

Article - Labor and Employment

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§3–710.

(a) (1) In this section the following words have the meanings indicated.

(2) “Employer” means a person:

(i) engaged in a retail establishment business in the State that has 50 or more retail employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year; or

(ii) that owns one or more retail establishment franchises with the same trade name with 50 or more retail employees in the State for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.

(3) “Franchise” has the meaning stated in § 14–201 of the Business Regulation Article.

(4) (i) “Retail establishment” means a place of business with the primary purpose of selling goods to a consumer who is present at the place of business at the time of sale.

(ii) “Retail establishment” does not include:

1. a wholesaler, as defined in § 11–401(i) of the Commercial Law Article; or

2. a restaurant.

(b) This section does not apply to an employee:

(1) covered by a collective bargaining agreement or employment policy that includes shift breaks equal to or greater than those provided under this section;

(2) exempt from overtime pay requirements under the Fair Labor Standards Act;

(3) who works for a unit of the State, a county, or a municipality;

(4) who works in a corporate office or other office location; or

(5) who works for at least 4 consecutive hours for an employer at a single location with 5 or fewer employees.

(c) (1) (i) Except as provided in paragraph (4) of this subsection or subparagraph (ii) of this paragraph, an employer may not employ an employee at a retail establishment for 4 to 6 consecutive hours without providing a nonworking shift break of at least 15 minutes.

(ii) An employee is not entitled to a 15 minute shift break under this paragraph if the employee is entitled to a 30 minute shift break under paragraph (2) of this subsection.

(2) An employer may not employ an employee at a retail establishment for more than 6 consecutive hours without providing a nonworking shift break of at least 30 minutes.

(3) If an employee works 8 consecutive hours in a single shift, the employer shall provide an additional nonworking shift break of at least 15 minutes for every additional 4 consecutive hours the employer employs the employee in the shift.

(4) If an employee's work hours do not exceed 6 consecutive hours, the provisions of paragraph (1) of this subsection may be waived by written agreement between the employer and employee.

(5) A shift break required under this subsection may be considered a working shift break if:

(i) 1. the type of work prevents an employee from being relieved of work during the nonworking shift break; or

2. the employee is allowed to consume a meal while working and the working shift break is counted towards the employee's work hours; and

(ii) the employer and employee mutually agree in writing to the working shift break.

(d) (1) If an employer violates subsection (c) of this section, an employee of the employer may file a complaint with the Commissioner.

(2) If the Commissioner receives a complaint under paragraph (1) of this subsection, the Commissioner shall:

- (i) try to resolve the issue informally; or
- (ii) determine whether the employer has violated this section.

(3) If the Commissioner determines that the employer has violated this section, the Commissioner shall:

- (i) issue an order compelling compliance with this section; and
- (ii) in the Commissioner's discretion, assess a civil penalty of:

1. up to \$300 for each employee for whom the employer is not in compliance with this section; or

2. up to \$600 for each employee for whom the employer is not in compliance with this section if the violation occurred within 3 years after an employee filed a previous complaint that led to a determination that a violation had occurred.

(4) The provisions of paragraphs (2)(ii) and (3) of this subsection are subject to the notice and hearing requirements of Title 10, Subtitle 2 of the State Government Article.

(5) (i) In determining whether there is a violation of this section, the Commissioner shall consider if there was a threat to public health or safety at the time the violation is alleged to have occurred.

(ii) In determining the amount of any civil penalty to be imposed, the Commissioner shall consider the:

- 1. seriousness of the violation;
- 2. size of the employer's business;
- 3. employer's good faith in complying with this section;

and

- 4. employer's history of violations under this section.

(6) If the employer fails to comply with an order issued for a violation under paragraph (3) of this subsection, the Commissioner may bring an action to enforce the order and civil penalty in the circuit court in the county where the employer is located.

(7) If the employer fails to comply with an order issued for a subsequent violation against the same employee under paragraph (3) of this subsection within 3 years after the employee filed a complaint that is determined to be a violation under this subsection, the employee may bring an action to enforce the order in the circuit court in the county where the employer is located.

(8) If an employee prevails in an action brought under paragraph (7) of this subsection, the employee may be entitled to:

(i) three times the value of the employee's hourly wage for each shift break violation of this section occurring after the most recent violation against the same employee; and

(ii) reasonable attorney's fees and other costs of the employee.

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