

SENATE No. 2208

The Commonwealth of Massachusetts

PRESENTED BY:

Patrick M. O'Connor

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the scheduling of employees.

PETITION OF:

NAME:

Patrick M. O'Connor

DISTRICT/ADDRESS:

Plymouth and Norfolk

SENATE No. 2208

By Mr. O'Connor, a petition (accompanied by bill, Senate, No. 2208) (subject to Joint Rule 12) of Patrick M. O'Connor for legislation relative to the scheduling of employees. Labor and Workforce Development.

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act relative to the scheduling of employees.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 148 of said chapter 149 of the General Laws in the 2012 Official
2 Edition, is hereby amended by striking out, in line 57 the words “the name of the employer, the
3 name of the employee, the day, month, year, number of hours worked, and hourly rate, and” and
4 inserting in place thereof the following words:- : (i) the name of the employer; (ii) the name of
5 the employee; (iii) the day, month, year, number of hours worked, and hourly rate; (iv) the day,
6 month, year, number of predictability pay hours paid, and the hourly predictability pay rate, as
7 required by section 148C of Chapter 149; and (v) .

8 SECTION 2. Section 15 of chapter 151 of the General Laws is hereby amended by
9 inserting after the words "of the hours worked each day and each week by each employee" in line
10 4 the following words:- , of the initial work schedule, pursuant to section 148C of Chapter 149.

11 SECTION 3. Chapter 149 of the General Laws is hereby further amended by inserting
12 after section 148B the following section:-

Section 148C. Just Scheduling Act. (a) For the purposes of this chapter, the following terms shall be defined as follows:

“Employee” shall mean any individual employed by an employer, excluding those employees contained in chapter 151, section 1A, subsection 3.

“Employer” shall include any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public employer.

“Events beyond an employer’s control” are factors outside of an employer’s reasonable control that would cause the business to close or to require different staffing than originally scheduled. These activities, include but are not limited to, acts of God, terrorism, loss of utilities or other services, failure of equipment, matters of public safety, traffic disruption, the addition or cancellation of an event, regulatory or other legal matters, acts or omissions of employees and weather.

“On-call shift” or “on-call hours” shall mean time that an employer requires an employee to be available to work, and to contact the employer or its designee or wait to be contacted by the employer or its designee to determine whether the employee must report to work at that time.

“Predictability Pay” shall mean payments to an employee, calculated on an hourly basis at the employee’s regular hourly rate, as compensation required for scheduling changes permitted under subsections e and f. An employer must pay an employee predictability pay, when required by this section, in addition to any wages earned for work performed by the employee. For purposes of this chapter, predictability pay shall be deemed to be penalty. Predictability pay shall not include tips, bonuses, commissions or any other form of compensation when not in direct conflict with Fair Labor Standards Act 29 US Code Chapter 8.

"Regular hourly rate" shall have the same meaning as defined under section 1A of chapter 151 and regulations promulgated thereunder.

"Shift" shall mean the consecutive hours an employer requires an employee to work or to be on-call to work, provided that a break of one hour or less shall not be considered an interruption of consecutive hours. If an employee intended to not work a scheduled shift for any reason, no predictability pay shall be due.

"Voluntary Call List" is an internal list or voluntary designation, kept in electronic or written form, for each employment location of employees who volunteer to take on an additional shift or shifts. If an employee is needed for a new voluntary shift, the employer will contact a qualified employee on the list to fill the shift. This is not a mandated request, it is voluntary, and will not result in any adverse employment action taken on the employee if he or she declines to work any additional hours offered. This list also allows for employees to voluntarily work "clopenings" (closing and opening a store the next morning). It shall not be a violation of this Act should an employee voluntarily agree to leave work sooner than a shift was scheduled to end upon request of an employer, but there shall be no adverse employment action taken on the employee should the employee elect to work the full scheduled shift.

"Work schedule" shall mean all of an employee's regular and on-call shifts during a consecutive 7-day period after any initial probationary or training period of up to 90 days.

(b) The employer shall post the 7 day schedule in a conspicuous location for each employee in writing at least 7 days prior to the first day of that work schedule. A "Writing" means a printed or printable communication in physical or electronic format including a

communication that is transmitted through electronic mail, text message or a computer system or is otherwise sent and stored electronically.

The employer must contact the employee to notify him or her of any change prior to the change taking effect as soon as reasonably practicable after the employer becomes aware of the need for a change in schedule. An employer cannot require an employee to work hours not included in that initial work schedule without consent by the employee. This does not apply to events beyond an employer's control as so defined.

(c) The employer shall post 7 days in advance of the start of each week in writing a schedule that includes the shifts of all current employees at that worksite, whether or not they are scheduled to work or be on call that week. The employer shall update that posted schedule within 24 hours of any change. The schedule must be posted in a place that is readily accessible and visible to all employees of the employer at that worksite. This does not apply to events beyond an employer's control as so defined.

(d) An employee has the right to request to change his or her work schedule, request to limit his or her availability to work particular hours, or otherwise provide input into his or her work schedule. It shall not be a violation if the employer denies a request by an employee to change or limit their hours or if this results in in any change in schedule or reduction in hours.

(e) An employer may subtract hours from the shift, cancel the shift, change the start or end time of a shift, or add hours of work, as permitted by subsection (b) of this section, provided that the employer pays the employee 1 hour of predictability pay, in addition to wages earned, for each shift that is changed, to be paid in the next regular pay period as permitted by this subsection.

(f) Within 24 hours of the first scheduled hour of the shift, an employer must pay one hour of predictability pay, in addition to wages earned, if the employer: (i) shortens a shift to three or fewer hours; (ii) changes the start and end time of a shift , but does not alter the total number of hours in that shift; or (iii) adds hours of work, as permitted by subsection (b) of this section.

(g) An employer is required to pay an employee for three hours or the number of hours the employee was scheduled to work, whichever is less, at the employee's regular hourly rate, regardless of the actual hours worked by the employee, on any day: (i) when an employee who is scheduled to work reports for their shift or (ii) the employee is notified within 24 hours of the start of any shift that the shift has been shortened or the employee is not required to report to work.

(h) An employee has the right to decline work hours that occur: (i) less than 10 hours after the end of the previous day's shift or (ii) during the 6 hours following the end of a shift that spans two days. This does not apply to employees from the voluntary call list or who otherwise volunteer to work all or part of any shift, nor does it apply to events beyond an employer's control.

(i) Predictability pay shall not apply to any shift changes made at the request of the employee, including employee-initiated requests to work hours other than those scheduled by the employer or requests to use sick leave, vacation time, personal days, or other leave policies offered by the employer, or as required by law, or if an employee intended to not be present for a shift or when an employer subtracts hours from an employee's work schedule for disciplinary reasons.

(j) Nothing in this subsection shall be construed to prevent an employer from allowing an employee to work in place of another employee who has been scheduled to work a particular shift as long as the change in schedule is mutually agreed upon by the employee. An employer shall not be subject to the requirements of predictability pay for such voluntary shift trades.

(k) The attorney general shall enforce this section and shall promulgate rules and regulations necessary for enforcement. The attorney general may obtain injunctive or declaratory relief for this purpose. A violation of this section shall be subject to paragraphs (1) and (2) of subsection (b) and subsection (c) of section 27C and section 150.

(l) Nothing in this section shall be construed: (i) to discourage or prohibit an employer from the adoption or retention of policies related to scheduling that are more beneficial to employees than those required herein; or (ii) as diminishing the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing policies that are more beneficial to an employee than required herein.

(m) This section shall preempt the applicability of any other law, regulation, requirement, policy, or standard that provides for scheduling policies that create more rights or extend other protections to employees.

SECTION 4. Section 148A of said chapter 149, as so appearing, is hereby amended by inserting after the word “chapter”, in line 3 the following words:- , including but not limited to section 148C.

SECTION 5. Section 150 of said chapter 149, as so appearing, is hereby amended by inserting after the word “148B”, in line 21 the following words:- , 148C.