

HB3285



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB3285

Introduced 2/19/2021, 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.

LRB102 15122 JLS 20477 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

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 service
16 establishment and is engaged in providing services relating
17 to:

18 (1) retail trade, as that term is used in the 2017
19 North American Industry Classification System under code
20 44-45;

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

1 2017 North American Industry Classification System under
2 code 721120; or

3 (3) food services, as that term is used in the 2017
4 North American Industry Classification System under code
5 722.

6 "Employee" does not include:

7 (1) a salaried employee;

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

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

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

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

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

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

1 the shift, on-call status applies regardless of whether the
2 employee is located on or off the employer's premises.

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

8 (1) tips;

9 (2) bonuses or other incentive payments;

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

11 (4) any additional compensation an employer is
12 required to pay an employee under Section 40.

13 "Retail establishment" means the fixed point of sale
14 location for an establishment defined in the 2017 North
15 American Industry Classification System under codes 441110 to
16 453998 as a retail trade establishment.

17 "Shift differential pay" means a pay differential meant to
18 compensate an employee for work performed under differing
19 conditions, such as for working at night. "Shift differential
20 pay" does not include any additional compensation an employer
21 is required to pay an employee under Section 40.

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

26 "Time of hire" means the period after an offer of

1 employment and acceptance of the offer of employment and on or
2 before the commencement of employment.

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

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

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

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

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

21 Section 10. Covered employees.

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

25 (1) A retail establishment that employs 500 or more

1 employees worldwide, including but not limited to a chain
2 or an integrated enterprise.

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

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

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

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

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

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

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

1 (4) the degree of common ownership or financial
2 control over the entities.

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

7 Section 15. Good faith estimate of work schedule.

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

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

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

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

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

25 (b) The employer shall include the good faith estimate in

1 the language the employer typically uses to communicate with
2 the employee.

3 Section 20. Voluntary standby list.

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

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

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

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

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

23 (b) An employer shall provide an employee on the standby
24 list with notice of additional hours available by in-person
25 conversation, telephone call, electronic mail, text message,

1 or other accessible electronic or written format.

2 (c) An employee who receives notice of additional hours
3 available under this Section may decline to accept the
4 additional hours offered.

5 (d) An employee who consents to work additional hours in
6 response to an employer's request under this Section is not
7 eligible for any additional compensation under Section 40 for
8 the resulting change to the employee's written work schedule.

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

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

12 (1) does not request or agree to be added to the
13 standby list;

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

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

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

25 (h) The standby list is not a list of employees scheduled
26 for on-call shifts and the employer is not required to include

1 a list of employees on the standby list in the written work
2 schedule described in Section 25.

3 Section 25. Advance notice of work schedule.

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

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

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

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

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

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

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

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

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

3 (f) At any time after the advance notice of written work
4 schedule required in this Section, an employee may request in
5 writing that the employer add the employee to one or more work
6 shifts or on-call work shifts. Any changes to the employee's
7 written work schedule resulting from such employee-requested
8 work schedule changes are not subject to the advance notice
9 requirements of this Section.

10 Section 30. Right to rest between work shifts.

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

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

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

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

23 (c) Subsection (b) does not apply to any hour or portion of
24 an hour an employee works during the rest period described in
25 subsection (a) during which the employee is engaged in

1 providing roadside assistance services. As used in this
2 subsection, "roadside assistance" means offsite repair
3 assistance rendered to a motorist with a disabled vehicle.

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

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

10 (b) (1) An employer may require the employee to provide
11 reasonable verification of the need for a request made under
12 subsection (a).

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

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

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

21 Section 40. Compensation for work schedule changes.

22 (a) As used in this Section:

23 "Group communication" means communication to all eligible
24 employees, either written or oral.

1 "Ticketed event" means a sporting, entertainment, civic,
2 charitable, or other event that requires a ticket for
3 admission. The ticket may be electronic, physical, or a name
4 on a list held by the event organizer.

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

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

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

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

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

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

20 (A) subtracts hours from the employee's work
21 shift before or after the employee reports for
22 duty;

23 (B) changes the date or start or end time of
24 the employee's work shift, resulting in a loss of
25 work shift hours;

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

1 (D) does not ask the employee to perform work
2 when the employee is scheduled for an on-call
3 shift.

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

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

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

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

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

24 (5) an employer subtracts hours from an employee's
25 work schedule for disciplinary reasons for just cause,
26 provided the employer documents the incident leading to

1 the employee's discipline in writing;

2 (6) an employee's work shift or on-call shift cannot
3 begin or continue due to threats to employees or property
4 or due to the recommendation of a public official;

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

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

13 (9) operation hours change or are substantially
14 altered because a ticketed event is canceled, rescheduled,
15 or changes in duration due to circumstances that are
16 outside the employer's control and that occur after the
17 employer provides the written work schedule under Section
18 25;

19 (10) an employer requests that an employee on a
20 voluntary standby list work additional hours as described
21 in Section 20 and the employee consents to work the
22 additional hours; or

23 (11) (A) an employer requests that an employee work
24 additional hours to address unanticipated customer needs
25 or unexpected employee absence;

26 (B) the employee consents in writing to work the

1 additional hours;

2 (C) if the employer maintains a voluntary standby list
3 described in Section 20, the employer has contacted all of
4 the employees listed on the voluntary standby list and
5 requires additional employee coverage; and

6 (D) (i) if the employee is working a work shift at the
7 time the employer makes the request, the employer makes
8 the request either individually or as part of a group
9 communication; or

10 (ii) if the employee is not working a work shift at the
11 time the employer makes the request, the employer makes
12 the request through a group communication.

13 Section 45. Notice and posting requirements.

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

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

23 Section 50. Record retention. An employer shall retain
24 records that document the employer's compliance with this Act

1 for 3 years.

2 Section 55. Retaliation prohibited. It is an unlawful
3 practice for an employer to:

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

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

10 Section 60. Enforcement, right of action, and
11 administrative remedies.

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

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

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

20 (1) \$500 for any violation of Section 45.

21 (2) \$1,000 for any violation of Section 20, 25, 30,
22 35, 40, 50, or 55.

23 (3) If the Department determines that the employer
24 paid the full remedy due, not including any statutory

1 penalty, within 14 days of service of an order, the
2 Department shall waive 50% of the amount of any statutory
3 penalty imposed by order under this Section.

4 Section 65. Other rights and remedies. Nothing in this Act
5 is intended to:

6 (1) limit employee rights or protections otherwise
7 provided by law;

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

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

17 Section 70. Action for retaliation.

18 (a) A person claiming to be aggrieved by a violation of
19 Section 55, except a claim relating to Section 35, may file a
20 civil action in circuit court. In any action under this
21 subsection, the court may order injunctive relief and any
22 other equitable relief that may be appropriate, including, but
23 not limited to, reinstatement or the hiring of employees with
24 or without back pay. A court may order back pay in an action

1 under this subsection only for the 2-year period immediately
2 preceding the filing of a complaint under this Act with the
3 Department, or if a complaint was not filed before the action
4 was commenced, the 2-year period immediately preceding the
5 filing of the action. In any action under this subsection, the
6 court may allow the prevailing party costs and reasonable
7 attorney fees at trial and on appeal.

8 (b) In any action under subsection (a), the court may
9 award, in addition to the relief authorized under subsection
10 (a), compensatory damages or \$200, whichever is greater, and
11 punitive damages.

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