

SENATE BILL 664

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CF 6lr1753

By: **Senators Benson, Currie, Kagan, Lee, Madaleno, Manno, McFadden, Muse,
Pinsky, Pugh, Ramirez, Raskin, Young, and Zucker**

Introduced and read first time: February 5, 2016

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Fair Scheduling, Wages, and Benefits Act**

3 FOR the purpose of requiring an employer to provide certain employees with certain
4 estimates and work schedules within certain time periods and notify employees of
5 certain changes; requiring an employer to conspicuously post at a certain location at
6 each work site certain information; prohibiting an employer, except under certain
7 circumstances, from requiring an employee to work certain hours; providing that
8 certain written consent is not required under certain circumstances and may be
9 provided in paper or electronic form; authorizing an employer to make certain
10 changes to a scheduled shift within a certain period of time; requiring an employer,
11 except under certain circumstances, to pay certain predictability pay under certain
12 circumstances; providing that predictability pay is in addition to certain other pay;
13 requiring an employer to pay an employee for certain hours of work at a certain rate
14 for certain shifts; requiring an employer to offer additional hours of work to current
15 employees before hiring new employees or subcontractors; providing for the
16 application of a certain provision of this Act; prohibiting certain criteria from being
17 discriminatory on certain bases; requiring that certain information be posted for
18 certain periods of time; requiring an employer, except under certain circumstances,
19 to assign additional hours of work to certain current employees and distribute
20 additional hours of work among certain employees; authorizing an employer to hire
21 new employees and subcontractors under certain circumstances; requiring an
22 employer to make certain efforts to offer employees certain training opportunities;
23 requiring an employer to document compliance with a certain provision of this Act
24 under certain circumstances; requiring that certain documentation be maintained
25 by an employer for a certain period of time; establishing certain rebuttable
26 presumptions; providing that certain employees must be paid the same hourly wage,
27 have the same eligibility to accrue certain benefits, and be provided certain
28 opportunities and conditions of employment; requiring each employer to record
29 certain wages in a certain statement of earnings and specify in the statement certain
30 predictability pay; authorizing the Commissioner of Labor and Industry, under

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 certain circumstances, to require an employer to include certain information in a
 2 certain statement and use additional means to notify the employer's employees of
 3 certain information; requiring an employer to give employees notice of certain rights
 4 in a certain manner; requiring employers to keep certain records for a certain
 5 minimum period of time and make the records available for inspection by certain
 6 individuals; providing that each day an employer violates a certain provision of this
 7 Act is a separate violation; prohibiting certain persons from taking certain actions;
 8 providing that certain protections apply to certain employees; providing for the
 9 enforcement of this Act; requiring the Commissioner to keep a certain identity
 10 confidential, except under certain circumstances, and to notify a certain person
 11 before a certain disclosure is made; requiring the Commissioner to post certain
 12 information on a certain Web site on or before a certain date each year; authorizing
 13 the Commissioner to conduct a certain investigation under certain circumstances;
 14 providing for the construction of this Act; defining certain terms; and generally
 15 relating to fair scheduling, wages, and benefits.

16 BY repealing and reenacting, with amendments,
 17 Article – Labor and Employment
 18 Section 2–106(b) and 3–102(a)
 19 Annotated Code of Maryland
 20 (2008 Replacement Volume and 2015 Supplement)

21 BY adding to
 22 Article – Labor and Employment
 23 Section 3–103(k); and 3–1301 through 3–1313 to be under the new subtitle “Subtitle
 24 13. Fair Scheduling, Wages, and Benefits”
 25 Annotated Code of Maryland
 26 (2008 Replacement Volume and 2015 Supplement)

27 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 28 That the Laws of Maryland read as follows:

29 **Article – Labor and Employment**

30 2–106.

31 (b) Except as provided in subsection (c) of this section, and in addition to authority
 32 to adopt regulations that is set forth elsewhere, the Commissioner may adopt regulations
 33 that are necessary to carry out:

- 34 (1) Title 3, Subtitle 3 of this article;
- 35 (2) Title 3, Subtitle 5 of this article;
- 36 (3) **TITLE 3, SUBTITLE 13 OF THIS ARTICLE;**
- 37 (4) Title 4, Subtitle 2, Parts I through III of this article;

1 [(4)] (5) Title 5 of this article;

2 [(5)] (6) Title 6 of this article; and

3 [(6)] (7) Title 7 of this article.

4 3–102.

5 (a) In addition to any duties set forth elsewhere, the Commissioner shall:

6 (1) enforce Subtitle 2 of this title;

7 (2) carry out Subtitle 3 of this title;

8 (3) enforce Subtitle 4 of this title;

9 (4) enforce Subtitle 9 of this title; [and]

10 (5) **ENFORCE SUBTITLE 13 OF THIS TITLE; AND**

11 (6) enforce a local minimum wage law.

12 3–103.

13 (K) **THE COMMISSIONER MAY CONDUCT AN INVESTIGATION TO DETERMINE**
 14 **WHETHER A PROVISION OF SUBTITLE 13 OF THIS TITLE HAS BEEN VIOLATED, ON**
 15 **THE COMMISSIONER’S OWN INITIATIVE OR ON RECEIPT OF A WRITTEN COMPLAINT**
 16 **OF AN EMPLOYEE.**

17 **SUBTITLE 13. FAIR SCHEDULING, WAGES, AND BENEFITS.**

18 **3–1301.**

19 (A) **IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
 20 **INDICATED.**

21 (B) **“EMPLOYEE” DOES NOT INCLUDE AN INDIVIDUAL WHO PERFORMS**
 22 **WORK FOR AN EMPLOYER FOR REMUNERATION IF:**

23 (1) **THE INDIVIDUAL IS FREE FROM THE EMPLOYER’S CONTROL AND**
 24 **DIRECTION REGARDING THE PERFORMANCE OF THE WORK;**

1 **(2) THE INDIVIDUAL CUSTOMARILY IS ENGAGED IN AN INDEPENDENT**
2 **BUSINESS OR OCCUPATION OF THE SAME NATURE AS THAT INVOLVED IN THE WORK;**
3 **AND**

4 **(3) THE WORK IS:**

5 **(I) OUTSIDE THE USUAL COURSE OF BUSINESS OF THE**
6 **EMPLOYER; OR**

7 **(II) PERFORMED OUTSIDE ANY PLACE OF BUSINESS OF THE**
8 **EMPLOYER.**

9 **(C) “EMPLOYER” INCLUDES A PERSON WHO ACTS DIRECTLY OR**
10 **INDIRECTLY IN THE INTEREST OF ANOTHER EMPLOYER WITH AN EMPLOYEE.**

11 **(D) “INITIAL WORK SCHEDULE” MEANS THE FIRST WRITTEN WORK**
12 **SCHEDULE OF AN EMPLOYEE’S SHIFTS FOR A WORKWEEK THAT IS PROVIDED BY AN**
13 **EMPLOYER TO AN EMPLOYEE.**

14 **(E) “ON-CALL SHIFT” MEANS TIME THAT AN EMPLOYER REQUIRES AN**
15 **EMPLOYEE TO BE AVAILABLE TO WORK AND TO CONTACT THE EMPLOYER, OR THE**
16 **EMPLOYER’S DESIGNEE, OR TO WAIT TO BE CONTACTED BY THE EMPLOYER, OR THE**
17 **EMPLOYER’S DESIGNEE, TO DETERMINE WHETHER THE EMPLOYEE MUST REPORT**
18 **TO WORK.**

19 **(F) “PREDICTABILITY PAY” MEANS WAGES THAT ARE PAID TO AN**
20 **EMPLOYEE AT THE EMPLOYEE’S REGULAR RATE OF PAY, AS DEFINED IN 29 U.S.C.**
21 **§ 207(E), AS REQUIRED UNDER § 3-1304 OF THIS SUBTITLE.**

22 **(G) “SHIFT” MEANS THE CONSECUTIVE HOURS AN EMPLOYER REQUIRES AN**
23 **EMPLOYEE TO WORK OR TO BE ON CALL TO WORK.**

24 **(H) “WORK SCHEDULE” MEANS A SCHEDULE OF ALL OF AN EMPLOYEE’S**
25 **REGULAR AND ON-CALL SHIFTS FOR A CONSECUTIVE 7-DAY PERIOD THAT**
26 **INCLUDES THE SPECIFIC START AND END TIMES FOR EACH SHIFT.**

27 **3-1302.**

28 **THIS SUBTITLE MAY NOT BE CONSTRUED TO:**

29 **(1) DISCOURAGE OR PROHIBIT AN EMPLOYER FROM THE ADOPTION**
30 **OR RETENTION OF POLICIES THAT ARE MORE BENEFICIAL TO EMPLOYEES THAN THE**
31 **REQUIREMENTS OF THIS SUBTITLE;**

1 **(2) DIMINISH THE OBLIGATION OF AN EMPLOYER TO COMPLY WITH A**
2 **CONTRACT, A COLLECTIVE BARGAINING AGREEMENT, AN EMPLOYMENT BENEFIT**
3 **PLAN, OR ANY OTHER AGREEMENT THAT ESTABLISHES POLICIES THAT ARE MORE**
4 **BENEFICIAL TO AN EMPLOYEE THAN THE REQUIREMENTS OF THIS SUBTITLE; OR**

5 **(3) PREEMPT, LIMIT, OR OTHERWISE AFFECT THE APPLICABILITY OF**
6 **ANY OTHER LAW, POLICY, OR STANDARD ESTABLISHING SCHEDULING POLICIES**
7 **THAT PROVIDE ADDITIONAL RIGHTS OR EXTEND OTHER PROTECTIONS TO**
8 **EMPLOYEES BEYOND THOSE PROVIDED UNDER THIS SUBTITLE.**

9 **3-1303.**

10 **(A) AN EMPLOYER SHALL:**

11 **(1) ON HIRING A NEW EMPLOYEE, PROVIDE THE EMPLOYEE WITH A**
12 **GOOD FAITH WRITTEN ESTIMATE OF THE NUMBER OF HOURS AND THE DAYS AND**
13 **TIMES THE EMPLOYEE IS EXPECTED TO WORK EACH WEEK, INCLUDING ANY**
14 **ON-CALL SHIFTS;**

15 **(2) ON OR BEFORE THE FIRST DAY OF WORK FOR A NEW EMPLOYEE,**
16 **PROVIDE THE EMPLOYEE WITH A WRITTEN WORK SCHEDULE FOR THE EMPLOYEE'S**
17 **FIRST 21 DAYS OF WORK;**

18 **(3) PROVIDE EACH EMPLOYEE WITH AN INITIAL WORK SCHEDULE AT**
19 **LEAST 21 DAYS BEFORE THE FIRST DAY THE EMPLOYEE IS SCHEDULED TO WORK;**

20 **(4) NOTIFY AN EMPLOYEE OF ANY SUBSEQUENT CHANGES MADE TO**
21 **THE EMPLOYEE'S INITIAL WORK SCHEDULE BEFORE THE CHANGE TAKES EFFECT;**
22 **AND**

23 **(5) WITHIN 24 HOURS AFTER MAKING A CHANGE TO AN EMPLOYEE'S**
24 **INITIAL WORK SCHEDULE, PROVIDE THE EMPLOYEE WITH A REVISED WORK**
25 **SCHEDULE.**

26 **(B) AN EMPLOYER SHALL POST CONSPICUOUSLY AT EACH WORK SITE IN A**
27 **LOCATION THAT IS READILY ACCESSIBLE TO ALL EMPLOYEES:**

28 **(1) AT LEAST 21 DAYS BEFORE THE START OF EACH WORKWEEK, A**
29 **WRITTEN WORK SCHEDULE THAT INCLUDES THE SHIFTS OF ALL EMPLOYEES AT THE**
30 **WORK SITE, INCLUDING EMPLOYEES WHO ARE NOT SCHEDULED TO WORK OR BE ON**
31 **CALL FOR THE WORKWEEK; AND**

1 **(2) AN UPDATED SCHEDULE WITHIN 24 HOURS AFTER ANY CHANGE IS**
2 **MADE TO A PREVIOUSLY POSTED WORK SCHEDULE.**

3 **(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,**
4 **AN EMPLOYER MAY NOT REQUIRE AN EMPLOYEE TO WORK HOURS NOT INCLUDED IN**
5 **AN INITIAL WORK SCHEDULE UNLESS THE EMPLOYEE CONSENTS TO THE**
6 **ADDITIONAL HOURS IN WRITING.**

7 **(2) WRITTEN CONSENT IS NOT REQUIRED IF THE CHANGE TO AN**
8 **EMPLOYEE'S WORK SCHEDULE:**

9 **(I) WAS MADE AT THE REQUEST OF THE EMPLOYEE, INCLUDING**
10 **A REQUEST TO:**

11 **1. WORK SPECIFIC HOURS OTHER THAN THOSE**
12 **SCHEDULED BY THE EMPLOYER; OR**

13 **2. USE SICK LEAVE, VACATION LEAVE, PERSONAL DAYS,**
14 **OR OTHER LEAVE OFFERED BY THE EMPLOYER; OR**

15 **(II) IS THE RESULT OF A MUTUALLY AGREED ON SHIFT TRADE**
16 **AMONG EMPLOYEES.**

17 **(3) WRITTEN CONSENT TO WORK ADDITIONAL HOURS MAY BE**
18 **PROVIDED IN PAPER OR ELECTRONIC FORM.**

19 **3-1304.**

20 **(A) WITHIN 21 DAYS BEFORE THE FIRST SCHEDULED HOUR OF A SHIFT, AN**
21 **EMPLOYER MAY:**

22 **(1) REDUCE OR EXTEND THE LENGTH OF A SCHEDULED SHIFT;**

23 **(2) CANCEL AN EMPLOYEE'S SCHEDULED SHIFT; OR**

24 **(3) CHANGE THE START OR END TIME OF AN EMPLOYEE'S SCHEDULED**
25 **SHIFT.**

26 **(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION**
27 **AND SUBSECTION (C)(2) OF THIS SECTION, IF AN EMPLOYER MAKES A CHANGE TO**
28 **AN EMPLOYEE'S WORK SCHEDULE UNDER SUBSECTION (A) OF THIS SECTION, THE**
29 **EMPLOYER SHALL PAY THE EMPLOYEE 1 HOUR OF PREDICTABILITY PAY FOR EACH**
30 **SHIFT THAT IS CHANGED.**

1 **(2) AN EMPLOYER IS NOT REQUIRED TO PAY PREDICTABILITY PAY**
2 **UNDER PARAGRAPH (1) OF THIS SUBSECTION IF THE CHANGE TO AN EMPLOYEE'S**
3 **WORK SCHEDULE:**

4 **(I) WAS MADE AT THE REQUEST OF THE EMPLOYEE, INCLUDING**
5 **A REQUEST TO:**

6 **1. WORK SPECIFIC HOURS OTHER THAN THOSE**
7 **SCHEDULED BY THE EMPLOYER; OR**

8 **2. USE SICK LEAVE, VACATION LEAVE, PERSONAL DAYS,**
9 **OR OTHER LEAVE OFFERED BY THE EMPLOYER; OR**

10 **(II) IS THE RESULT OF A MUTUALLY AGREED ON SHIFT TRADE**
11 **AMONG EMPLOYEES.**

12 **(3) THE PREDICTABILITY PAY REQUIRED UNDER PARAGRAPH (1) OF**
13 **THIS SUBSECTION IS IN ADDITION TO ANY OTHER WAGES REQUIRED TO BE PAID TO**
14 **THE EMPLOYEE UNDER THIS TITLE.**

15 **(C) (1) REGARDLESS OF THE ACTUAL HOURS WORKED BY AN EMPLOYEE**
16 **DURING A SHIFT, AN EMPLOYER SHALL PAY AN EMPLOYEE FOR 4 HOURS OF WORK**
17 **OR THE NUMBER OF HOURS IN THE EMPLOYEE'S SCHEDULED SHIFT, WHICHEVER IS**
18 **FEWER, AT THE EMPLOYEE'S REGULAR RATE OF PAY FOR ANY SHIFT FOR WHICH THE**
19 **EMPLOYEE:**

20 **(I) REPORTS TO WORK; OR**

21 **(II) IS NOTIFIED WITHIN 24 HOURS BEFORE THE FIRST HOUR OF**
22 **A SCHEDULED SHIFT THAT THE SHIFT HAS BEEN CANCELED OR THE HOURS IN THE**
23 **SHIFT HAVE BEEN REDUCED.**

24 **(2) THE PAY REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION**
25 **SHALL BE IN LIEU OF, RATHER THAN IN ADDITION TO, PREDICTABILITY PAY.**

26 **3-1305.**

27 **(A) THIS SECTION MAY NOT BE CONSTRUED TO REQUIRE AN EMPLOYER TO**
28 **OFFER OR PROHIBIT AN EMPLOYER FROM OFFERING EMPLOYEES WORK HOURS**
29 **PAID AT A PREMIUM RATE UNDER 29 U.S.C. § 207(A) OR AT AN OVERTIME RATE**
30 **UNDER § 3-415 OF THIS TITLE.**

1 **(B) AN EMPLOYER SHALL OFFER ADDITIONAL HOURS OF WORK TO**
2 **CURRENT EMPLOYEES BEFORE HIRING NEW EMPLOYEES OR SUBCONTRACTORS,**
3 **INCLUDING HIRING THROUGH TEMPORARY SERVICES OR STAFFING AGENCIES.**

4 **(C) (1) THIS SUBSECTION DOES NOT APPLY IF ADDITIONAL HOURS OF**
5 **WORK ARE MADE AVAILABLE:**

6 **(I) THROUGH AN OFFER TO EXTEND A SCHEDULED SHIFT; OR**

7 **(II) WITHIN 2 DAYS BEFORE AN EMPLOYEE WOULD START THE**
8 **ADDITIONAL HOURS OF WORK.**

9 **(2) AN EMPLOYER SHALL POST:**

10 **(I) A NOTICE OF ADDITIONAL HOURS OF WORK THAT ARE**
11 **AVAILABLE TO CURRENT EMPLOYEES;**

12 **(II) THE PROCESS BY WHICH CURRENT EMPLOYEES MAY NOTIFY**
13 **THE EMPLOYER OF A DESIRE TO WORK THE ADDITIONAL HOURS; AND**

14 **(III) THE CRITERIA THE EMPLOYER WILL USE TO DETERMINE**
15 **THE DISTRIBUTION OF THE ADDITIONAL HOURS OF WORK.**

16 **(3) THE NOTICE REQUIRED UNDER PARAGRAPH (2)(I) OF THIS**
17 **SECTION SHALL:**

18 **(I) BE POSTED CONSPICUOUSLY AT A LOCATION AT THE WORK**
19 **SITE THAT IS READILY ACCESSIBLE TO ALL EMPLOYEES; AND**

20 **(II) INCLUDE:**

21 1. **THE TOTAL HOURS OF WORK BEING OFFERED;**

22 2. **THE SCHEDULE OF AVAILABLE SHIFTS;**

23 3. **WHETHER THE AVAILABLE SHIFTS WILL OCCUR AT**
24 **THE SAME TIME EACH WEEK; AND**

25 4. **THE LENGTH OF TIME THE EMPLOYER ANTICIPATES**
26 **THE ADDITIONAL HOURS OF WORK WILL BE AVAILABLE.**

27 **(4) THE CRITERIA POSTED UNDER PARAGRAPH (2)(III) OF THIS**
28 **SUBSECTION MAY NOT BE DISCRIMINATORY ON THE BASIS OF:**

1 **(I) RACE, COLOR, CREED, RELIGION, ANCESTRY, NATIONAL**
2 **ORIGIN, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, DISABILITY, AGE, OR**
3 **MARITAL OR FAMILIAL STATUS;**

4 **(II) THE EMPLOYEE'S FAMILY CAREGIVING RESPONSIBILITIES;**
5 **OR**

6 **(III) THE EMPLOYEE'S STATUS AS A STUDENT.**

7 **(D) BEFORE AN EMPLOYER MAY HIRE ADDITIONAL EMPLOYEES OR**
8 **SUBCONTRACTORS, THE EMPLOYER SHALL POST THE INFORMATION REQUIRED**
9 **UNDER SUBSECTION (C) OF THIS SECTION FOR:**

10 **(1) AT LEAST 7 CONSECUTIVE DAYS IF THE ADDITIONAL EMPLOYEES**
11 **OR SUBCONTRACTORS WOULD WORK FOR THE EMPLOYER FOR A PERIOD OF AT**
12 **LEAST 7 CONSECUTIVE DAYS; OR**

13 **(2) AT LEAST 2 CONSECUTIVE DAYS IF THE ADDITIONAL EMPLOYEES**
14 **OR SUBCONTRACTORS WOULD WORK FOR THE EMPLOYER FOR A PERIOD OF LESS**
15 **THAN 7 CONSECUTIVE DAYS.**

16 **(E) (1) UNLESS NO CURRENT EMPLOYEE RESPONDS TO THE OFFER OF**
17 **ADDITIONAL HOURS OF WORK, AN EMPLOYER SHALL ASSIGN ADDITIONAL HOURS OF**
18 **WORK TO A CURRENT EMPLOYEE WHO:**

19 **(I) HAS RESPONDED TO THE OFFER OF ADDITIONAL HOURS OF**
20 **WORK; AND**

21 **(II) IN THE GOOD FAITH AND REASONABLE JUDGMENT OF THE**
22 **EMPLOYER, HAS THE SKILLS AND EXPERIENCE TO PERFORM THE ADDITIONAL**
23 **HOURS OF WORK.**

24 **(2) IF MORE THAN ONE CURRENT EMPLOYEE HAS RESPONDED TO THE**
25 **OFFER OF ADDITIONAL HOURS OF WORK, THE EMPLOYER SHALL DISTRIBUTE THE**
26 **ADDITIONAL HOURS AMONG THE INTERESTED EMPLOYEES ACCORDING TO THE**
27 **CRITERIA POSTED UNDER SUBSECTION (C)(2)(III) OF THIS SECTION.**

28 **(3) IF NO CURRENT EMPLOYEE RESPONDS TO THE OFFER OF**
29 **ADDITIONAL HOURS OF WORK, THE EMPLOYER MAY HIRE NEW EMPLOYEES OR**
30 **SUBCONTRACTORS TO WORK THE ADDITIONAL HOURS.**

1 **(4) AN EMPLOYER SHALL MAKE REASONABLE EFFORTS TO OFFER**
2 **EMPLOYEES TRAINING OPPORTUNITIES TO GAIN THE SKILLS AND EXPERIENCE TO**
3 **PERFORM WORK FOR WHICH THE EMPLOYER TYPICALLY HAS ADDITIONAL NEEDS.**

4 **(F) (1) IF AN EMPLOYER HIRES ADDITIONAL EMPLOYEES OR**
5 **SUBCONTRACTORS RATHER THAN USING CURRENT EMPLOYEES FOR ADDITIONAL**
6 **HOURS OF WORK, THE EMPLOYER SHALL DOCUMENT COMPLIANCE WITH THIS**
7 **SECTION.**

8 **(2) THE DOCUMENTATION REQUIRED UNDER PARAGRAPH (1) OF**
9 **THIS SUBSECTION SHALL BE MAINTAINED BY THE EMPLOYER FOR AT LEAST 3 YEARS**
10 **AFTER THE EMPLOYER HIRED THE ADDITIONAL EMPLOYEES OR SUBCONTRACTORS.**

11 **(3) THERE IS A REBUTTABLE PRESUMPTION THAT AN EMPLOYER HAS**
12 **VIOLATED THIS SECTION IF THE EMPLOYER FAILS TO MAINTAIN THE**
13 **DOCUMENTATION AS REQUIRED BY PARAGRAPH (2) OF THIS SUBSECTION.**

14 **3-1306.**

15 **(A) EMPLOYEES WHO HOLD JOBS THAT REQUIRE SUBSTANTIALLY EQUAL**
16 **SKILL, EFFORT, RESPONSIBILITY, AND DUTIES AND THAT ARE PERFORMED UNDER**
17 **SIMILAR WORKING CONDITIONS, REGARDLESS OF THE NUMBER OF HOURS THAT AN**
18 **EMPLOYEE IS SCHEDULED TO WORK OR THE EXPECTED DURATION OF**
19 **EMPLOYMENT, SHALL:**

20 **(1) BE PAID THE SAME HOURLY WAGE;**

21 **(2) HAVE THE SAME ELIGIBILITY TO ACCRUE EMPLOYER-PROVIDED**
22 **PAID AND UNPAID LEAVE AND OTHER BENEFITS; AND**

23 **(3) BE PROVIDED THE SAME PROMOTION OPPORTUNITIES AND**
24 **OTHER CONDITIONS OF EMPLOYMENT.**

25 **(B) SUBSECTION (A) OF THIS SECTION MAY NOT BE CONSTRUED TO**
26 **PROHIBIT DIFFERENCES IN HOURLY WAGES BASED ON REASONS OTHER THAN THE**
27 **NUMBER OF HOURS THE EMPLOYEE IS SCHEDULED TO WORK OR THE EXPECTED**
28 **DURATION OF EMPLOYMENT, INCLUDING:**

29 **(1) A SENIORITY SYSTEM;**

30 **(2) A MERIT SYSTEM; OR**

1 **(3) A SYSTEM THAT MEASURES EARNINGS BY QUANTITY PRODUCED**
2 **PER HOUR OR QUALITY OF PRODUCTION.**

3 **(C) SUBSECTION (A)(2) OF THIS SECTION MAY NOT BE CONSTRUED TO**
4 **AFFECT A REQUIREMENT THAT AN EMPLOYEE WORK A MINIMUM NUMBER OF HOURS**
5 **TO BE ELIGIBLE TO RECEIVE BENEFITS.**

6 **3-1307.**

7 **(A) EACH EMPLOYER SHALL:**

8 **(1) RECORD THE WAGES PAID TO AN EMPLOYEE UNDER § 3-1304 OF**
9 **THIS SUBTITLE IN THE STATEMENT OF EARNINGS REQUIRED BY § 3-504(A)(2) OF**
10 **THIS TITLE; AND**

11 **(2) SPECIFY IN THE STATEMENT OF EARNINGS THE TOTAL AMOUNT**
12 **OF PREDICTABILITY PAY PAID UNDER § 3-1304 OF THIS SUBTITLE.**

13 **(B) IF NECESSARY TO CARRY OUT THIS SUBTITLE, THE COMMISSIONER MAY**
14 **REQUIRE AN EMPLOYER TO:**

15 **(1) INCLUDE ADDITIONAL INFORMATION IN THE STATEMENT OF**
16 **EARNINGS; AND**

17 **(2) USE ADDITIONAL MEANS TO NOTIFY THE EMPLOYER'S**
18 **EMPLOYEES OF THE INFORMATION REQUIRED TO BE INCLUDED IN THE STATEMENT**
19 **OF EARNINGS UNDER SUBSECTION (A) OF THIS SECTION.**

20 **3-1308.**

21 **(A) AN EMPLOYER SHALL GIVE EMPLOYEES NOTICE OF THEIR RIGHTS**
22 **UNDER THIS SUBTITLE BY CONSPICUOUSLY POSTING NOTICES IN ENGLISH AND**
23 **SPANISH AT A LOCATION AT THE WORK SITE THAT IS READILY ACCESSIBLE TO ALL**
24 **EMPLOYEES.**

25 **(B) THE NOTICES REQUIRED UNDER SUBSECTION (A) OF THIS SECTION**
26 **SHALL INCLUDE:**

27 **(1) THE RIGHT TO RECEIVE PREDICTABILITY PAY UNDER § 3-1304 OF**
28 **THIS SUBTITLE;**

29 **(2) THE RIGHT TO DECLINE SHIFTS UNDER § 3-1303 OF THIS**
30 **SUBTITLE;**

1 **(3) A STATEMENT THAT RETALIATION AGAINST EMPLOYEES WHO**
2 **EXERCISE THEIR RIGHTS UNDER THIS SUBTITLE IS PROHIBITED; AND**

3 **(4) A STATEMENT THAT EACH EMPLOYEE HAS THE RIGHT TO FILE A**
4 **COMPLAINT OR BRING A CIVIL ACTION TO ENFORCE THE EMPLOYEE'S RIGHTS**
5 **UNDER THIS SUBTITLE.**

6 **3-1309.**

7 **(A) EACH EMPLOYER SHALL KEEP FOR AT LEAST 3 YEARS AN ACCURATE**
8 **RECORD OF:**

9 **(1) THE NAME, ADDRESS, AND OCCUPATION OF EACH EMPLOYEE;**

10 **(2) THE AMOUNT PAID EACH PAY PERIOD TO EACH EMPLOYEE;**

11 **(3) THE HOURS WORKED EACH DAY BY EACH EMPLOYEE;**

12 **(4) THE INITIAL WORK SCHEDULE OF EACH EMPLOYEE;**

13 **(5) THE PREDICTABILITY PAY PAID TO EACH EMPLOYEE; AND**

14 **(6) ANY SUBSEQUENT REVISIONS TO THE INITIAL WORK SCHEDULE**
15 **OF EACH EMPLOYEE.**

16 **(B) THE EMPLOYER SHALL:**

17 **(1) MAKE THE RECORDS KEPT UNDER SUBSECTION (A) OF THIS**
18 **SECTION AVAILABLE FOR INSPECTION BY THE COMMISSIONER TO THE SAME**
19 **EXTENT AND FOR THE SAME PURPOSES AS RECORDS ARE MADE AVAILABLE TO THE**
20 **COMMISSIONER UNDER § 3-425 OF THIS TITLE; AND**

21 **(2) ALLOW AN EMPLOYEE TO INSPECT AT ANY REASONABLE TIME AND**
22 **PLACE ANY RECORD KEPT UNDER SUBSECTION (A) OF THIS SECTION PERTAINING TO**
23 **THE EMPLOYEE.**

24 **(C) EACH DAY THAT AN EMPLOYER FAILS TO KEEP A RECORD, FALSIFIES A**
25 **RECORD, OR OTHERWISE VIOLATES THIS SECTION SHALL CONSTITUTE A SEPARATE**
26 **VIOLATION.**

27 **3-1310.**

1 **(A) IN THIS SECTION, “RETALIATE” MEANS TO ENGAGE IN ANY FORM OF**
2 **INTIMIDATION, THREAT, REPRISAL, HARASSMENT, DISCRIMINATION, OR ADVERSE**
3 **EMPLOYMENT ACTION, INCLUDING:**

4 **(1) DISCIPLINE;**

5 **(2) DISCHARGE;**

6 **(3) SUSPENSION;**

7 **(4) TRANSFER OR ASSIGNMENT TO A LOWER POSITION IN TERMS OF**
8 **JOB CLASSIFICATION, JOB SECURITY, OR ANY OTHER CONDITION OF EMPLOYMENT;**

9 **(5) REDUCTION IN PAY OR HOURS ASSIGNED;**

10 **(6) DENIAL OF ADDITIONAL HOURS;**

11 **(7) INFORMING ANOTHER EMPLOYER THAT THE EMPLOYEE HAS**
12 **ENGAGED IN ACTIVITIES PROTECTED BY THIS SUBTITLE; OR**

13 **(8) REPORTING OR THREATENING TO REPORT THE ACTUAL OR**
14 **SUSPECTED CITIZENSHIP OR IMMIGRATION STATUS OF AN EMPLOYEE, A FORMER**
15 **EMPLOYEE, OR A FAMILY MEMBER OF AN EMPLOYEE OR A FORMER EMPLOYEE TO A**
16 **FEDERAL, STATE, OR LOCAL AGENCY.**

17 **(B) A PERSON MAY NOT INTERFERE WITH, RESTRAIN, OR DENY THE**
18 **EXERCISE OF, OR THE ATTEMPT TO EXERCISE, ANY RIGHT PROTECTED UNDER THIS**
19 **SUBTITLE.**

20 **(C) AN EMPLOYER MAY NOT RETALIATE AGAINST AN EMPLOYEE BECAUSE**
21 **THE EMPLOYEE HAS EXERCISED RIGHTS PROTECTED UNDER THIS SUBTITLE,**
22 **INCLUDING THE RIGHT TO:**

23 **(1) DECLINE HOURS OF WORK UNDER § 3-1303 OF THIS SUBTITLE;**

24 **(2) FILE A COMPLAINT UNDER § 3-1311 OF THIS SUBTITLE;**

25 **(3) INFORM ANY PERSON ABOUT THE EMPLOYER’S ALLEGED**
26 **VIOLATION OF THIS SUBTITLE;**

27 **(4) COOPERATE WITH THE COMMISSIONER OR ATTORNEY GENERAL**
28 **IN AN INVESTIGATION OF AN ALLEGED VIOLATION OF THIS SUBTITLE; AND**

1 **(5) INFORM AN INDIVIDUAL REGARDING THE INDIVIDUAL'S RIGHTS**
2 **UNDER THIS SUBTITLE.**

3 **(D) THERE IS A REBUTTABLE PRESUMPTION THAT AN EMPLOYER HAS**
4 **VIOLATED THIS SECTION IF THE EMPLOYER TAKES AN ACTION LISTED IN**
5 **SUBSECTION (A) OF THIS SECTION AGAINST AN EMPLOYEE WITHIN 90 DAYS AFTER**
6 **THE EMPLOYEE:**

7 **(1) FILES A COMPLAINT WITH THE COMMISSIONER UNDER § 3-1311**
8 **OF THIS SUBTITLE ALLEGING A VIOLATION OF THIS SUBTITLE OR BRINGS A CIVIL**
9 **ACTION UNDER § 3-1312 OF THIS SUBTITLE;**

10 **(2) INFORMS A PERSON ABOUT AN ALLEGED VIOLATION OF THIS**
11 **SUBTITLE BY THE EMPLOYER;**

12 **(3) COOPERATES WITH THE COMMISSIONER OR ANOTHER PERSON IN**
13 **THE INVESTIGATION OR PROSECUTION OF AN ALLEGED VIOLATION OF THIS**
14 **SUBTITLE BY THE EMPLOYER;**

15 **(4) OPPOSES ANY POLICY, PRACTICE, OR ACT THAT IS UNLAWFUL**
16 **UNDER THIS SUBTITLE; OR**

17 **(5) INFORMS AN INDIVIDUAL OF THE INDIVIDUAL'S RIGHTS UNDER**
18 **THIS SUBTITLE.**

19 **(E) THE PROTECTIONS AFFORDED UNDER THIS SUBTITLE SHALL APPLY TO**
20 **AN EMPLOYEE WHO MISTAKENLY, BUT IN GOOD FAITH, ALLEGES A VIOLATION OF**
21 **THIS SUBTITLE.**

22 **3-1311.**

23 **(A) (1) A PERSON MAY FILE A COMPLAINT ALLEGING A VIOLATION OF**
24 **THIS SUBTITLE WITH THE COMMISSIONER.**

25 **(2) THE COMMISSIONER SHALL KEEP CONFIDENTIAL THE IDENTITY**
26 **OF A PERSON WHO FILES A COMPLAINT UNLESS DISCLOSURE IS NECESSARY FOR THE**
27 **RESOLUTION OF ANY INVESTIGATION OR IS OTHERWISE REQUIRED BY LAW.**

28 **(3) IF THE COMMISSIONER NEEDS TO DISCLOSE THE IDENTITY OF A**
29 **PERSON WHO FILES A COMPLAINT, THE COMMISSIONER SHALL, TO THE EXTENT**
30 **PRACTICABLE, NOTIFY THE PERSON BEFORE THE DISCLOSURE IS MADE.**

1 **(B) (1) ON RECEIPT OF A COMPLAINT FILED UNDER SUBSECTION (A)(1)**
2 **OF THIS SECTION, THE COMMISSIONER SHALL SEND A LETTER TO THE EMPLOYER.**

3 **(2) THE LETTER SHALL:**

4 **(I) STATE THAT THERE IS A COMPLAINT ALLEGING A**
5 **VIOLATION OF THIS SUBTITLE FILED AGAINST THE EMPLOYER;**

6 **(II) STATE THE REQUIREMENTS OF SUBSECTION (C) OF THIS**
7 **SECTION;**

8 **(III) STATE THAT FAILURE TO COMPLY MAY RESULT IN A CIVIL**
9 **ACTION SEEKING DAMAGES, COUNSEL FEES, AND OTHER LEGAL REMEDIES; AND**

10 **(IV) INFORM THE EMPLOYER THAT RETALIATION AGAINST AN**
11 **EMPLOYEE FOR EXERCISING RIGHTS UNDER THIS SECTION IS A BASIS FOR A**
12 **PRIVATE RIGHT OF ACTION SEEKING ADDITIONAL MONETARY DAMAGES TO BE**
13 **DETERMINED BY A COURT.**

14 **(C) IF AN EMPLOYER RECEIVES A LETTER SENT UNDER SUBSECTION (B) OF**
15 **THIS SECTION, WITHIN 10 DAYS AFTER THE DATE OF THE LETTER, THE EMPLOYER**
16 **SHALL SUBMIT TO THE COMMISSIONER:**

17 **(1) PROOF OF COMPLIANCE WITH THIS SUBTITLE; OR**

18 **(2) AN ACTION PLAN THE EMPLOYER WILL IMPLEMENT TO CORRECT**
19 **ANY VIOLATION OF THIS SUBTITLE.**

20 **(D) IF THE COMMISSIONER DETERMINES THAT THIS SUBTITLE HAS BEEN**
21 **VIOLATED, THE COMMISSIONER MAY ISSUE AN ORDER:**

22 **(1) REQUIRING THE EMPLOYER TO:**

23 **(I) COMPLY WITH THIS SUBTITLE; AND**

24 **(II) PAY ANY PREDICTABILITY PAY OR OTHER WAGES OWED TO**
25 **EMPLOYEES UNDER THIS SUBTITLE;**

26 **(2) IMPOSING A CIVIL PENALTY NOT TO EXCEED \$500 FOR EACH**
27 **VIOLATION OF THIS SUBTITLE; AND**

28 **(3) GRANTING ANY OTHER APPROPRIATE RELIEF, INCLUDING:**

- 1 **(I) REINSTATEMENT OF EMPLOYMENT;**
- 2 **(II) INJUNCTIVE RELIEF;**
- 3 **(III) ACTUAL DAMAGES;**
- 4 **(IV) AN ADDITIONAL AMOUNT EQUAL TO TWICE ANY**
5 **PREDICTABILITY PAY OR OTHER WAGES OWED TO EMPLOYEES UNDER THIS**
6 **SUBTITLE; AND**

- 7 **(V) AN ADDITIONAL AMOUNT OF LIQUIDATED DAMAGES OF:**
- 8 1. **\$500 FOR EACH VIOLATION OF § 3-1303 OR § 3-1305**
9 **OF THIS SUBTITLE; AND**
- 10 2. **\$100 FOR EACH WILLFUL VIOLATION OF § 3-1307 OR**
11 **§ 3-1308 OF THIS SUBTITLE.**

12 **(E) (1) WITHIN 30 DAYS AFTER RECEIVING AN ORDER ISSUED UNDER**
13 **SUBSECTION (D) OF THIS SECTION, AN EMPLOYER MAY REQUEST A DE NOVO**
14 **ADMINISTRATIVE HEARING.**

15 **(2) AN ADMINISTRATIVE HEARING REQUESTED UNDER PARAGRAPH**
16 **(1) OF THIS SUBSECTION SHALL BE CONDUCTED IN ACCORDANCE WITH TITLE 10,**
17 **SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.**

18 **(3) IF AN EMPLOYER DOES NOT REQUEST A HEARING UNDER**
19 **PARAGRAPH (1) OF THIS SUBSECTION, THE ORDER ISSUED BY THE COMMISSIONER**
20 **BECOMES FINAL.**

21 **(4) (I) A FINAL ORDER OF THE COMMISSIONER MAY BE APPEALED**
22 **IN ACCORDANCE WITH § 10-222 OF THE STATE GOVERNMENT ARTICLE.**

23 **(II) IF AN EMPLOYER DOES NOT REQUEST JUDICIAL REVIEW OF**
24 **A FINAL ORDER WITHIN 30 DAYS AFTER THE ORDER BECOMES FINAL, THE**
25 **COMMISSIONER MAY FILE AN ACTION TO ENFORCE THE ORDER IN THE CIRCUIT**
26 **COURT FOR THE COUNTY IN WHICH THE EMPLOYER RESIDES OR HAS A PLACE OF**
27 **BUSINESS.**

28 **(F) ON OR BEFORE FEBRUARY 1 EACH YEAR, THE COMMISSIONER SHALL**
29 **POST ON THE WEB SITE OF THE DEPARTMENT OF LABOR, LICENSING, AND**
30 **REGULATION:**

1 (1) THE NUMBER AND NATURE OF COMPLAINTS FILED UNDER THIS
2 SECTION;

3 (2) THE RESULTS OF ANY INVESTIGATIONS RELATED TO A
4 COMPLAINT;

5 (3) THE NUMBER OF ORDERS ISSUED AND PENALTIES IMPOSED
6 UNDER THIS SECTION; AND

7 (4) THE AVERAGE TIME TAKEN FOR A COMPLAINT TO BE RESOLVED.

8 **3-1312.**

9 (A) (1) ANY PERSON ALLEGING A VIOLATION OF THIS SUBTITLE MAY
10 BRING AN ACTION IN A COURT OF COMPETENT JURISDICTION.

11 (2) AN ACTION MAY BE BROUGHT WHETHER OR NOT A COMPLAINT
12 WAS FIRST FILED WITH THE COMMISSIONER.

13 (3) AN ACTION BROUGHT UNDER THIS SUBSECTION:

14 (I) SHALL BE FILED WITHIN 3 YEARS AFTER THE PERSON KNEW
15 OR SHOULD HAVE KNOWN OF THE ALLEGED VIOLATION; AND

16 (II) MAY BE BROUGHT AS A CLASS ACTION IN ACCORDANCE
17 WITH STATE LAW.

18 (B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IN AN ACTION
19 UNDER SUBSECTION (A) OF THIS SECTION, IF A COURT FINDS THAT AN EMPLOYER
20 HAS VIOLATED THIS SUBTITLE, THE COURT MAY AWARD:

21 (I) A CIVIL PENALTY NOT TO EXCEED \$500 FOR EACH
22 VIOLATION OF THIS SUBTITLE;

23 (II) REINSTATEMENT OF EMPLOYMENT;

24 (III) INJUNCTIVE RELIEF;

25 (IV) ACTUAL DAMAGES;

26 (V) ANY PREDICTABILITY PAY OR OTHER WAGES OWED TO
27 EMPLOYEES UNDER THIS SUBTITLE PLUS INTEREST;

1 (VI) AN ADDITIONAL AMOUNT EQUAL TO TWICE ANY
2 PREDICTABILITY PAY OR OTHER WAGES OWED TO EMPLOYEES UNDER THIS
3 SUBTITLE;

4 (VII) AN ADDITIONAL AMOUNT OF LIQUIDATED DAMAGES OF:

5 1. \$500 FOR EACH VIOLATION OF § 3-1303 OR § 3-1305
6 OF THIS SUBTITLE; AND

7 2. \$100 FOR EACH WILLFUL VIOLATION OF § 3-1307 OR
8 § 3-1308 OF THIS SUBTITLE; AND

9 (VIII) REASONABLE COUNSEL FEES AND OTHER COSTS.

10 (2) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
11 PARAGRAPH, IF A COURT FINDS THAT AN EMPLOYER HAS VIOLATED § 3-1308(B) OF
12 THIS SUBTITLE OR OTHERWISE DISCRIMINATED AGAINST AN EMPLOYEE, THE
13 COURT SHALL AWARD ACTUAL DAMAGES AND REINSTATEMENT OF EMPLOYMENT.

14 (II) A COURT IS NOT REQUIRED TO AWARD REINSTATEMENT OF
15 EMPLOYMENT IF THE EMPLOYEE WAIVES THE RIGHT TO REINSTATEMENT.

16 (III) IF THE COURT FINDS THAT THE EMPLOYEE HAS BEEN
17 DISCHARGED IN RETALIATION FOR EXERCISING RIGHTS UNDER THIS SUBTITLE, FOR
18 THE PURPOSE OF CALCULATING ACTUAL DAMAGES REQUIRED TO BE AWARDED
19 UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE PERIOD OF VIOLATION
20 BEGINS THE DAY THE EMPLOYEE WAS DISCHARGED AND ENDS THE DAY BEFORE THE
21 EMPLOYEE IS REINSTATED OR THE DAY THE EMPLOYEE AGREES TO WAIVE
22 REINSTATEMENT.

23 (C) IN AN ACTION BROUGHT BY A PERSON OTHER THAN AN EMPLOYEE, ANY
24 WAGES, PREDICTABILITY PAY, OR ACTUAL DAMAGES AWARDED BY THE COURT
25 SHALL BE PAID TO THE EMPLOYEES TO WHOM THE VIOLATION RELATES.

26 **3-1313.**

27 THIS SUBTITLE MAY BE CITED AS THE FAIR SCHEDULING, WAGES, AND
28 BENEFITS ACT.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2016.