

JAN 19 2018

A BILL FOR AN ACT

RELATING TO EMPLOYMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 **"CHAPTER**

5 **EMPLOYEE WORK SCHEDULES**

6 § -1 **Definitions.** As used in this chapter, unless the
7 context requires otherwise:

8 "Chain" means an establishment that is part of an
9 affiliation of two or more establishments within the United
10 States, each of which is owned by the same person or entity and
11 operate under identical or substantially similar trade names or
12 service marks, as defined in section 482-1.

13 "Director" means the director of labor and industrial
14 relations.

15 "Employ" includes to permit or suffer to work.

16 "Employee" means an individual who is employed in:

17 (1) A retail establishment;



(2) A hospitality establishment; or

(3) A food services establishment.

"Employee" does not include:

(1) A salaried individual;

(2) An individual who performs temporary help services as defined under section 373L-1; or

(3) An individual employed by a professional employer organization, as defined under section 373L-1.

"Employer" means an employer, as defined in section 387-1, including a chain or an integrated enterprise, who employs five hundred or more employees worldwide and is also:

(1) A retail establishment;

(2) A hospitality establishment; or

(3) A food services establishment.

"Food services establishment" means an establishment covered in the 2017 North American Industry Classification System under code 722 for food services and drinking places.

"Hospitality establishment" means an establishment covered in the 2017 North American Industry Classification System under code 721110 for hotels and motels and code 721120 for casino hotels.



1 "On-call shift" means any time that an employer requires an
2 employee to be available to work or to contact the employer or
3 wait to be contacted by the employer for the purpose of
4 determining whether the employee must report to work. During
5 the shift, the on-call status applies regardless of whether the
6 employee is located on or off the employer's premises.

7 "Regular rate of pay" means the regular hourly rate or
8 hourly equivalent that an employer must pay an employee for each
9 hour the employee works during a given work shift, including any
10 shift differential pay. "Regular rate of pay" does not include:

- 11 (1) Tips;
- 12 (2) Bonuses or other incentive payments;
- 13 (3) Overtime, holiday pay or other premium rate; or
- 14 (4) Any additional compensation an employer is required to
15 pay an employee under section -6 or -8.

16 "Retail establishment" means an establishment covered in
17 the 2017 North American Industry Classification System under
18 codes 441110 to 453998 for store retailers.

19 "Shift differential pay" means a pay differential meant to
20 compensate an employee for work performed under differing
21 conditions, such as working at night. "Shift differential pay"



1 does not include any additional compensation an employer is
2 required to pay an employee under section -6 or -8.

3 "Time of hire" means the period after an offer of
4 employment and acceptance of the offer of employment and on or
5 before the commencement of employment.

6 "Work schedule" means the hours, days, and times, including
7 regular work shifts and on-call shifts, when an employee is
8 required by an employer to perform duties of employment for
9 which the employee will receive compensation.

10 "Work shift" means the specific and consecutive hours the
11 employer requires the employee to work.

12 "Workweek" shall have the same meaning as defined in
13 section 387-1.

14 "Writing" or "written" means a printed or printable
15 communication in physical or electronic format, including a
16 communication that is transmitted through electronic mail, text
17 message, a computer system, or is otherwise sent and stored
18 electronically.

19 "Year" means any fixed, consecutive twelve-month period of
20 time.



1 § -2 **Number of employees; determination.** (a) For the
2 purposes of this chapter, a determination of the number of
3 employees employed by an employer shall be based upon the
4 average number of employees employed on each working day during
5 each of twenty or more workweeks in the current calendar year or
6 immediately preceding calendar year.

7 (b) For the purposes of this chapter, separate entities
8 that form an integrated enterprise shall be deemed a single
9 employer. Separate entities shall be deemed an integrated
10 enterprise and a single employer under this chapter if a
11 separate entity controls the operation of another entity. In
12 determining whether separate entities form an integrated
13 enterprise the following factors shall be considered:

14 (1) The degree of interrelation between the operations of
15 multiple entities;

16 (2) The degree to which the entities share common
17 management;

18 (3) The degree to which the entities have centralized
19 control of labor relations; and

20 (4) The degree of common ownership or financial control
21 over the entities.



1 § -3 **Good faith estimate of work schedule.** At the time
2 of hire an employer shall provide a new employee with a written
3 good faith estimate of the employee's work schedule. The good
4 faith estimate:

5 (1) Shall state the median number of hours that the
6 employee may expect to work in an average one-month
7 period;

8 (2) Shall explain the voluntary standby list described in
9 section -4 and provide the written notice required
10 in section -4;

11 (3) Shall indicate whether an employee who is not on the
12 voluntary standby list may expect to work on-call
13 shifts and, if so, set forth an objective standard for
14 when an employee who is not listed on the voluntary
15 standby list may be expected to be available to work
16 on-call shifts; and

17 (4) May be based upon a prior year's schedule if the prior
18 year's schedule is a good faith estimate of seasonal
19 or episodic work.



1 The good faith estimate shall be printed in the language
2 that the employer typically uses to communicate with the
3 employee.

4 **§ -4 Voluntary standby list.** (a) An employer may
5 maintain a voluntary standby list of employees whom the employer
6 may request to work additional hours to address unanticipated
7 customer needs or unexpected employee absences if the listed
8 employees have requested or agreed in writing to be included on
9 the voluntary standby list and the employer provides each
10 employee written notice of the following:

11 (1) Notice that inclusion on the list is voluntary;

12 (2) A description of the procedures under which an
13 employee may request to be removed from the list;

14 (3) A description of the procedures under which:

15 (A) The employer shall notify a voluntary standby
16 list employee of additional available hours; and

17 (B) An employee may accept additional hours;

18 (4) Notice that the employee's acceptance of the
19 additional hours offered is voluntary; and

20 (5) Terms under which an employee on the voluntary standby
21 list may be ineligible for additional compensation



1 under section -8 for the changes to the employee's
2 written work schedule that result from the employee's
3 acceptance of additional hours offered to the
4 employee.

5 (b) An employer shall provide an employee on the voluntary
6 standby list with notice of additional hours available by in-
7 person conversation, telephone call, electronic mail, text
8 message, or other accessible electronic or written format.

9 (c) An employee who receives notice of additional hours
10 available under this section may decline to accept the
11 additional hours offered.

12 (d) An employee who consents to work additional hours in
13 response to an employer's request under this section shall not
14 be eligible for any additional compensation under section -8
15 for the resulting change to the employee's written work
16 schedule.

17 (e) An employee may request to be removed from the
18 voluntary standby list at any time.

19 (f) The voluntary standby list shall not be deemed a list
20 of employees scheduled for on-call shifts, and the employer
21 shall not be required to include a list of employees on the



1 voluntary standby list in the written work schedule described in
2 section -5.

3 **§ -5 Advance notice of work schedule.** (a) An employer
4 shall provide an employee with a work schedule in writing at
5 least fourteen calendar days before the first day of the work
6 schedule.

7 (b) The employer shall post the written work schedule in a
8 conspicuous and accessible location, in English and in the
9 language that the employer typically uses to communicate with
10 the employees.

11 (c) The employer shall provide a written work schedule
12 that runs through the last date of the posted work schedule in
13 effect at the time of delivery to:

14 (1) A new employee on or before the employee's first day
15 of work; or

16 (2) An existing employee on the employee's first day of
17 work after a leave of absence.

18 (d) The written work schedule shall include all work
19 shifts and on-call shifts for the work period.

20 (e) If the employer requests changes to the written work
21 schedule after the advance notice required in this section:



(1) The employer shall provide an employee affected by the change with timely notice of the change in person or by telephone, electronic mail, text message, or other accessible electronic or written format; and

(2) An employee may decline any work shifts that are changes requested by the employer to the employee's written work schedule.

(f) At any time after the advance notice of written work schedule required in this section, an employee may request in writing that the employer add the employee to one or more work shifts or on-call work shifts. Any changes to the employee's written work schedule resulting from an employee's request for work schedule changes shall not be subject to the advance notice requirements of this section.

§ -6 Right to rest between work shifts. (a) Unless an employee requests or consents to work during a rest period, an employer shall not schedule or require an employee to work during the following rest periods:

(1) The first ten hours following the end of the previous calendar day's work shift or on-call shift; or



(2) The first ten hours following the end of a work shift or on-call shift that spanned two calendar days.

(b) Except as provided in subsection (c), an employer shall compensate an employee who requests or consents to work during a rest period for each hour or portion of an hour that the employee works during a rest period described in subsection (a) at one and one-half times the employee's regular rate of pay.

(c) Subsection (b) shall not apply to any hour or portion of an hour that an employee works during the rest period described in subsection (a) during which the employee is engaged in providing roadside assistance services.

(d) As used in this section, "roadside assistance services" means offsite repair assistance rendered to a motorist with a disabled vehicle.

§ -7 Employee right to provide input on work schedule.

(a) At the time of hire and during employment, an employee may identify to the employer any limitations or changes in the employee's work schedule availability. The employee may also request not to be scheduled for work shifts during certain times or at certain locations.



1 (b) An employer may require the employee to provide
2 reasonable verification of the need for a request made under
3 subsection (a); provided that the employer shall reimburse the
4 employee for the costs of providing the reasonable verification.

5 (c) Nothing in this section shall require an employer to
6 grant an employee's request under subsection (a).

7 **§ -8 Additional compensation for work schedule changes.**

8 (a) An employer shall provide the following compensation to an
9 employee for each work schedule change that is requested by the
10 employer and that alters the employee's written work schedule
11 without the advance notice required in section -5:

12 (1) One hour of pay at the employee's regular rate of pay,
13 in addition to wages earned, if the employer:

14 (A) Adds more than thirty minutes of work to the
15 employee's work shift;

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

18 (C) Schedules the employee for an additional work
19 shift or on-call shift; and



1 (2) One-half times the employee's regular rate of pay per
2 hour for each scheduled hour that the employee does
3 not work if the employer:

4 (A) Subtracts hours from the employee's work shift
5 before or after the employee reports for duty;

6 (B) Changes the date or start or end time of the
7 employee's work shift, resulting in a loss of
8 work shift hours;

9 (C) Cancels the employee's work shift; or

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

12 (b) This section shall not apply if:

13 (1) An employer changes the start or end time of an
14 employee's work shift by thirty minutes or less;

15 (2) An employee mutually agrees with another employee to
16 swap work shifts or coverage; provided that the
17 employer may require that a work shift or coverage
18 swap under this paragraph receive prior approval by
19 the employer; provided further that the employer may
20 assist an employee in identifying other employees who
21 may be available to swap work shifts or coverage;



1 provided further that an employer shall not require an
2 employee to swap work shifts or coverage with another
3 employee;

4 (3) An employee requests changes to the employee's written
5 work schedule, including adding or subtracting hours,
6 and the employee documents the request in writing;

7 (4) An employer makes changes to an employee's written
8 work schedule at the employee's request under section
9 -5(f);

10 (5) An employer subtracts hours from an employee's work
11 schedule for disciplinary reasons for just cause;
12 provided that the employer documents in writing the
13 incident leading to the employee's discipline;

14 (6) An employee's work shift or on-call shift cannot begin
15 or continue due to:

16 (A) Threats to the employer, employees, or the place
17 of work; or

18 (B) The recommendation of a public official;

19 (7) Operations cannot begin or continue due to the failure
20 of:



(A) A public utility to supply electricity, water,
gas or any other service necessary to conduct
business; or

(B) The sewer system;

(8) Operations cannot begin or continue due to a natural
or manmade disaster or a similar cause that is not
within the employer's control;

(9) Operation hours change or are substantially altered
due to:

(A) The cancellation or rescheduling of a ticketed
event; or

(B) Circumstances that are outside the employer's
control;

provided that the change or alteration occurs after
the employer provides a written work schedule under
section -5;

(10) An employer requests that an employee on a voluntary
standby list work additional hours as described in
section -4 and the employee consents to work the
additional hours; or



1 (11) An employer requests that an employee work additional
2 hours to address unanticipated customer needs or an
3 unexpected employee absence and the employee consents
4 in writing to work the additional hours; provided
5 that:

6 (A) If the employer maintains a voluntary standby
7 list described in section -4, the employer
8 contacts all of the employees listed on the
9 voluntary standby list and requires additional
10 employee coverage;

11 (B) If the employee is working a work shift when the
12 employer makes the request, the employer makes
13 the request either individually or as part of a
14 group communication; and

15 (C) If the employee is not working a work shift at
16 the time the employer makes the request, the
17 employer makes the request through a group
18 communication.

19 (c) As used in this section, unless the context otherwise
20 requires:



1 "Group communication" means communication to all eligible
2 employees, either written or verbal.

3 "Ticketed event" means a sporting, entertainment, civic,
4 charitable or other event that requires a ticket for admission.

5 § -9 Notice and posting requirements. (a) The director
6 shall publish a template of a poster, in English, giving notice
7 of the rights described in this chapter.

8 (b) Employers shall display the poster in a conspicuous
9 location at the workplace that is visible to employees. If
10 displaying the poster is not feasible, including situations in
11 which the employees work remotely or do not have a regular
12 workplace or job site, the employer may provide the poster to
13 employees individually in a physical or electronic format.

14 § -10 Recordkeeping requirements. An employer shall
15 retain for three years records that document the employer's
16 compliance with this chapter.

17 § -11 Retaliation, interference; prohibited. (a) It
18 shall be unlawful for an employer to:

19 (1) Interfere with, restrain, deny, or attempt to deny an
20 employee the exercise of any right under this chapter;



(2) Retaliate or in any way discriminate against an individual with respect to a hiring decision, tenure, or any other term or condition of employment solely because the individual has inquired about this chapter; or

(3) Retaliate against an employee for making a work schedule request under section -7(a).

(b) It shall be unlawful for an employee to retaliate against an employee who:

(1) Does not request or agree to be added to the voluntary standby list under section -4;

(2) Requests to be removed from the voluntary standby list under section -4; or

(3) Declines an employer's request that the employee work additional hours as a result of the employee being placed on the voluntary standby list under section -4.

§ -12 Enforcement. (a) The director shall enforce and administer this chapter including holding hearings, investigating violations of this chapter, and instituting penalties therefor.



(b) The director or the director's authorized representatives may enter and inspect such places, question employees, and investigate facts, conditions, or matters as they may deem appropriate to enforce this chapter or any rule hereunder.

§ -13 Civil penalties. In addition to any other remedies provided by law, the director may assess a civil penalty as follows:

(1) \$500 for any violation of section -9;

(2) \$1,000 for any other violation of section -2, -4, -5, -6, -7, -8, -10, or -11(a); and

(3) \$2,000 for any violation of section -11(b);

provided that:

(A) Each violation shall be a separate and distinct offense; and

(B) In the case of a continuing violation, each day of the violation shall constitute a separate offense.

§ -14 Limitations. Nothing in this chapter shall be construed to:



- 1 (1) Limit employee rights or protections otherwise
2 provided by law;
- 3 (2) Create an additional remedy for an employee if an
4 existing remedy is required by an applicable
5 collective bargaining agreement in effect at the time
6 of a violation; or
- 7 (3) Provide a cause of action to an employee for work
8 schedule changes necessary to accommodate that
9 employee under chapters 398 or 398A or the Family and
10 Medical Leave Act of 1993, 29 U.S.C. section 2601, et
11 seq.

12 § -15 **Rulemaking authority.** The director shall adopt
13 rules pursuant to chapter 91 to implement this chapter."

14 SECTION 2. This Act does not affect rights and duties that
15 matured, penalties that were incurred, and proceedings that were
16 begun before its effective date.

17 SECTION 3. This Act shall take effect upon its approval.
18

INTRODUCED BY:

Randy H. Becker
JH

[Signature]
[Signature]



S.B. NO. 2094

Report Title:

Employment; Work Schedules

Description:

Requires certain employers in the retail, hospitality, and food services to provide employees with advance notice of work schedules. Authorizes an employer to create voluntary standby lists. Requires overtime pay for employees who work during certain rest periods between work shifts. Requires overtime pay if employer gives no advance notice of work schedule.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

