

HOUSE BILL NO. 5136

June 24, 2021, Introduced by Reps. Hope, Clemente, Breen, Aiyash, Stone, Young, Hood, Steckloff, Haadsma, Morse, Tyrone Carter, Rogers, Sowerby, Pohutsky, Brenda Carter, Cherry, Ellison, Cavanagh, Kuppa, Cynthia Johnson, Brixie, Coleman and Yancey and referred to the Committee on Workforce, Trades, and Talent.

A bill to require certain employers to provide written work schedules to certain employees; to require compensation for changes to a work schedule in certain circumstances; to allow employees to request changes to work schedules; to prohibit employers from requiring employees to work during certain rest periods; to require certain notices and postings; to prohibit retaliation; to provide for the powers and duties of certain state officers and entities; to provide for the promulgation of rules; and to provide remedies and sanctions.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "employee fair scheduling act".

3 Sec. 3. As used in this act:

4 (a) "Chain" means an establishment that is part of an
5 affiliation of 2 or more establishments in the United States that
6 are owned by the same person and operate under an identical or
7 substantially similar trade name or mark as those terms are defined
8 in section 1 of 1969 PA 242, MCL 429.31.

9 (b) "Department" means the department of licensing and
10 regulatory affairs.

11 (c) "Employee" means, subject to subdivision (d), an
12 individual who is employed by an employer and in that employment
13 provides services related to any of the following at a retail
14 establishment, hospitality establishment, or food services
15 establishment:

16 (i) Retail trade, as that term is used in code 44-45 of the
17 2012 North American Industry Classification System.

18 (ii) Hotels or motels, as those terms are used in code 721110
19 of the 2012 North American Industry Classification System.

20 (iii) Food services, as that term is used in code 722 of the
21 2012 North American Industry Classification System.

22 (d) "Employee" does not include any of the following:

23 (i) An individual engaged in administrative, executive, or
24 professional work and to whom all of the following apply:

25 (A) Performs predominately intellectual, managerial, or
26 creative tasks.

27 (B) Exercises discretion and independent judgment.

28 (C) Earns a salary and is paid on a salary basis.

1 (ii) An individual employed by an employer to perform services
2 for a client of the employer if the employer's primary business is
3 to provide clients with the temporary services of 1 or more
4 individuals who are under contract with the employer.

5 (e) "Employer" means a person including, but not limited to, a
6 chain or integrated enterprise, that employs 100 or more
7 individuals worldwide and is a retail establishment, hospitality
8 establishment, or a food services establishment. The number of
9 individuals employed by an employer must be determined based on the
10 average number of individuals employed on each working day during
11 each of 20 or more workweeks in the current calendar year or
12 immediately preceding calendar year.

13 (f) "Food services establishment" means the fixed point of
14 sale location for establishments defined as food services and
15 drinking places in code 722 of the 2012 North American Industry
16 Classification System.

17 (g) "Hospitality establishment" means a hotel or motel as
18 those terms are used in code 721110 of the 2012 North American
19 Industry Classification System, or a casino hotel as that term is
20 used in code 721120 of the 2012 North American Industry
21 Classification System.

22 (h) "Integrated enterprise" means 2 or more separate entities,
23 1 of which controls the operations of the others, as determined
24 based on the following factors:

25 (i) The degree of interrelation between the operations of
26 multiple entities.

27 (ii) The degree to which the entities share common management.

28 (iii) The degree to which the entities have centralized control
29 of labor relations.

1 (iv) The degree of common ownership or financial control over
2 the entities.

3 (v) Any other factor as determined by the department.

4 (i) "On-call shift" means any time that an employer requires
5 an employee to be available to work or to contact the employer or
6 wait to be contacted by the employer for determining if the
7 employee must report to work, regardless of whether the employee is
8 located on the employer's premises.

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

14 (i) Tips.

15 (ii) Bonuses or other incentive payments.

16 (iii) Overtime, holiday pay, or any other premium rate.

17 (iv) Additional compensation required under section 11 or 15.

18 (k) "Retail establishment" means the fixed point of sale
19 location for a retail trade establishment as that term is used in
20 codes 441110 to 453998 of the 2012 North American Industry
21 Classification System.

22 (l) "Shift differential pay" means a pay differential meant to
23 compensate an employee for work performed under differing
24 conditions, such as for working at night. Shift differential pay
25 does not include any additional compensation an employer is
26 required to pay an employee under section 11 or 15.

27 (m) "Successor employer" means an employer that is
28 substantially the same entity as a predecessor employer as
29 determined by criteria established by the department.

1 (n) "Time of hire" means the period after an acceptance of an
2 offer of employment but before commencement of the employment.

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

7 (p) "Work shift" means the specific and consecutive hours the
8 employer requires the employee to work.

9 (q) "Workweek" means a fixed period of time established by an
10 employer that reflects a regularly recurring period of 168 hours or
11 7 consecutive 24-hour periods. A workweek may begin on any day of
12 the week and any hour of the day and need not coincide with a
13 calendar week, and the beginning of a workweek may change if the
14 change is intended to be permanent.

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

20 (s) "Year" means any fixed consecutive 12-month period of
21 time.

22 Sec. 5. (1) An employer shall provide a new employee with a
23 written good-faith estimate of the employee's work schedule at the
24 time of hire. An employer shall provide the good-faith estimate in
25 the language the employer typically uses to communicate with the
26 employee. The good-faith estimate must include all of the
27 following:

28 (a) The median number of hours the employee can expect to work
29 in a typical 1-month period.

1 (b) If the employer maintains a voluntary standby list under
2 section 7, all of the following:

3 (i) An explanation of the voluntary standby list.

4 (ii) A statement regarding whether an employee who is not on
5 the voluntary standby list can expect to work on-call shifts and,
6 if so, an objective standard for when an employee not listed on the
7 voluntary standby list may be expected to be available to work on-
8 call shifts.

9 (c) The written notice required under section 9.

10 (2) A good-faith estimate described in subsection (1) may be
11 based on a prior year schedule if it is an estimate of seasonal or
12 episodic work.

13 Sec. 7. (1) An employer may maintain a voluntary standby list
14 of employees who the employer will request to work additional hours
15 to address unanticipated customer needs or unexpected employee
16 absences. An employer shall provide an employee on the list with
17 notice of additional hours available in writing or by in-person
18 conversation or telephone call. An employee who receives notice of
19 additional hours available under this section may decline to accept
20 the additional hours offered. An employee who agrees to work
21 additional hours in response to an employer's request under this
22 section is not eligible for additional compensation under section
23 15 for the resulting change to the employee's written work
24 schedule. An employee may request to be removed from the list at
25 any time. An employer shall not include an employee on the list
26 unless all of the following conditions are met:

27 (a) The employee agrees in writing to be included on the list.

28 (b) The employer notifies the employee in writing of all of
29 the following:

1 (i) That the list is voluntary.

2 (ii) How the employee may request to be removed from the list.

3 (iii) That the employee is not required to accept the additional
4 hours offered.

5 (iv) That the employee is not eligible for additional
6 compensation under section 15 for the changes to the employee's
7 written work schedule resulting from the employee's acceptance of
8 additional hours offered to the employee as a result of being on
9 the list.

10 (2) The voluntary standby list is not a list of employees
11 scheduled for on-call shifts and the employer is not required to
12 include a list of employees on the standby list in the written work
13 schedule described in section 9.

14 (3) An employer shall not retaliate against an employee for
15 any of the following:

16 (a) Not requesting or agreeing to be added to the voluntary
17 standby list.

18 (b) Requesting to be removed from the list.

19 (c) Declining the employer's request that the employee work
20 additional hours as a result of the employee being on the list.

21 (4) An employer that violates this section may be ordered to
22 pay a civil fine of not more than \$2,000.00. Each violation is a
23 separate and distinct violation. For a continuing violation, each
24 day that an employer is in violation is a separate and distinct
25 violation. A violation of this section may be prosecuted by the
26 prosecutor of the county in which the violation occurred or by the
27 attorney general.

28 Sec. 9. (1) Except as otherwise provided in subsection (4), an
29 employer shall provide an employee with a written work schedule at

1 least 14 calendar days before the first day of the work schedule.
2 The employer shall post the written work schedule in a conspicuous
3 location that is accessible to employees. An employer shall provide
4 a written work schedule that runs through the last date of the
5 posted work schedule in effect at the time of delivery to the
6 following employees at the following times:

7 (a) For a new employee, on or before the employee's first day
8 of work.

9 (b) For an employee on a leave of absence, on the employee's
10 first day of work after the leave of absence.

11 (2) A written work schedule must meet all of the following
12 requirements:

13 (a) Be in English and in the language the employer typically
14 uses to communicate with its employees.

15 (b) Include all work shifts and on-call shifts for the work
16 period.

17 (3) After providing the advance notice required under
18 subsection (1), an employer shall not change a written work
19 schedule unless the employer has provided the employee with timely
20 notice of the change in writing or by in-person conversation or
21 telephone call. An employee may decline any work shifts not
22 included in the employee's written work schedule.

23 (4) At any time after the advance notice of written work
24 schedule required under this section, an employee may request in
25 writing that the employer add the employee to 1 or more work shifts
26 or on-call work shifts. A change to the employee's written work
27 schedule resulting from an employee-requested work schedule change
28 is not subject to the advance notice required under this section.

29 Sec. 11. (1) Subject to subsection (2), an employer shall not

1 schedule or require an employee to work during either of the
2 following rest periods:

3 (a) The 10 hours immediately following the end of the previous
4 calendar day's work shift or on-call shift.

5 (b) The 10 hours immediately following the end of a work shift
6 or on-call shift that spanned 2 calendar days.

7 (2) Subsection (1) does not apply if the employee agrees in
8 writing to work during the rest period.

9 (3) An employer shall compensate an employee for each hour or
10 portion of an hour that the employee works during a rest period
11 described in subsection (1) at 1.5 times the employee's regular
12 rate of pay. This subsection does not apply to any hour or portion
13 of an hour during which an employee provides roadside assistance
14 services. As used in this subsection, "roadside assistance" means
15 off-site repair assistance rendered to a motorist with a disabled
16 vehicle.

17 Sec. 13. At the time of hire and during employment, an
18 employee may identify any limitations or changes in the employee's
19 work schedule availability. The employee may also request not to be
20 scheduled for work shifts during certain times or at certain
21 locations. An employer may require the employee to provide
22 reasonable verification of the need for a request made under this
23 section. The employer shall pay any reasonable costs for providing
24 medical verification, including lost wages, that are not paid under
25 a health benefit plan in which the employee is enrolled. An
26 employer is not required to grant an employee's request under this
27 section. An employer shall not retaliate against an employee for
28 making a request under this section.

29 Sec. 15. (1) An employer shall provide the following

1 compensation to an employee for each employer-initiated change that
2 occurs to the employee's written work schedule without the advance
3 notice required under section 9:

4 (a) 1 hour of pay at the employee's regular rate of pay, in
5 addition to any wages earned, in any of the following
6 circumstances:

7 (i) More than 30 minutes of work are added to the employee's
8 work shift.

9 (ii) The date or start or end time of the employee's shift is
10 changed with no loss of hours.

11 (iii) The employee is scheduled for an additional shift or on-
12 call shift.

13 (b) The greater of the minimum wage rate established under
14 section 4 of the improved workforce opportunity wage act, 2018 PA
15 338, MCL 408.934, or 0.5 times the employee's regular rate of pay
16 per hour for each hour that the employee does not work in any of
17 the following circumstances:

18 (i) Hours are subtracted from the employee's work shift before
19 or after the employee reports for work.

20 (ii) The date or start or end time of the employee's shift is
21 changed, resulting in a loss of hours.

22 (iii) The employee's work shift is canceled.

23 (iv) The employer does not ask the employee to perform work
24 while the employee is scheduled for an on-call shift.

25 (2) Subsection (1) does not apply to any of the following
26 circumstances:

27 (a) An employer subtracts hours from an employee's work
28 schedule for disciplinary reasons for just cause, if the employer
29 documents the incident leading to the employee's discipline in

1 writing.

2 (b) An employee's work shift or on-call shift cannot begin or
3 continue because of any of the following:

4 (i) A threat to employees or property.

5 (ii) The recommendation of a public official.

6 (iii) Failure of a public utility to supply electricity, water,
7 or natural gas or there is a failure in the public utilities or
8 sewer system.

9 (iv) A natural disaster or a similar cause not within the
10 employer's control.

11 (v) A ticketed event is canceled, rescheduled, or changes in
12 duration because of circumstances that are outside the employer's
13 control.

14 (c) An employer requests that an employee on a voluntary
15 standby list work additional hours as described in section 7 and
16 the employee consents to work the additional hours.

17 (d) An employer requests that an employee work additional
18 hours to address unanticipated customer needs or unexpected
19 employee absence and all of the following conditions are met:

20 (i) The employee consents in writing to work the additional
21 hours.

22 (ii) Both of the following conditions are met:

23 (A) If the employer maintains a voluntary standby list as
24 described in section 7, the employer has contacted all of the
25 employees listed on the voluntary standby list and requires
26 additional employee coverage.

27 (B) If the employee is working a work shift at the time the
28 employer makes the request, the employer makes the request either
29 individually or as part of a group communication or, if the

1 employee is not working a work shift at the time the employer makes
2 the request, the employer makes the request through a group
3 communication.

4 (3) As used in this section:

5 (a) "Group communication" means communication to all eligible
6 employees, written or oral.

7 (b) "Ticketed event" means a sporting, entertainment, civic,
8 charitable, or other event that requires a ticket for admission.
9 The ticket may be electronic, physical, or a name on a list held by
10 the event organizer.

11 Sec. 17. The department shall make available to employers a
12 poster that includes the rights of employees under this act. An
13 employer shall display the poster at its workplace so that it is
14 reasonably conspicuous and accessible. If displaying the poster is
15 not feasible including, but not limited to, situations in which an
16 employer's employees work remotely or do not have a regular
17 workplace or job site, the employer shall provide the poster on an
18 individual basis in a physical or electronic format.

19 Sec. 19. An employer shall retain records that document the
20 employer's compliance with this act for at least 7 years.

21 Sec. 21. An employer shall not do any of the following:

22 (a) Interfere with, restrain, deny, or attempt to deny the
23 exercise of any right protected under this act.

24 (b) Retaliate or in any way discriminate against an individual
25 with respect to hire, tenure, or any other term or condition of
26 employment because the individual has inquired about the provisions
27 of this act.

28 Sec. 23. (1) An individual aggrieved by a violation of this
29 act may do either of the following:

1 (a) File a complaint with the department.

2 (b) Bring a civil action for appropriate injunctive relief or
3 damages, or both, in the circuit court for the county where the
4 alleged violation occurred or where the person against whom the
5 civil complaint is filed resides or has his or her principal place
6 of business. Filing a complaint with the department under
7 subdivision (a) is not a prerequisite or a bar to bringing an
8 action under this subdivision.

9 (2) The department shall investigate a complaint it receives
10 under subsection (1). Upon completion of its investigation, the
11 department shall issue a written determination to the complainant
12 and alleged violator that states whether a violation occurred and
13 includes the information the department relied on in making its
14 determination.

15 Sec. 25. (1) This act does not do any of the following:

16 (a) Limit an employee's rights or protections otherwise
17 provided by law.

18 (b) Prohibit an employer from providing an employee with
19 greater rights or benefits including, but not limited to,
20 compensation and notice, than what is required under this act.

21 (c) Provide a cause of action to an employee for work schedule
22 changes necessary to accommodate that employee under either of the
23 following:

24 (i) The paid medical leave act, 2018 PA 338, MCL 408.961 to
25 408.974.

26 (ii) The federal family and medical leave act, 29 USC chapter
27 28.

28 (2) This act applies to a collective bargaining agreement that
29 is entered into, extended, or renewed on or after the effective

1 date of this act.

2 Sec. 27. The department may promulgate rules to implement this
3 act pursuant to the administrative procedures act of 1969, 1969 PA
4 306, MCL 24.201 to 24.328.