

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 HOUSE BILL 2082

By: Dollens

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5
6 AS INTRODUCED

7 An Act relating to labor; creating the Fair
8 Scheduling Act; defining terms; providing for
9 application of act; providing factors to determine
10 covered employers; authorizing Commissioner of Labor
11 to adopt rules; requiring good-faith estimate of work
12 schedule; requiring advance notice of work schedule;
13 providing for use of written work schedule; providing
14 for right to rest between shifts; providing
15 exceptions; defining terms; providing for
16 compensation for work schedule changes; providing
17 exceptions; requiring notice and posting of rights;
18 providing for retainment of certain documents;
19 prohibiting retaliation by employer; providing for
20 enforcement and administrative remedies; providing
21 for limits to legislative intent; providing for cause
22 of action for retaliation; defining terms; preempting
23 authority of local governments; providing for
24 codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 901 of Title 40, unless there is
created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Fair Scheduling
Act".

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 902 of Title 40, unless there is
3 created a duplication in numbering, reads as follows:

4 As used in the Fair Scheduling Act:

5 1. "Chain" means an establishment that is part of an
6 affiliation of two or more establishments within the United States,
7 each of which is owned by the same person or entity and operates
8 under identical or substantially similar trade names or service
9 marks;

10 2. "Employee" means an employee who is employed in a retail
11 establishment, a hospitality establishment or a food services
12 establishment and is engaged in providing services relating to:

13 a. retail trade as that term is used in the 2012 North
14 American Industry Classification System under Code 44-
15 45,

16 b. hotels and motels as those terms are used in the 2012
17 North American Industry Classification System under
18 Code 721110, or casino hotels as that term is used in
19 the 2012 North American Industry Classification System
20 under Code 721120, or

21 c. food services as that term is used in the 2012 North
22 American Industry Classification System under Code
23 722;

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1 3. "Employer" means an employer, or a successor to an employer,
2 described in subsection A of Section 3 of this act;

3 4. "Food services establishment" means the fixed point-of-sale
4 location for establishments defined in the 2012 North American
5 Industry Classification System under Code 722 as food services and
6 drinking places;

7 5. "Hospitality establishment" has the meaning provided in the
8 2012 North American Industry Classification System under Code 721110
9 for hotels and motels and Code 721120 for casino hotels;

10 6. "On-call shift" means any time that an employer requires an
11 employee to be available to work or to contact the employer or wait
12 to be contacted by the employer for the purpose of determining
13 whether the employee must report to work. During the shift, on-call
14 status applies regardless of whether the employee is located on or
15 off the employer's premises;

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

- 20 a. tips,
- 21 b. bonuses or other incentive payments,
- 22 c. overtime, holiday pay or other premium rate, or
- 23 d. any additional compensation an employer is required to
- 24 pay an employee under this act;

1 8. "Retail establishment" means the fixed point-of-sale
2 location for an establishment defined in the 2012 North American
3 Industry Classification System under Codes 441110 to 453998 as a
4 retail trade establishment;

5 9. "Shift differential pay" means a pay differential meant to
6 compensate an employee for work performed under differing
7 conditions, such as for working at night. "Shift differential pay"
8 does not include any additional compensation an employer is required
9 to pay an employee under this act;

10 10. "Successor" means a business or enterprise that is
11 substantially the same entity as the predecessor employer according
12 to criteria adopted by the Bureau of Labor and Industries by rule
13 and consistent with federal law;

14 11. "Time of hire" means the period after an offer of
15 employment and acceptance of the offer of employment and on or
16 before the commencement of employment;

17 12. "Work schedule" means the hours, days and times, including
18 regular work shifts and on-call shifts, when an employee is required
19 by an employer to perform duties of employment for which the
20 employee will receive compensation;

21 13. "Work shift" means the specific and consecutive hours the
22 employer requires the employee to work;

23 14. "Workweek" means a fixed period of time established by an
24 employer that reflects a regularly recurring period of one hundred

1 sixty-eight (168) hours or seven (7) consecutive twenty-four-hour
2 periods. A workweek may begin on any day of the week and any hour
3 of the day and need not coincide with a calendar week. The
4 beginning of a workweek may be changed if the change is intended to
5 be permanent;

6 15. "Writing" or "written" means a printed or printable
7 communication in physical or electronic format including a
8 communication that is transmitted through electronic mail, text
9 message or a computer system or is otherwise sent and stored
10 electronically; and

11 16. "Year" means any fixed, consecutive twelve-month period of
12 time.

13 SECTION 3. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 903 of Title 40, unless there is
15 created a duplication in numbering, reads as follows:

16 A. The Fair Scheduling Act shall apply to an employee who is
17 employed by an employer that is also one or more of the following:

18 1. A retail establishment that employs five hundred or more
19 employees worldwide, including but not limited to a chain or an
20 integrated enterprise;

21 2. A hospitality establishment that employs five hundred or
22 more employees worldwide, including but not limited to a chain or an
23 integrated enterprise; or

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1 3. A food services establishment that employs five hundred or
2 more employees worldwide, including but not limited to a chain or an
3 integrated enterprise.

4 B. To determine the number of employees employed by an
5 employer, the calculation shall be based upon the average number of
6 employees employed on each working day during each of twenty (20) or
7 more workweeks in the current calendar year or immediately preceding
8 calendar year.

9 C. Separate entities that form an integrated enterprise are
10 considered a single employer under this act. Separate entities will
11 be considered an integrated enterprise and a single employer under
12 this act where a separate entity controls the operation of another
13 entity. The factors to consider in determining whether separate
14 entities form an integrated enterprise include, but are not limited
15 to:

- 16 1. The degree of interrelation between the operations of
17 multiple entities;
- 18 2. The degree to which the entities share common management;
- 19 3. The degree to which the entities have centralized control of
20 labor relations; and
- 21 4. The degree of common ownership or financial control over the
22 entities.

23 D. The Commissioner of Labor shall adopt rules in accordance
24 with the provisions of subsection C of this section regarding how to

1 determine when separate entities form an integrated enterprise for
2 the purposes of this act.

3 SECTION 4. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 904 of Title 40, unless there is
5 created a duplication in numbering, reads as follows:

6 A. An employer shall provide a new employee with a written
7 good-faith estimate of the employee's work schedule at the time of
8 hire. The good-faith estimate:

9 1. Shall state the median number of hours the employee can
10 expect to work in an average one-month period;

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

16 3. May be based on a prior year schedule if it is a good-faith
17 estimate of seasonal or episodic work.

18 B. The employer shall include the good-faith estimate in the
19 language the employer typically uses to communicate with the
20 employee.

21 SECTION 5. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 905 of Title 40, unless there is
23 created a duplication in numbering, reads as follows:

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1 A. An employer shall provide an employee with a work schedule
2 in writing at least seven (7) calendar days before the first day of
3 the work schedule.

4 B. The employer shall post the written work schedule in a
5 conspicuous and accessible location, in English and in the language
6 the employer typically uses to communicate with the employees.

7 C. The employer shall provide a written work schedule that runs
8 through the last date of the posted work schedule in effect at the
9 time of delivery to:

10 1. A new employee on or before the employee's first day of
11 work; or

12 2. An existing employee on the employee's first day of work
13 after a leave of absence.

14 D. The written work schedule shall include all work shifts and
15 on-call shifts for the work period.

16 E. If the employer requests changes to the written work
17 schedule after the advance notice required in this section:

18 1. The employer shall provide the employee with timely notice
19 of the change by in-person conversation, telephone call, electronic
20 mail, text message or other accessible electronic or written format;
21 and

22 2. The employee may decline any work shifts not included in the
23 employee's written work schedule.

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1 F. At any time after the advance notice of written work
2 schedule required in this section, an employee may request in
3 writing that the employer add the employee to one or more work
4 shifts or on-call work shifts. Any changes to the employee's
5 written work schedule resulting from such employee-requested work
6 schedule changes are not subject to the advance notice requirements
7 of this section.

8 SECTION 6. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 906 of Title 40, unless there is
10 created a duplication in numbering, reads as follows:

11 A. An employer shall provide an employee with a work schedule
12 in writing at least fourteen (14) calendar days before the first day
13 of the work schedule.

14 B. The employer shall post the written work schedule in a
15 conspicuous and accessible location, in English and in the language
16 the employer typically uses to communicate with the employees.

17 C. The employer shall provide a written work schedule that runs
18 through the last date of the posted work schedule in effect at the
19 time of delivery to:

20 1. A new employee on or before the employee's first day of
21 work; or

22 2. An existing employee on the employee's first day of work
23 after a leave of absence.

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1 D. The written work schedule shall include all work shifts and
2 on-call shifts for the work period.

3 E. If the employer requests changes to the written work
4 schedule after the advance notice required in this section:

5 1. The employer shall provide the employee with timely notice
6 of the change by in-person conversation, telephone call, electronic
7 mail, text message or other accessible electronic or written format;
8 and

9 2. The employee may decline any work shifts not included in the
10 employee's written work schedule.

11 F. At any time after the advance notice of written work
12 schedule required in this section, an employee may request in
13 writing that the employer add the employee to one or more work
14 shifts or on-call work shifts. Any changes to the employee's
15 written work schedule resulting from such employee-requested work
16 schedule changes are not subject to the advance notice requirements
17 of this section.

18 SECTION 7. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 907 of Title 40, unless there is
20 created a duplication in numbering, reads as follows:

21 A. Unless the employee requests or consents to work such hours,
22 an employer shall not schedule or require an employee to work during
23 the following rest periods:

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1 1. The first ten (10) hours following the end of the previous
2 calendar day's work shift or on-call shift; or

3 2. The first ten (10) hours following the end of a work shift
4 or on-call shift that spanned two (2) calendar days.

5 B. Except as provided in subsection C of this section, an
6 employer shall compensate an employee for each hour or portion of an
7 hour that the employee works during a rest period described in
8 subsection A of this section at one and one-half (1 1/2) times the
9 employee's regular rate of pay.

10 C. Subsection B of this section does not apply to any hour or
11 portion of an hour an employee works during the rest period
12 described in subsection A of this section during which the employee
13 is engaged in providing roadside assistance services. As used in
14 this subsection, "roadside assistance" means offsite repair
15 assistance rendered to a motorist with a disabled vehicle.

16 SECTION 8. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 908 of Title 40, unless there is
18 created a duplication in numbering, reads as follows:

19 A. As used in this section:

20 1. "Group communication" means communication to all eligible
21 employees, either written or oral; and

22 2. "Ticketed event" means a sporting, entertainment, civic,
23 charitable or other event that requires a ticket for admission. The
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1 ticket may be electronic, physical or a name on a list held by the
2 event organizer.

3 B. An employer shall provide the following compensation to an
4 employee for each employer-requested change that occurs to the
5 employee's written work schedule without the advance notice required
6 in Section 5 of this act:

7 1. One (1) hour of pay at the employee's regular rate of pay,
8 in addition to wages earned, when the employer:

- 9 a. adds more than thirty (30) minutes of work to the
10 employee's work shift,
- 11 b. changes the date or start- or end-time of the
12 employee's work shift with no loss of hours, or
- 13 c. schedules the employee for an additional work shift or
14 on-call shift;

15 2. One-half (1/2) times the employee's regular rate of pay per
16 hour for each scheduled hour that the employee does not work when
17 the employer:

- 18 a. subtracts hours from the employee's work shift before
19 or after the employee reports for duty,
- 20 b. changes the date or start- or end-time of the
21 employee's work shift, resulting in a loss of work
22 shift hours,
- 23 c. cancels the employee's work shift, or

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1 d. does not ask the employee to perform work when the
2 employee is scheduled for an on-call shift.

3 C. The requirements for additional compensation in this section
4 do not apply when:

5 1. An employer changes the start- or end-time of an employee's
6 work shift by thirty (30) minutes or less;

7 2. An employee requests changes to the employee's written work
8 schedule, including adding or subtracting hours, and the employee
9 documents the request in writing;

10 3. An employer makes changes to an employee's written work
11 schedule at the employee's request under subsection F of Section 5
12 of this act;

13 4. An employer subtracts hours from an employee's work schedule
14 for disciplinary reasons for just cause, provided the employer
15 documents the incident leading to the employee's discipline in
16 writing;

17 5. An employee's work shift or on-call shift cannot begin or
18 continue due to threats to employees or property or due to the
19 recommendation of a public official;

20 6. Operations cannot begin or continue because public utilities
21 fail to supply electricity, water or gas or there is a failure in
22 the public utilities or sewer system;

23 7. Operations cannot begin or continue due to a natural
24 disaster or a similar cause not within the employer's control,

1 including when the natural disaster or similar cause physically
2 affects the work site; and

3 8. Operations hours change or are substantially altered because
4 a ticketed event is canceled, rescheduled or changes in duration due
5 to circumstances that are outside the employer's control and that
6 occur after the employer provides the written work schedule under
7 Section 5 of this act.

8 SECTION 9. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 909 of Title 40, unless there is
10 created a duplication in numbering, reads as follows:

11 A. The Commissioner of Labor shall make available to employers
12 a template of a poster giving notice of the rights described in the
13 Fair Scheduling Act. The poster must be in English.

14 B. Employers shall display the poster at the workplace. If
15 displaying the poster is not feasible, including situations in which
16 the employees work remotely or do not have a regular workplace or
17 job site, the employer may provide the poster on an individual basis
18 in a physical or electronic format that is reasonably conspicuous
19 and accessible.

20 SECTION 10. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 910 of Title 40, unless there is
22 created a duplication in numbering, reads as follows:

23 An employer shall retain records that document the employer's
24 compliance with the Fair Scheduling Act for three (3) years.

1 SECTION 11. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 911 of Title 40, unless there is
3 created a duplication in numbering, reads as follows:

4 It is an unlawful practice for an employer to:

5 1. Interfere with, restrain, deny or attempt to deny the
6 exercise of any right protected under the Fair Scheduling Act; or

7 2. Retaliate or in any way discriminate against an individual
8 with respect to hire or tenure or any other term or condition of
9 employment because the individual has inquired about the provisions
10 of this act.

11 SECTION 12. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 912 of Title 40, unless there is
13 created a duplication in numbering, reads as follows:

14 A. An employee asserting a violation of Section 11 of this act
15 may file a complaint with the Commissioner of Labor.

16 B. In addition to any other damages provided by law, the
17 Commissioner may assess a statutory penalty as follows:

18 1. Five Hundred Dollars (\$500.00) for any violation of this
19 act; and

20 2. One Thousand Dollars (\$1,000.00) for any violation of this
21 act.

22 C. If the Commissioner determines that the employer paid the
23 full remedy due, not including any statutory penalty, within
24 fourteen (14) days of service of an order, the Commissioner shall

1 waive fifty percent (50%) of the amount of any statutory penalty
2 imposed by order under this section.

3 SECTION 13. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 913 of Title 40, unless there is
5 created a duplication in numbering, reads as follows:

6 Nothing in the Fair Scheduling Act is intended to:

7 1. Limit employee rights or protections otherwise provided by
8 law;

9 2. Create an additional remedy for an employee if a remedy
10 equal to or better than a remedy in this act is required by a
11 collective bargaining agreement or other contract; or

12 3. Provide a cause of action to an employee for work schedule
13 changes necessary to accommodate that employee under state or
14 federal family or medical leave laws and state or federal disability
15 laws.

16 SECTION 14. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 914 of Title 40, unless there is
18 created a duplication in numbering, reads as follows:

19 Any person claiming to be aggrieved by an unlawful practice may
20 file a civil action in circuit court. In any action under this
21 section, the court may order injunctive relief and any other
22 equitable relief that may be appropriate, including but not limited
23 to reinstatement or the hiring of employees with or without back
24 pay. A court may order back pay in an action under this section

1 only for the two-year period immediately preceding the filing of a
2 complaint with the Commissioner of Labor, or if a complaint was not
3 filed before the action was commenced, the two-year period
4 immediately preceding the filing of the action. In any action under
5 this section, the court may allow the prevailing party costs and
6 reasonable attorney fees at trial and on appeal.

7 SECTION 15. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 915 of Title 40, unless there is
9 created a duplication in numbering, reads as follows:

10 A. As used in this section:

11 1. "Enact" includes but is not limited to adopt, amend, refer
12 or pass with a delayed operative or effective date;

13 2. "Local government" includes a county, city, district or
14 other public corporation, authority or entity organized and existing
15 under statute or city or county charter; and

16 3. "Work schedule" means the days and times during which an
17 employee is required by an employer to perform the duties for which
18 the employee will receive compensation. "Work schedule" does not
19 include employee time-off for medical reasons or sick time.

20 B. The State of Oklahoma preempts all charter and statutory
21 authority of local governments to enact a requirement relating to
22 work schedules.

23 C. Notwithstanding subsection B of this section, a local
24 government may set work schedule requirements:

- 1 1. For public employers; and
- 2 2. In specifications for public contracts or subcontracts
- 3 entered into by the local government.

4 SECTION 16. This act shall become effective November 1, 2019.

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