

Predictable Work Schedules: Oregon Blazes a Trail

Legal Alert
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Oregon is poised to become the first state in the country to require larger food service, retail and hospitality employers to provide their hourly workers predictable schedules – or to pay the price. This is the second of two major changes to Oregon employment law. An earlier alert discussed the [Equal Pay Act](#).

Starting July 1, 2018, qualifying employers must post a written work schedule for all employees one week ahead. The requirement expands to two weeks in 2020. Employees may decline any work shifts not included in the advance schedule, and employees may ask (only in writing) for additional shifts during the notice window. The Oregon Bureau of Labor and Industries (BOLI) will start enforcing the law January 1, 2019.

The legislature passed Senate Bill 828, known by its champions as the **Fair Work Week Act**, and the bill is heading to the desk of Oregon Governor Kate Brown for her expected signature.

Fair Work Week Act

Who it covers. The act applies to retail, hospitality, and food services employers who have at least 500 employees worldwide, including as part of a chain or an “integrated enterprise.” The bill does not define “integrated enterprise.” BOLI is supposed to define the term in the regulations, to be written before the law goes into effect.

In the hiring process. Employers must provide applicants with a good faith estimate of the median number of hours the employee can expect to work.

Employer penalties. The bill has several penalties, called “predictability pay” by advocates, imposed when employers make unplanned schedule changes. The penalties cut both ways:

When employers *reduce* an employee’s scheduled hours – cancelling or shortening a shift, or not calling in a worker scheduled for an on-call shift – they must pay employees for half of the hours scheduled but not worked, at the employee’s base hourly wage rate.

If employers *add* time to the employee’s schedule, they must pay the employee one hour of penalty pay at the employee’s base rate, on top of the pay the employee earns for the extra time at the regular pay rate and overtime, if applicable. That one-hour penalty kicks in when an employer adds more than half an hour to a work day without advance notice, or if they schedule an additional shift without notice.

Employers won’t pay the penalties if they change the start or end of the shift by 30 minutes or less; if they use the voluntary standby list; if the employee initiates a shift swap; in cases of discipline; due to power outage or disasters; or to comply with state and federal laws.

Voluntary standby list. Employees may agree, in writing, they’d like to be notified of any chance to pick up more hours. Those standby volunteers are not required to pick up extra hours, and must agree in writing to the additional work. If there are no volunteers and the employer assigns the extra work, the employer must pay the hour of penalty pay, as above.

Right to rest. Employers must give employees at least 10 hours off between shifts, unless the employee requests or consents to the quick turnaround shifts. (The law doesn’t require written requests or consent – but that would be advisable.) Even if employees request or consent to such schedules, they must be paid time-and-a-half pay for any hours worked during the 10-hour rest period.

Employee input. When hired and during their employment, workers may identify limitations or changes to their availability, and may request not to be scheduled at certain times or locations. An employer may request reasonable verification of the need for those requests, and is under no obligation to grant them.

Retaliation prohibited. Employers may not interfere with employees exercising their rights under the Act, and may not retaliate against employees who choose not to join the standby list, who decline additional hours, or who request a change in their schedule.

Enforcement and records. Employees may file a lawsuit (they have a private right of action), or may file a complaint with BOLI. The Act carries statutory penalties up to \$1,000 per violation. Employers must post a notice of these new rights (adding another panel to the BOLI posters), and must retain records documenting compliance for three years. Records may be stored electronically.

State pre-emption. Employers won't face a patchwork of policies on this front: The state law preempts any local governments from imposing their own work-schedule regulation.

For any questions, feel free to reach out to the attorneys in [GSB's Labor & Employment Practice Group](#).