

9274

I N A S S E M B L Y

February 10, 2016

Introduced by M. of A. ROZIC -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to employee work schedules

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Article 5 of the labor law is amended by adding a new title
2 2 to read as follows:

3 TITLE 2

4 SPECIAL REQUIREMENTS

5 SECTION 171. DEFINITIONS.

6 172. ADVANCED NOTICE REQUIREMENTS.

7 173. EXCHANGE OF SHIFTS.

8 174. PROHIBITED ACTS.

9 175. EXCEPTIONS.

10 176. ENFORCEMENT.

11 S 171. DEFINITIONS. AS USED IN THIS TITLE:

12 1. "EMPLOYER" SHALL MEAN ANY PERSON, CORPORATION, LIMITED LIABILITY
13 COMPANY, LIMITED LIABILITY PARTNERSHIP OR ASSOCIATION EMPLOYING FIVE
14 HUNDRED OR MORE FULL-TIME EMPLOYEES NATIONWIDE OR A PROPORTIONAL NUMBER
15 OF PART-TIME EMPLOYEES, WHO EMPLOYS A RETAIL EMPLOYEE, FOOD SERVICE
16 EMPLOYEE OR CLEANING EMPLOYEE.

17 2. "EMPLOYEE" SHALL MEAN AN INDIVIDUAL EMPLOYED AS A RETAIL EMPLOYEE,
18 FOOD SERVICE EMPLOYEE OR CLEANING EMPLOYEE BY AN EMPLOYER.

19 3. "RETAIL EMPLOYEE" SHALL MEAN ANY EMPLOYEE PRIMARILY ENGAGED IN THE
20 SALE OF ITEMS AT A RETAIL STORE ENGAGED IN THE SALE OF ITEMS TO CONSUM-
21 ERS.

22 4. "FOOD SERVICE EMPLOYEE" SHALL MEAN ANY EMPLOYEE PRIMARILY ENGAGED
23 IN THE SERVICE OF FOOD OR BEVERAGE TO GUESTS, PATRONS OR CUSTOMERS IN
24 THE HOTEL OR RESTAURANT INDUSTRY, INCLUDING BUT NOT LIMITED TO, WAIT
25 STAFF, BARTENDERS, CAPTAINS AND BUSING PERSONNEL; AND WHO REGULARLY
26 RECEIVES TIPS FROM SUCH GUESTS, PATRONS OR CUSTOMERS.

27 5. "CLEANING EMPLOYEE" SHALL MEAN ANY EMPLOYEE PRIMARILY ENGAGED IN
28 ACTIVITIES INVOLVING CLEANING IN A COMMERCIAL CONTEXT AT A COMMERCIAL OR

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 RESIDENTIAL SETTING INCLUDING, BUT NOT LIMITED TO, JANITORS, MAIDS,
2 HOUSEKEEPING CLEANERS AND BUILDING CLEANERS.

3 S 172. ADVANCED NOTICE REQUIREMENTS. 1. ON OR BEFORE THE FIRST DAY OF
4 EMPLOYMENT OF A RETAIL EMPLOYEE, FOOD SERVICE EMPLOYEE OR CLEANING
5 EMPLOYEE, THE EMPLOYER OR ITS DESIGNEE SHALL PROVIDE NOTICE TO SUCH
6 EMPLOYEE IN WRITING OF THE EMPLOYEE'S WORK SCHEDULE AND THE MINIMUM
7 NUMBER OF HOURS THE EMPLOYEE WILL BE ASSIGNED ON A MONTHLY BASIS. UPON
8 THE PROVISIONS OF SUCH NOTICE TO SUCH AN EMPLOYEE, THE EMPLOYER OR ITS
9 DESIGNEE SHALL OBTAIN FROM THE EMPLOYEE A SIGNED AND DATED WRITTEN
10 ACKNOWLEDGEMENT, IN ENGLISH AND IN THE PRIMARY LANGUAGE OF THE EMPLOYEE,
11 OF RECEIPT OF THE NOTICE, WHICH THE EMPLOYER SHALL PRESERVE AND MAINTAIN
12 FOR A PERIOD OF SIX YEARS.

13 2. ON OR BEFORE THE SEVENTH DAY AFTER THE EFFECTIVE DATE OF THIS
14 SECTION AND EVERY SEVEN DAYS THEREAFTER, EACH EMPLOYER OR ITS DESIGNEE
15 SHALL PROVIDE EACH EMPLOYEE WITH THE DAYS THAT THE EMPLOYEE HAS BEEN
16 ASSIGNED TO WORK AND THE HOURS OF WORK ON THOSE DAYS IN WRITING. SCHED-
17 ULING NOTICES SHALL ADDITIONALLY BE POSTED IN A CONSPICUOUS PLACE IN
18 EVERY WORKPLACE OF THE EMPLOYER AND MAY BE REQUESTED BY ELECTRONIC
19 MEANS.

20 3. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY DURING ANY PERIOD
21 WHERE REGULAR OPERATIONS OF THE EMPLOYER ARE SUSPENDED AS A RESULT OF
22 EVENTS BEYOND THE EMPLOYER'S CONTROL.

23 S 173. EXCHANGE OF SHIFTS. ANY EMPLOYEES WHO WORK FOR THE SAME EMPLOY-
24 ER IN THE SAME OR SUBSTANTIALLY SIMILAR LINE OF WORK MAY MUTUALLY AGREE
25 TO EXCHANGE WORK SCHEDULES BETWEEN THE TWO EMPLOYEES. FOR ANY CHANGE OF
26 SCHEDULE AS A RESULT OF THIS SECTION, THE EMPLOYER SHALL NOT BE REQUIRED
27 TO PROVIDE ANY NOTICE TO ANY OTHER EMPLOYEES PURSUANT TO SECTION ONE
28 HUNDRED SEVENTY-TWO OF THIS TITLE.

29 S 174. PROHIBITED ACTS. IT SHALL BE UNLAWFUL FOR ANY EMPLOYER TO:

30 1. INTERFERE WITH, RESTRAIN OR DENY THE EXERCISE OF, OR ATTEMPT TO
31 EXERCISE ANY RIGHTS PROVIDED TO AN EMPLOYEE BY THE PROVISIONS OF THIS
32 TITLE;

33 2. DISCHARGE, THREATEN TO DISCHARGE, DEMOTE, SUSPEND, REDUCE WORK
34 HOURS OF OR TAKE ANY OTHER ADVERSE EMPLOYMENT ACTION AGAINST ANY EMPLOY-
35 EE WHO EXERCISES OR ATTEMPTS TO EXERCISE ANY RIGHTS PROVIDED BY THIS
36 TITLE; OR

37 3. DISCHARGE OR DISCRIMINATE IN ANY OTHER MANNER AGAINST AN INDIVIDUAL
38 BECAUSE SUCH INDIVIDUAL HAS FILED ANY CHARGE, INSTITUTED ANY PROCEEDING,
39 PROVIDED ANY INFORMATION IN CONNECTION WITH AN INVESTIGATION, OR TESTI-
40 FIED OR IS ABOUT TO TESTIFY IN ANY PROCEEDING AS A RESULT OF THE
41 PROVISIONS OF THIS TITLE.

42 S 175. EXCEPTIONS. NOTHING IN THIS TITLE SHALL BE CONSTRUED AS PROHIB-
43 ITING OR CONFLICTING WITH ANY PROVISION OF LAW, OBLIGATION OR COLLECTIVE
44 BARGAINING AGREEMENT THAT IMPOSES INCREASED LEVELS OF PROTECTIONS FOR
45 EMPLOYEES.

46 S 176. ENFORCEMENT. 1. FOR EACH VIOLATION OF THIS TITLE BY AN EMPLOY-
47 ER, THE DEPARTMENT MAY ASSESS A CIVIL PENALTY NOT TO EXCEED FIFTY
48 DOLLARS.

49 2. IN ADDITION TO ANY PENALTY ASSESSED BY THE DEPARTMENT PURSUANT TO
50 SUBDIVISION ONE OF THIS SECTION, ANY EMPLOYEE, WHO IS NOT PROVIDED WITH
51 THE NOTICE REQUIRED BY SUBDIVISION ONE OF SECTION ONE HUNDRED
52 SEVENTY-TWO OF THIS TITLE ON HIS OR HER FIRST DAY OF EMPLOYMENT, SHALL
53 HAVE A PRIVATE RIGHT OF ACTION AGAINST HIS OR HER EMPLOYER FOR DAMAGES
54 EQUAL TO FIFTY DOLLARS FOR EACH WORK DAY, AFTER THE FIRST DAY OF EMPLOY-
55 MENT, DURING WHICH THE EMPLOYEE IS NOT PROVIDED WITH THE REQUIRED

1 NOTICE, IN AN AMOUNT IN THE AGGREGATE NOT TO EXCEED FIVE THOUSAND
2 DOLLARS, PLUS COURT COSTS AND ATTORNEY'S FEES.

3 3. IN ADDITION TO ANY PENALTY ASSESSED BY THE DEPARTMENT PURSUANT TO
4 SUBDIVISION ONE OF THIS SECTION, ANY EMPLOYEE, WHO DURING ANY MONTH IS
5 NOT SCHEDULED TO WORK THE MINIMUM HOURS OF WORK FOR THE MONTH AS STATED
6 IN THE NOTICE PROVIDED TO SUCH EMPLOYEE PURSUANT TO SUBDIVISION ONE OF
7 SECTION ONE HUNDRED SEVENTY-TWO OF THIS TITLE, SHALL HAVE A PRIVATE
8 RIGHT OF ACTION AGAINST HIS OR HER EMPLOYER FOR DAMAGES EQUAL TO THE
9 EMPLOYEE'S HOURLY PAY RATE MULTIPLIED BY THE NUMBER OF HOURS WHICH IS
10 THE RESULT OF SUBTRACTING THE HOURS THE EMPLOYEE ACTUALLY WORKED DURING
11 THE MONTH FROM SUCH EMPLOYEE'S STATED MINIMUM HOURS OF WORK FOR A MONTH,
12 PLUS COURT COSTS AND ATTORNEY'S FEES.

13 S 2. Severability. If any clause, sentence, paragraph, section, or
14 part of this act shall be adjudged by any court of competent jurisdic-
15 tion to be invalid, this judgment shall not affect, impair, or invali-
16 date the remainder thereof, but shall be confined in its operation to
17 the clause, sentence, paragraph, section, or part of this act directly
18 involved in the controversy in which the judgment shall have been
19 rendered.

20 S 3. This act shall take effect on the ninetieth day after it shall
21 have become a law.