

# House Bill 3502

Sponsored by Representative CHAICHI

## 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**.

Modifies definition of "food services establishment."

Repeals provision of predictive work scheduling statutes that permitted employer to maintain voluntary standby list of employees whom employer may ask to work additional hours in certain circumstances. Makes conforming changes.

## A BILL FOR AN ACT

1  
2 Relating to predictive work scheduling; amending ORS 653.412, 653.428, 653.455 and 653.480; and  
3 repealing ORS 653.432.

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

5 **SECTION 1.** ORS 653.412 is amended to read:

6 653.412. As used in ORS 653.412 to 653.485, unless the context requires otherwise:

7 (1) "Chain" means an establishment that is part of an affiliation of two or more establishments  
8 within the United States, each of which is owned by the same person or entity and operate under  
9 identical or substantially similar trade names or service marks, both as defined in ORS 647.005.

10 (2)(a) "Employee" means an employee, as defined in ORS 652.310, who is employed in a retail  
11 establishment, a hospitality establishment or a food services establishment and is engaged in pro-  
12 viding services relating to:

13 (A) Retail trade, as that term is used in the 2012 North American Industry Classification System  
14 under code 44-45;

15 (B) Hotels and motels, as those terms are used in the 2012 North American Industry Classifica-  
16 tion System under code 721110, or casino hotels, as that term is used in the 2012 North American  
17 Industry Classification System under code 721120; or

18 (C) Food services, as that term is used in the 2012 North American Industry Classification Sys-  
19 tem under code 722.

20 (b) "Employee" does not include:

21 (A) A salaried employee described in ORS 653.020 (3);

22 (B) A worker supplied to an employer by a worker leasing company, as defined in ORS 656.850;

23 or

24 (C) An employee of a business that provides services to or on behalf of an employer.

25 (3) "Employer" means an employer, or a successor to an employer, described in ORS 653.422 (1).

26 (4) "Food services establishment" means the [*fixed point of sale location for*] establishments de-  
27 fined in the 2012 North American Industry Classification System under code 722 as food services  
28 and drinking places.

29 (5) "Hospitality establishment" has the meaning provided in the 2012 North American Industry  
30 Classification System under code 721110 for hotels and motels and code 721120 for casino hotels.

**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 (6) “On-call shift” means any time that an employer requires an employee to be available to  
 2 work or to contact the employer or wait to be contacted by the employer for the purpose of deter-  
 3 mining whether the employee must report to work. During the shift, on-call status applies regardless  
 4 of whether the employee is located on or off the employer’s premises.

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

8 (a) Tips;

9 (b) Bonuses or other incentive payments;

10 (c) Overtime, holiday pay or other premium rate; or

11 (d) Any additional compensation an employer is required to pay an employee under ORS 653.442  
 12 or 653.455.

13 (8) “Retail establishment” means the fixed point of sale location for an establishment defined in  
 14 the 2012 North American Industry Classification System under codes 441110 to 453998 as a retail  
 15 trade establishment.

16 (9) “Shift differential pay” means a pay differential meant to compensate an employee for work  
 17 performed under differing conditions, such as for working at night. “Shift differential pay” does not  
 18 include any additional compensation an employer is required to pay an employee under ORS 653.442  
 19 or 653.455.

20 (10) “Successor” means a business or enterprise that is substantially the same entity as the  
 21 predecessor employer according to criteria adopted by the Bureau of Labor and Industries by rule  
 22 and consistent with federal law.

23 (11) “Time of hire” means the period after an offer of employment and acceptance of the offer  
 24 of employment and on or before the commencement of employment.

25 (12) “Work schedule” means the hours, days and times, including regular work shifts and on-call  
 26 shifts, when an employee is required by an employer to perform duties of employment for which the  
 27 employee will receive compensation.

28 (13) “Work shift” means the specific and consecutive hours the employer requires the employee  
 29 to work.

30 (14) “Workweek” means a fixed period of time established by an employer that reflects a regu-  
 31 larly recurring period of 168 hours or seven consecutive 24-hour periods. A workweek may begin  
 32 on any day of the week and any hour of the day and need not coincide with a calendar week. The  
 33 beginning of a workweek may be changed if the change is intended to be permanent.

34 (15) “Writing” or “written” means a printed or printable communication in physical or elec-  
 35 tronic format including a communication that is transmitted through electronic mail, text message  
 36 or a computer system or is otherwise sent and stored electronically.

37 (16) “Year” means any fixed, consecutive 12-month period of time.

38 **SECTION 2.** ORS 653.428 is amended to read:

39 653.428. (1) An employer shall provide a new employee with a written good faith estimate of the  
 40 employee’s work schedule at the time of hire. The good faith estimate:

41 (a) Shall state the median number of hours the employee can expect to work in an average  
 42 one-month period;

43 *[(b) Shall explain the voluntary standby list described in ORS 653.432 and provide the written*  
 44 *notice required in ORS 653.432;]*

45 *[(c)]* (b) Shall indicate whether an employee *[who is not on the voluntary standby list]* can expect

1 to work on-call shifts and, if so, set forth an objective standard for when an employee [*not listed on*  
 2 *the voluntary standby list*] may be expected to be available to work on-call shifts; and

3 [(d)] (c) May be based on a prior year schedule if it is a good faith estimate of seasonal or  
 4 episodic work.

5 (2) The employer shall include the good faith estimate in the language the employer typically  
 6 uses to communicate with the employee.

7 **SECTION 3.** ORS 653.455 is amended to read:

8 653.455. (1) As used in this section:

9 (a) “Group communication” means communication to all eligible employees, either written or  
 10 oral.

11 (b) “Ticketed event” means a sporting, entertainment, civic, charitable or other event that re-  
 12 quires a ticket for admission. The ticket may be electronic, physical or a name on a list held by the  
 13 event organizer.

14 (2) An employer shall provide the following compensation to an employee for each employer-  
 15 requested change that occurs to the employee’s written work schedule without the advance notice  
 16 required in ORS 653.436:

17 (a) One hour of pay at the employee’s regular rate of pay, in addition to wages earned, when  
 18 the employer:

19 (A) Adds more than 30 minutes of work to the employee’s work shift;

20 (B) Changes the date or start or end time of the employee’s work shift with no loss of hours;

21 or

22 (C) Schedules the employee for an additional work shift or on-call shift.

23 (b) One-half times the employee’s regular rate of pay per hour for each scheduled hour that the  
 24 employee does not work when the employer:

25 (A) Subtracts hours from the employee’s work shift before or after the employee reports for duty;

26 (B) Changes the date or start or end time of the employee’s work shift, resulting in a loss of  
 27 work shift hours;

28 (C) Cancels the employee’s work shift; or

29 (D) Does not ask the employee to perform work when the employee is scheduled for an on-call  
 30 shift.

31 (3) The requirements for additional compensation in this section do not apply when:

32 (a) An employer changes the start or end time of an employee’s work shift by 30 minutes or less;

33 (b) An employee mutually agrees with another employee to employee-initiated work shift swaps  
 34 or coverage. The employer may require that work shift swaps or coverage under this paragraph be  
 35 preapproved by the employer. The employer may assist employees in finding such arrangements,  
 36 provided that any employer assistance must be limited to helping an employee identify other em-  
 37 ployees who may be available to provide work shift swaps or coverage and may not include the  
 38 employer arranging the work shift swap or coverage;

39 (c) An employee requests changes to the employee’s written work schedule, including adding or  
 40 subtracting hours, and the employee documents the request in writing;

41 (d) An employer makes changes to an employee’s written work schedule at the employee’s re-  
 42 quest under ORS 653.436 (6);

43 (e) An employer subtracts hours from an employee’s work schedule for disciplinary reasons for  
 44 just cause, provided the employer documents the incident leading to the employee’s discipline in  
 45 writing;

1 (f) An employee's work shift or on-call shift cannot begin or continue due to threats to employ-  
2 ees or property or due to the recommendation of a public official;

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

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

8 (i) Operations hours change or are substantially altered because a ticketed event is canceled,  
9 rescheduled or changes in duration due to circumstances that are outside the employer's control and  
10 that occur after the employer provides the written work schedule under ORS 653.436;

11 [(j) An employer requests that an employee on a voluntary standby list work additional hours as  
12 described in ORS 653.432 and the employee consents to work the additional hours;] or

13 [(k)(A)] (j)(A) An employer requests that an employee work additional hours to address unan-  
14 ticipated customer needs or unexpected employee absence;

15 (B) The employee consents in writing to work the additional hours; **and**

16 [(C) If the employer maintains a voluntary standby list described in ORS 653.432, the employer has  
17 contacted all of the employees listed on the voluntary standby list and requires additional employee  
18 coverage; and]

19 [(D)(i)] (C)(i) If the employee is working a work shift at the time the employer makes the re-  
20 quest, the employer makes the request either individually or as part of a group communication; or

21 (ii) If the employee is not working a work shift at the time the employer makes the request, the  
22 employer makes the request through a group communication.

23 **SECTION 4.** ORS 653.480 is amended to read:

24 653.480. (1) An employee asserting a violation of ORS 653.470 may file a complaint with the  
25 Commissioner of the Bureau of Labor and Industries under ORS 659A.820 or a civil action as pro-  
26 vided in ORS 659A.885.

27 (2) The commissioner has the same enforcement powers with respect to the rights established  
28 under this section and ORS 653.422, [653.432,] 653.436, 653.442, 653.450, 653.455, 653.465, 653.470 and  
29 653.485 as are established in this chapter and ORS chapter 652.

30 (3) In addition to any other damages provided by law, the commissioner may assess a statutory  
31 penalty as follows:

32 (a) \$500 for any violation of ORS 653.460.

33 (b) \$1,000 for any violation of ORS 653.422, [653.432,] 653.436, 653.442, 653.450, 653.455, 653.465  
34 or 653.470.

35 (4) If the commissioner determines that the employer paid the full remedy due, not including any  
36 statutory penalty, within 14 days of service of an order, the commissioner shall waive 50 percent  
37 of the amount of any statutory penalty imposed by order under this section.

38 **SECTION 5. ORS 653.432 is repealed.**

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