

House Bill 3377

Sponsored by Representative FAGAN; Representatives NOSSE, SMITH WARNER, VEGA PEDERSON, Senators DEMBROW, GELSER, ROSENBAUM

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Authorizes employee of certain employers to request flexible or predictable work schedule. Requires employer to engage in interactive process with employee to attempt to establish mutually acceptable work schedule. Requires employer to provide alternate work schedule in certain cases.

Establishes unlawful employment practice of discharging or retaliating against employee who requests or discusses flexible or predictable work schedule, or files complaint related to work scheduling.

Requires employer to pay employee additional compensation for certain shift changes or for being required to contact employer to determine whether employee is to report for scheduled shift.

A BILL FOR AN ACT

1 Relating to employee scheduling; creating new provisions; and amending ORS 653.060.

2 **Be It Enacted by the People of the State of Oregon:**

3 **SECTION 1. Sections 2 and 3 of this 2015 Act are added to and made a part of ORS 653.010**
4 **to 653.261.**

5 **SECTION 2. (1) As used in this section:**

6 **(a) "Bona fide business reason" means:**

7 **(A) Substantial cost to the employer, including the cost of lost productivity and expenses**
8 **incurred in hiring additional employees or retraining current employees and in transferring**
9 **an employee from one location to another;**

10 **(B) A detrimental effect on the ability of the employer to meet organization needs or**
11 **customer demands;**

12 **(C) An inability to reorganize work among existing employees;**

13 **(D) Lack of work during the periods the employee has requested to work;**

14 **(E) A need to meet scheduling requests from more than one employee that, if granted,**
15 **would result in a detrimental effect on the business; and**

16 **(F) Any reason specified by the Commissioner of the Bureau of Labor and Industries by**
17 **rule.**

18 **(b) "Career-related educational or training program" means:**

19 **(A) An educational or training program;**

20 **(B) A program of study offered by a public, private or nonprofit career school, an insti-**
21 **tution of higher education or other entity that provides academic, career or technical edu-**
22 **cation; or**

23 **(C) Training that leads to a post-secondary credential.**

24 **(c) "Family member" has the meaning given that term in ORS 659A.150.**

25 **(d) "Interactive process" means a timely, good faith process that includes a discussion**
26 **between the employer and the employee, and that may include the proposal of alternatives**
27

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 by the employee and the employer, in an attempt to arrive at a mutually beneficial ar-
 2 rangement for a schedule that meets the needs of the employee and the employer.

3 (e) "Serious health condition" has the meaning given that term in ORS 659A.150.

4 (f) "Work schedule" means the days and times that an employee is required by an em-
 5 ployer to perform the duties for which the employee will receive compensation.

6 (g) "Work schedule change" means any modification to the work schedule of an em-
 7 ployee. A work schedule change includes, but is not limited to, changes to any of the fol-
 8 lowing:

9 (A) The starting or ending time of an employee's work day or work shift.

10 (B) A part-time employment arrangement.

11 (C) A job sharing arrangement.

12 (D) The ability to work from home.

13 (E) A telecommuting arrangement.

14 (F) Work location.

15 (G) Work duties.

16 (2) When an employer hires an employee, the employer shall provide the employee with
 17 a written work schedule that includes the times and the number of hours the employee is
 18 scheduled to work. If there is a work schedule change after the initial work schedule has
 19 been established, the new work schedule shall be established through an interactive process.
 20 The employer shall provide the employee notice of the work schedule change in writing not
 21 less than 24 hours prior to the start of the new work schedule.

22 (3)(a) An employee may request a flexible or predictable work schedule from the
 23 employee's employer.

24 (b) If presented with a request from an employee for a flexible or predictable work
 25 schedule, the employer shall engage in a timely, interactive process with the employee to
 26 attempt to agree upon a mutually acceptable work schedule.

27 (c) The employer shall notify the employee in writing of the employer's decision to grant
 28 or deny the employee's request for a flexible or predictable work schedule. If the request is
 29 completely or partially denied, the written notification must include an explanation of the
 30 reason for the denial.

31 (d) The employer is not obligated to provide an alternate work schedule for the employee
 32 after engaging in the interactive process. However, unless the employer has a bona fide
 33 business reason not to grant the employee's request for a flexible or predictable work
 34 schedule, the request shall be granted if the request is based on:

35 (A) A serious health condition of the employee;

36 (B) The employee's caregiving responsibilities for a family member;

37 (C) A second job of the employee; or

38 (D) The employee's participation in a career-related educational or training program.

39 (4) An employer shall post in a location that is accessible and visible to all employees at
 40 a work location a physical copy of the work schedules of all employees at the work location.
 41 The posted schedules shall include all of the employer's employees at the work location, re-
 42 gardless of the specific hours a particular employee is scheduled to work, and shall be up-
 43 dated as soon as practicable after work schedule changes are made.

44 **SECTION 3.** (1)(a) If an employee scheduled to work a work shift of at least four hours
 45 reports for work as required by an employer and is given less than four hours of work, the

1 employee shall be paid for four hours at the employee’s regular rate of pay, regardless of the
 2 hours actually worked.

3 (b) If an employee scheduled to work a work shift of less than four hours reports for
 4 work as required by an employer and is given less than the scheduled hours of work, the
 5 employee shall be paid at the employee’s regular rate of pay for the number of hours that
 6 the employee was scheduled to work, regardless of the hours actually worked.

7 (2)(a) Information about wages paid in accordance with this section shall be included with
 8 the information required to be provided employees under ORS 652.610. This information shall
 9 include the total number of hours for which wages were paid in accordance with this section,
 10 which shall be identified as reporting time wages.

11 (b) The Commissioner of the Bureau of Labor and Industries may adopt by rule additional
 12 requirements for notification or inclusion of additional information for employees.

13 (3) Subsection (1) of this section does not apply if circumstances beyond the control of
 14 the employer prevent the employee from performing the work the employee was scheduled
 15 to perform.

16 **SECTION 4.** (1) As used in this section, “work schedule” and “work schedule change”
 17 have the meanings given those terms in section 2 of this 2015 Act.

18 (2)(a) After an employer has provided an employee with an initial work schedule as re-
 19 quired under section 2 of this 2015 Act, the employer must provide the employee with notice
 20 in writing of a work schedule change at least 21 days prior to the first day the new work
 21 schedule begins.

22 (b) If the employer changes the employee’s work schedule after providing notice under
 23 this subsection, the employer must notify the employee of the subsequent change and of the
 24 new work schedule within 24 hours of making the change.

25 (3)(A) After an employee has been provided written notification of the employee’s work
 26 schedule, an employer may change a work shift of the employee less than 21 days but more
 27 than 24 hours before the changed shift is to begin only if the employer compensates the
 28 employee for one hour at the employee’s regular rate of pay for each shift changed, in addi-
 29 tion to the compensation owed to the employee for the hours actually worked.

30 (b) After an employee has been provided written notification of the employee’s work
 31 schedule, an employer may change the work shift of the employee with less than 24 hours’
 32 notice only if the employer compensates the employee for four hours of work at the
 33 employee’s regular rate of pay for each shift changed, in addition to the compensation owed
 34 to the employee for the hours actually worked.

35 (4) Work shift changes for which additional compensation must be paid under this section
 36 include, but are not limited to:

- 37 (a) Shortening the duration of a work shift;
- 38 (b) Changes to the starting or ending time of a work shift; and
- 39 (c) Increasing the duration of a work shift.

40 (5)(a) An employer must pay an employee for four hours at the employee’s regular rate
 41 of pay, in addition to the compensation owed to the employee for the hours actually worked,
 42 if:

- 43 (A) The employer requires the employee to be available to report to work immediately
 44 upon notification from the employer;
- 45 (B) The employee is required to contact the employer within a specified period prior to

1 reporting to work for a scheduled work shift to ascertain whether the employee is required
2 to report for work for that work shift; or

3 (C) An employee is required to work a work shift in one 24-hour period in which the
4 hours worked are not consecutive. For purposes of this subparagraph, a work break of less
5 than one hour is not an interruption of consecutive hours of the work shift.

6 (b) An employee shall be paid at the employee's regular rate of pay for each hour the
7 employee is required to be available to receive notification to report to work, or for one hour
8 at the employee's regular rate of pay if the employee must contact the employer to deter-
9 mine whether the employee is required to report to work.

10 (6) This section does not apply to a work shift change made at the request of an em-
11 ployee, including, but not limited to, a request:

12 (a) To work a work shift other than the shift scheduled by the employer;

13 (b) To use sick leave, vacation leave, personal days off or other leave to which the em-
14 ployee is entitled under a policy of the employer; or

15 (c) To use leave required by law.

16 (7) This section does not apply to a work shift change that results from an employee
17 working a shift in place of another employee, if the shift change is agreed to by both em-
18 ployees.

19 (8) An employer may not require an employee to search for or find a replacement em-
20 ployee to work any hours of the employee's work schedule that the employee is unable to
21 work.

22 **SECTION 5.** ORS 653.060 is amended to read:

23 653.060. (1) An employer may not discharge or in any other manner discriminate against an
24 employee because:

25 (a) The employee has made a complaint that the employee has not been paid wages in accord-
26 ance with ORS 653.010 to 653.261.

27 (b) The employee has caused to be instituted or is about to cause to be instituted any pro-
28 ceedings under or related to ORS 653.010 to 653.261.

29 (c) The employee has testified or is about to testify in any such proceedings.

30 (d) **The employee has requested or discussed a flexible or predictable work schedule or a**
31 **work schedule change under section 2 of this 2015 Act, or has made a complaint that the**
32 **employer has violated the provisions of section 2, 3 or 4 of this 2015 Act.**

33 (2) A violation of this section is an unlawful employment practice under ORS chapter 659A. A
34 person unlawfully discriminated against under this section may file a complaint under ORS 659A.820
35 with the Commissioner of the Bureau of Labor and Industries.

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