

A-Engrossed
Senate Bill 888

Ordered by the Senate April 23
Including Senate Amendments dated April 23

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

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.

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 **nonsalaried** 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
2 Relating to employee scheduling; creating new provisions; and amending ORS 653.060.

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

4 **SECTION 1. Sections 2 to 7 of this 2015 Act are added to and made a part of ORS chapter**
5 **653.**

6 **SECTION 2. As used in sections 2 to 7 of this 2015 Act:**

7 (1) **"Bona fide business reason" means:**

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

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

13 (c) **An inability to reorganize work among existing employees;**

14 (d) **Lack of work during the periods the employee has requested to work;**

15 (e) **Scheduling requests from more than one employee that, if granted, would result in a**
16 **detrimental effect on the business or inability to reorganize work; or**

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

19 (2) **"Career-related educational or training program" means:**

20 (a) **An educational or training program;**

21 (b) **A program of study offered by a public, private or nonprofit career school, an insti-**
22 **tution of higher education or another entity that provides academic, career or technical ed-**
23 **ucation; or**

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 (c) Training that leads to a post-secondary credential.

2 (3) "Family member" has the meaning given that term in ORS 659A.150.

3 (4) "Interactive process" means a timely, good faith process that includes a discussion
4 between the employer and the employee, and that may include the proposal of alternatives
5 by the employee and the employer, in an attempt to arrive at a mutually beneficial ar-
6 rangement for a schedule that meets the needs of the employee and the employer.

7 (5) "Salaried employee" means an employee who receives a predetermined amount that
8 is not subject to reduction in any week in which the employee performs the work, regardless
9 of the number of days or hours worked, consistent with state and federal law.

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

11 (7) "Wages" has the meaning given that term in ORS 653.010.

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

14 (9) "Work schedule change" means any modification to the work schedule of an em-
15 ployee. A work schedule change includes, but is not limited to, a change in or to any of the
16 following:

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

18 (b) A part-time employment arrangement.

19 (c) A job-sharing arrangement.

20 (d) The ability to work from home.

21 (e) A telecommuting arrangement.

22 (f) An employee's work location.

23 (g) Work duties.

24 (h) A more predictable or stable schedule.

25 **SECTION 3.** (1) An employee may request a flexible or predictable work schedule or a
26 work schedule change from the employee's employer.

27 (2) If an employer presented with a request from an employee for a flexible or predictable
28 work schedule or work schedule change does not grant the request, the employer shall ini-
29 tiate an interactive process with the employee to attempt to agree upon a mutually accept-
30 able work schedule.

31 (3) The employer shall notify the employee in writing of the employer's decision to grant
32 or deny the employee's request for a flexible or predictable work schedule or work schedule
33 change. If the request is completely or partially denied, the written notification must include
34 an explanation of the reason for the denial.

35 (4) Unless the employer has a bona fide business reason not to grant the employee's re-
36 quest for a flexible or predictable work schedule or work schedule change, the request shall
37 be granted if the request is based on:

38 (a) A serious health condition of the employee;

39 (b) The employee's caregiving responsibilities for a family member;

40 (c) A second job of the employee; or

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

42 **SECTION 4.** (1) When an employer hires an employee, the employer shall provide the
43 employee with a written work schedule that includes the times and the number of hours the
44 employee is scheduled to work for at least the employee's first 21 days of work.

45 (2) After the date of hire, the employer shall provide the employee with written notice

1 of any work schedule change at least 21 days prior to the first day of the new work schedule.

2 (3) The employer shall post in a location that is accessible and visible to all employees
3 at a work location a physical copy of the work schedules of all employees at the work lo-
4 cation at least 21 days prior to the first day of the work schedule and shall update the
5 schedule as soon as practicable after work schedule changes are made.

6 (4) Employees are entitled to request and receive the current work schedules of all em-
7 ployees at the work location at any time, whether or not changes to the work schedule have
8 been posted.

9 (5) An employer may not require an employee to work hours not included in the
10 employee's initial work schedule without consent in writing from the employee.

11 (6) This section does not apply to salaried employees.

12 **SECTION 5.** (1)(a) If an employee scheduled to work at least four hours reports for the
13 work shift as required by an employer and is given less than four hours of work, the em-
14 ployee shall be paid in the same pay period for four hours of work for that shift at the
15 employee's regular rate of pay.

16 (b) If an employee scheduled to work less than four hours reports for the work shift as
17 required by an employer and is given less than the scheduled hours of work, the employee
18 shall be paid in the same pay period for the number of hours that the employee was sched-
19 uled to work for that shift at the employee's regular rate of pay.

20 (2) Subsection (1) of this section does not apply if an employee was prevented from per-
21 forming the work the employee was scheduled to perform due to strike, flood, explosion, fire,
22 equipment failure, geological event or court order.

23 (3) The itemized statement provided to employees as required under ORS 652.610 shall
24 identify the wages earned under this section. The Commissioner of the Bureau of Labor and
25 Industries may adopt rules to implement this subsection.

26 (4) This section does not apply to salaried employees.

27 **SECTION 6.** (1)(a) After an employee has been provided written notification of the
28 employee's work schedule, an employer may change a work shift of the employee less than
29 21 days but more than 24 hours before the changed shift is to begin only if the employer
30 compensates the employee for one hour at the employee's regular rate of pay for each shift
31 changed in the same pay period or the next pay period in addition to other compensation
32 owed to the employee.

33 (b) After an employee has been provided written notification of the employee's work
34 schedule, an employer may change the work shift of the employee with less than 24 hours'
35 notice only if the employer compensates the employee for four hours at the employee's reg-
36 ular rate of pay for each shift changed in the same pay period or the next pay period in ad-
37 dition to other compensation owed to the employee.

38 (2) Work shift changes by the employer for which additional compensation must be paid
39 under this section include, but are not limited to:

- 40 (a) Shortening the duration of a work shift;
- 41 (b) Changing the starting or ending time of a work shift;
- 42 (c) Increasing the duration of a work shift;
- 43 (d) Adding a work shift; and
- 44 (e) Canceling a work shift.

45 (3) An employer shall pay an employee for four hours of work at the employee's regular

1 rate of pay, in addition to other compensation owed to the employee, if:

2 (a) The employee is required to contact the employer or be available to be contacted by
3 the employer at any time within 72 hours prior to the time the employee is expected to re-
4 port to work to ascertain whether the employee is required to report to work for that shift;
5 or

6 (b) An employee is required to work one or more work shifts in one 24-hour period in
7 which the hours worked are not consecutive. For purposes of this paragraph, a work break
8 of less than one hour is not an interruption of consecutive hours of the work shift.

9 (4) An employer may not require an employee to search for or find a replacement em-
10 ployee to work any hours of the employee's work schedule that the employee is unable to
11 work.

12 (5) This section does not apply to:

13 (a) Salaried employees;

14 (b) A work shift change that results from an employee working a shift in place of another
15 employee, if the work shift change is agreed to by both employees; or

16 (c) A work shift change made at the request of an employee, including, but not limited
17 to, a request:

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

19 (B) To use sick leave, vacation leave, personal time off, paid time off or any other paid
20 or unpaid leave to which the employee is entitled under a policy of the employer; or

21 (C) To use leave required by law.

22 **SECTION 7.** The Commissioner of the Bureau of Labor and Industries has the same
23 enforcement powers with respect to the rights established under sections 2 to 7 of this 2015
24 Act as are established under ORS chapters 652 and 653.

25 **SECTION 8.** ORS 653.060 is amended to read:

26 653.060. (1) An employer may not discharge or in any other manner discriminate against an
27 employee because:

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

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

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

33 (d) **The employee has requested or discussed a flexible or predictable work schedule or a**
34 **work schedule change under section 3 of this 2015 Act, or has made a complaint that the**
35 **employer has violated the provisions of section 3 to 6 of this 2015 Act.**

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

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