

Oregon Becomes First State in Nation to Enact Scheduling Legislation

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Oregon has become the first U.S. state to regulate employer scheduling practices in the food service, hospitality, and retail industries. The new law, [S.B. 828](#), will take effect July 1, 2018.

Signed by Governor Kate Brown on August 8, 2017, the new law follows similar measures enacted in such cities as [New York](#), [Seattle](#), and San Francisco.

Coverage

The new law applies to employers in the food service, hospitality, and retail industries who operate in Oregon and have at least 500 employees worldwide. It applies to chains and franchises to the extent an individual or entity shares ownership in more than one establishment and has 500 employees worldwide.

Covered employees include non-exempt employees performing services relating to food services, hotels, motels, casino hotels, and retail trade. The new law does not cover consultants, leased workers, and salaried employees covered by the administrative, executive, and professional exemptions under the Fair Labor Standards Act.

Good Faith Estimate of Work Schedule

At the time of hire, employers must provide a written, good faith estimate of the employee's work schedule in the language ordinarily used to communicate with employees. The estimate must include the following information:

- The median number of hours the employee can expect to work in an average one-month period;
- A description of the "voluntary standby list" (discussed below); and
- Whether an employee who is not on the voluntary standby list can expect to work on-call shifts. If so, the estimate must include an objective standard for when such an employee may be expected to be available to work an on-call shift.

Voluntary Standby List

Employers may create a "voluntary standby list" of employees who will be asked to work additional hours because of unanticipated customer needs or unexpected employee absences. Employees must request or agree to be included on the list in writing.

Employers who establish a voluntary standby list must notify all employees of the following:

- That the list is voluntary and how employees can be removed;
- How employees will be notified of available work and how the employee can accept the additional hours;
- That the employee is not required to accept the additional hours offered; and
- That an employee on the list is not eligible for additional compensation for changes to the employee's schedule resulting from the employee's acceptance of additional hours.

Employers may notify employees on the standby list of available work through an in-person conversation, telephone call, email, text message, or other means of electronic or written communication.

Further, employees may decline the additional work offered and may ask to be removed from the list at any time. Employers may not retaliate against any employee who does not want to be included on the list, requests to be removed, or turns down work.

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Advance Notice of Work Schedule, Ability to Refuse Schedule Change

Employers must give all covered employees a written work schedule at least seven calendar days before the first day of the schedule. The written work schedule must include all work shifts for the work period. The advance notice period increases to 14 days on July 1, 2020.

If the employer changes the written work schedule, it must notify affected employees in a timely manner. Employers cannot require an employee to work any shift that was not included in the employee's written work schedule. Employees do not need to provide advance notification of employee-initiated schedule changes.

Employers must post the written schedule in a conspicuous and accessible location in English and in the language the employer typically uses to communicate with employees.

Right to Schedule Input

At any time, an employee may identify limitations or changes in the employee's ability to work and may request not to be scheduled for certain work shifts or at certain locations. The employer is not required to grant the request.

Compensation for Changes to Work Schedule

Employers will be required to pay additional compensation for changes to an employee's work shift without advance notice.

When changes to an employee's shift do not result in a loss of pay, the employee is entitled to one hour of pay in addition to wages earned when:

- The employer adds more than 30 minutes of work to the employee's work shift;
- The employer changes the date or start or end time of the shift, but no hours are lost; or
- The employee is scheduled for an additional shift or on-call shift.

For changes that result in a loss of hours for an employee, the employee is entitled to receive one-half times the employee's regular rate of pay for each scheduled hour that the employee does not work when:

- The employer subtracts hours from the employee's work shift;
- The employer changes the date or start or end time of the shift and the employee loses hours;
- The employer cancels the employee's work shift; or
- The employee is not required to work when scheduled for an on-call shift.

Employers do not owe compensation for changes when:

- The employer changes the start or end time of a work shift by 30 minutes or less;
- The employee agrees to swap shifts with another employee;
- The employee initiated the change and the request is in writing;
- The employee asks for additional work;
- The employer subtracts hours from a shift for disciplinary reasons and documents the incident;
- Standby employees accept available work; or
- Operations are effected by threats to employees, utility failure, natural disaster, or cancellation of a ticketed event.

Right to Rest

All employees must be given a 10-hour rest period between shifts, unless the employee requests or consents to work.

If an employee is required to work within the 10-hour rest period, the employee is entitled to one-and-one-half times the employee's regular rate of pay for such work, unless the employee is engaged in roadside assistance services.

Anti-Retaliation, Enforcement

Employers are prohibited from discriminating or retaliating against any employee who exercises his or her rights under the statute. Employees may file a complaint with the Bureau of Labor and Industries (BOLI) or pursue a civil action for discrimination or retaliation (private right of action limited to complaints of discrimination and retaliation). Complaints regarding the remaining portions of the statute (*i.e.*, the failure to provide a good faith estimate, a ten-hour rest period, or compensation for shift changes) must be pursued through BOLI.

Next Steps

Employers in the food service, hospitality, and retail industries should consider doing the following before the new legislation takes effect:

- Revise handbook policies and procedures to reflect the requirements of the new law
- Develop a comprehensive procedure for managing scheduling practices
- Develop written communication to employees. Such communication may include:
 - Written notice of good faith estimate of schedule
 - Notice of opt-in/opt-out of voluntary standby list and related procedures
 - Employee request for schedule change
 - Notification of employer change to the written work schedule at employee's request
- Train managers on the new scheduling requirements, the ramifications of failing to comply, and the anti-retaliation measures
- Provide all required employee communications in the language(s) used to communicate with employees
- If managers communicate with employees by text message, develop procedures to preserve and document messages and communication with employees
- Obtain and post BOLI notice posting

Please contact your Jackson Lewis attorney to discuss the new Oregon law and your specific organizational needs.

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