during employment, an employee
3 may identify any limitations or changes in the employee's work
4 schedule availability. The employee may also request not to be
5 scheduled for work shifts during certain times or at certain
6 locations.

7 (b) (1) An employer may require the employee to provide
8 reasonable verification of the need for a request made under
9 subsection (a).

10 (2) The employer shall pay any reasonable costs for
11 providing verification that is medical verification required
12 under this subsection, including lost wages, that are not paid
13 under a health benefit plan in which the employee is enrolled.

14 (c) An employer may not retaliate against an employee for
15 making a request under subsection (a).

16 (d) An employer is under no obligation to grant an
17 employee's request under subsection (a).

18 Section 40. Compensation for work schedule changes.

19 (a) As used in this Section:

20 "Group communication" means communication to all eligible
21 employees, either written or oral.

22 "Ticketed event" means a sporting, entertainment, civic,
23 charitable, or other event that requires a ticket for
24 admission. The ticket may be electronic, physical, or a name on

1 a list held by the event organizer.

2 (b) An employer shall provide the following compensation to
3 an employee for each employer-requested change that occurs to
4 the employee's written work schedule without the advance notice
5 required in Section 25:

6 (1) One hour of pay at the employee's regular rate of
7 pay, in addition to wages earned, when the employer:

8 (A) adds more than 30 minutes of work to the
9 employee's work shift;

10 (B) changes the date or start or end time of the
11 employee's work shift with no loss of hours; or

12 (C) schedules the employee for an additional work
13 shift or on-call shift.

14 (2) One-half times the employee's regular rate of pay
15 per hour for each scheduled hour that the employee does not
16 work when the employer:

17 (A) subtracts hours from the employee's work
18 shift before or after the employee reports for
19 duty;

20 (B) changes the date or start or end time of
21 the employee's work shift, resulting in a loss of
22 work shift hours;

23 (C) cancels the employee's work shift; or

24 (D) does not ask the employee to perform work
25 when the employee is scheduled for an on-call
26 shift.

1 (c) The requirements for additional compensation in this
2 Section do not apply when:

3 (1) an employer changes the start or end time of an
4 employee's work shift by 30 minutes or less;

5 (2) an employee mutually agrees with another employee
6 to employee-initiated work shift swaps or coverage. The
7 employer may require that work shift swaps or coverage
8 under this paragraph be preapproved by the employer. The
9 employer may assist employees in finding such
10 arrangements, but any employer assistance must be limited
11 to helping an employee identify other employees who may be
12 available to provide work shift swaps or coverage and may
13 not include the employer arranging the work shift swap or
14 coverage;

15 (3) an employee requests changes to the employee's
16 written work schedule, including adding or subtracting
17 hours, and the employee documents the request in writing;

18 (4) an employer makes changes to an employee's written
19 work schedule at the employee's request under subsection
20 (f) of Section 25;

21 (5) an employer subtracts hours from an employee's work
22 schedule for disciplinary reasons for just cause, provided
23 the employer documents the incident leading to the
24 employee's discipline in writing;

25 (6) an employee's work shift or on-call shift cannot
26 begin or continue due to threats to employees or property

1 or due to the recommendation of a public official;

2 (7) operations cannot begin or continue because public
3 utilities fail to supply electricity, water or gas or there
4 is a failure in the public utilities or sewer system;

5 (8) operations cannot begin or continue due to a
6 natural disaster or a similar cause not within the
7 employer's control, including when the natural disaster or
8 similar cause physically affects the work site;

9 (9) operation hours change or are substantially
10 altered because a ticketed event is canceled, rescheduled,
11 or changes in duration due to circumstances that are
12 outside the employer's control and that occur after the
13 employer provides the written work schedule under Section
14 25;

15 (10) an employer requests that an employee on a
16 voluntary standby list work additional hours as described
17 in Section 20 and the employee consents to work the
18 additional hours; or

19 (11)(A) an employer requests that an employee work
20 additional hours to address unanticipated customer needs
21 or unexpected employee absence;

22 (B) the employee consents in writing to work the
23 additional hours;

24 (C) if the employer maintains a voluntary standby list
25 described in Section 20, the employer has contacted all of
26 the employees listed on the voluntary standby list and

1 requires additional employee coverage; and

2 (D) (i) if the employee is working a work shift at the
3 time the employer makes the request, the employer makes the
4 request either individually or as part of a group
5 communication; or

6 (ii) if the employee is not working a work shift at the
7 time the employer makes the request, the employer makes the
8 request through a group communication.

9 Section 45. Notice and posting requirements.

10 (a) The Department shall make available to employers a
11 template of a poster giving notice of the rights described in
12 this Act. The poster must be in English.

13 (b) Employers shall display the poster at the workplace. If
14 displaying the poster is not feasible, including situations in
15 which the employees work remotely or do not have a regular
16 workplace or job site, the employer may provide the poster on
17 an individual basis in a physical or electronic format that is
18 reasonably conspicuous and accessible.

19 Section 50. Record retention. An employer shall retain
20 records that document the employer's compliance with this Act
21 for 3 years.

22 Section 55. Retaliation prohibited. It is an unlawful
23 practice for an employer to:

1 (1) Interfere with, restrain, deny or attempt to deny
2 the exercise of any right protected under this Act; or

3 (2) Retaliate or in any way discriminate against an
4 individual with respect to hire or tenure or any other term
5 or condition of employment because the individual has
6 inquired about the provisions of this Act.

7 Section 60. Enforcement, right of action, and
8 administrative remedies.

9 (a) An employee asserting a violation of Section 55 may
10 file a complaint with the Department or a civil action as
11 provided in the Code of Civil Procedure.

12 (b) The Department has the same enforcement powers with
13 respect to the rights established under this Act as are
14 established under the Wage Payment and Collection Act.

15 (c) In addition to any other damages provided by law, the
16 Department may assess a statutory penalty as follows:

17 (1) \$500 for any violation of Section 45.

18 (2) \$1,000 for any violation of Section 55, 20, 25, 30,
19 35, 40, 50 or 55.

20 (3) If the Department determines that the employer paid
21 the full remedy due, not including any statutory penalty,
22 within 14 days of service of an order, the Department shall
23 waive 50% of the amount of any statutory penalty imposed by
24 order under this Section.

1 Section 65. Other rights and remedies. Nothing in this Act
2 is intended to:

3 (1) limit employee rights or protections otherwise
4 provided by law;

5 (2) create an additional remedy for an employee if a
6 remedy equal to or better than a remedy in Section 30 or 40
7 is required by a collective bargaining agreement or other
8 contract; or

9 (3) provide a cause of action to an employee for work
10 schedule changes necessary to accommodate that employee
11 under State or federal family or medical leave laws, State
12 or federal disability laws, or under the Workers'
13 Compensation Act.

14 Section 70. Action for retaliation.

15 (a) A person claiming to be aggrieved by a violation of
16 Section 55, except a claim relating to Section 35, may file a
17 civil action in circuit court. In any action under this
18 subsection, the court may order injunctive relief and any other
19 equitable relief that may be appropriate, including, but not
20 limited to, reinstatement or the hiring of employees with or
21 without back pay. A court may order back pay in an action under
22 this subsection only for the 2-year period immediately
23 preceding the filing of a complaint under this Act with the
24 Department, or if a complaint was not filed before the action
25 was commenced, the 2-year period immediately preceding the

1 filing of the action. In any action under this subsection, the
2 court may allow the prevailing party costs and reasonable
3 attorney fees at trial and on appeal.

4 (b) In any action under subsection (a), the court may
5 award, in addition to the relief authorized under subsection
6 (a), compensatory damages or \$200, whichever is greater, and
7 punitive damages.

8 (c) Any attorney's fee agreement shall be subject to
9 approval by the court.