

# STATE OF NEW YORK

3486

2017-2018 Regular Sessions

## IN SENATE

January 23, 2017

Introduced by Sen. PERALTA -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

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

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The labor law is amended by adding a new article 5-A to  
2 read as follows:

### ARTICLE 5-A

#### SCHEDULES THAT WORK ACT

##### Section 180. Short title.

##### 181. Definitions.

##### 182. Right to request and receive a flexible, predictable or stable work schedule.

##### 183. Requirements for reporting time pay, split shift pay, and advance notice of work schedules for retail, food service or cleaning employees.

##### 184. Prohibited acts.

##### 185. Civil action.

##### 186. Other legal requirements.

##### 187. Savings clause.

16 § 180. Short title. This article shall be known and may be cited as  
17 the "schedules that work act".

18 § 181. Definitions. As used in this article, the following terms shall  
19 have the following meanings:

##### 1. "Bona fide business reason" means:

21 (a) the identifiable burden of additional costs to an employer,  
22 including the cost of productivity loss, retraining or hiring employees,  
23 or transferring employees from one facility to another facility;

24 (b) a significant detrimental effect on the employer's ability to meet  
25 organizational needs or customer demand;

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

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1 (c) a significant inability of the employer, despite best efforts, to  
2 reorganize work among existing (as of the date of the reorganization)  
3 staff;

4 (d) a significant detrimental effect on business performance;

5 (e) insufficiency of work during the periods an employee proposes to  
6 work;

7 (f) the need to balance competing scheduling requests when it is not  
8 possible to grant all such requests without a significant detrimental  
9 effect on the employer's ability to meet organizational needs; or

10 (g) such other reason as may be specified by the commissioner.

11 2. "Career-related educational or training program" means an educa-  
12 tional or training program or program of study offered by a public,  
13 private, or nonprofit career and technical education school, institution  
14 of higher education, or other entity that provides academic education,  
15 career and technical education, or training (including remedial educa-  
16 tion or English as a second language, as appropriate), that is a program  
17 that leads to a recognized postsecondary credential and provides career  
18 awareness information.

19 3. "Caregiver" means an individual with the status of being a signif-  
20 icant provider of:

21 (a) ongoing care or education, including responsibility for securing  
22 the ongoing care or education, of a child; or

23 (b) ongoing care, including responsibility for securing the ongoing  
24 care, of:

25 (i) a person with a serious health condition who is in a family  
26 relationship with the individual; or

27 (ii) a parent of the individual, who is age sixty-five or older.

28 4. "Child" means a biological, adopted, or foster child, a stepchild,  
29 a legal ward, or a child of a person standing in loco parentis to that  
30 child, who is:

31 (a) under age eighteen; or

32 (b) age eighteen or older and incapable of self-care because of a  
33 mental or physical disability.

34 5. "Domestic partner" means the individual recognized as being in a  
35 relationship with an employee under any domestic partnership or civil  
36 union entered into pursuant to the laws of the United States or of any  
37 state, local or foreign jurisdiction, or registered as the domestic  
38 partner of the employee with any registry maintained by the employer of  
39 either party or any state, municipality, or foreign jurisdiction.

40 6. "Employee" means any person employed for hire by an employer in any  
41 employment.

42 7. "Employer" means a state agency, officer, or department, a unit of  
43 local government, a school district, an individual, a corporation, a  
44 partnership, an association, or a nonprofit organization employing fifty  
45 or more employees in the state of New York.

46 8. "Family relationship" means a relationship with:

47 (a) a child, spouse, domestic partner, parent, grandchild, grandpar-  
48 ent, sibling, or parent of a spouse or domestic partner; or

49 (b) any individual related to the employee involved by blood or affini-  
50 ty, whose close association with the employee is the equivalent of a  
51 family relationship described in paragraph (a) of this subdivision.

52 9. "Minimum number of expected work hours" means the minimum number of  
53 hours an employee will be assigned to work on a weekly or monthly basis.

54 10. "Nonexempt employee" means an employee who is not employed in a  
55 bona fide executive, administrative, or professional capacity, as

1 defined for purposes of section 213(a)(1) of the Fair Labor Standards  
2 Act of 1938 (29 U.S.C. 213(a)(1)).

3 11. "Part-time employee" means an individual who works fewer than  
4 thirty hours per week on average during any one-month period.

5 12. "Retail, food service, or cleaning employee" means an individual  
6 nonexempt employee who is employed in any of the following occupations,  
7 as described by the Bureau of Labor Statistics Standard Occupational  
8 Classification System (as in effect on the day before the effective date  
9 of this article):

10 (a) retail sales occupations consisting of occupations described in  
11 41-1010 and 41-2000, and all subdivisions thereof, of such System, which  
12 includes first-line supervisors of sales workers, cashiers, gaming  
13 change persons and booth cashiers, counter and rental clerks, parts  
14 salespersons, and retail salespersons.

15 (b) food preparation and serving related occupations as described in  
16 35-0000, and all subdivisions thereof, of such System, which includes  
17 supervisors of food preparation and serving workers, cooks and food  
18 preparation workers, food and beverage serving workers, and other food  
19 preparation and serving related workers.

20 (c) building cleaning occupations as described in 37-2011, 37-2012 and  
21 37-2019 of such System, which includes janitors and cleaners, maids and  
22 housekeeping cleaners, and building cleaning workers.

23 13. "Serious health condition" means an illness, injury, impairment,  
24 or physical or mental condition that involves:

25 (a) inpatient care in a hospital, hospice, or residential medical care  
26 facility; or

27 (b) continuing treatment by a health care provider.

28 14. "Split shift" means a schedule of daily hours in which the hours  
29 worked are not consecutive, except that:

30 (a) a schedule in which the total time out for meals does not exceed  
31 one hour shall not be treated as a split shift; and

32 (b) a schedule in which the break in the employee's work shift is  
33 requested by the employee shall not be treated as a split shift.

34 15. "Work schedule" means those days and times within a work period  
35 when an employee is required by an employer to perform the duties of the  
36 employee's employment for which the employee will receive compensation.

37 16. "Work schedule change" means any modification to an employee's  
38 work schedule, such as an addition or reduction of hours, cancellation  
39 of a shift, or a change in the date or time of a work shift, by an  
40 employer.

41 17. "Work shift" means the specific hours of the workday during which  
42 an employee works.

43 § 182. Right to request and receive a flexible, predictable or stable  
44 work schedule. 1. An employee may apply to the employee's employer to  
45 request a change in the terms and conditions of employment as they  
46 relate to:

47 (a) the number of hours the employee is required to work or be on call  
48 for work;

49 (b) the times when the employee is required to work or be on call for  
50 work;

51 (c) the location where the employee is required to work;

52 (d) the amount of notification the employee receives of work schedule  
53 assignments; and

54 (e) minimizing fluctuations in the number of hours the employee is  
55 scheduled to work on a daily, weekly, or monthly basis.

1 2. (a) If an employee applies to the employee's employer to request a  
2 change in the terms and conditions of employment as set forth in subdivi-  
3 vision one of this section, the employer shall engage in a timely, good  
4 faith interactive process with the employee that includes a discussion  
5 of potential schedule changes that would meet the employee's needs.

6 (b) Such process shall result in:

7 (i) either granting or denying the request;

8 (ii) in the event of a denial, considering alternatives to the  
9 proposed change that might meet the employee's needs and granting or  
10 denying a request for an alternative change in the terms and conditions  
11 of employment as set forth in subdivision one of this section; and

12 (iii) in the event of a denial, stating the reason for denial, includ-  
13 ing whether any such reason is a bona fide business reason.

14 (c) If information provided by the employee making a request under  
15 this section requires clarification, the employer shall explain what  
16 further information is needed and give the employee reasonable time to  
17 produce the information.

18 3. If an employee makes a request for a change in the terms and condi-  
19 tions of employment as set forth in subdivision one of this section  
20 because of a serious health condition of the employee, due to the  
21 employee's responsibilities as a caregiver, or due to the employee's  
22 enrollment in a career-related educational or training program, or if a  
23 part-time employee makes a request for such a change for a reason  
24 related to a second job, the employer shall grant the request, unless  
25 the employer has a bona fide business reason for denying the request.

26 4. If an employee makes a request for a change in the terms and condi-  
27 tions of employment as set forth in subdivision one of this section, for  
28 a reason other than those reasons set forth in subdivision three of this  
29 section, the employer may deny the request for any reason that is not  
30 unlawful. If the employer denies such a request, the employer shall  
31 provide the employee with the reason for the denial, including whether  
32 such reason is a bona fide business reason.

33 5. An employee may voluntarily agree with employee's employer to be  
34 contacted by employer when employee is needed to work but not on the  
35 employer's work schedule.

36 § 183. Requirements for reporting time pay, split shift pay, and  
37 advance notice of work schedules for retail, food service or cleaning  
38 employees. 1. An employer shall pay a retail, food service, or cleaning  
39 employee:

40 (a) for at least four hours at the regular rate of pay of the employee  
41 involved for each day on which the retail, food service, or cleaning  
42 employee reports for work, as required by the employer, but is given  
43 less than four hours of work, except that if the employee's scheduled  
44 hours for a day are less than four hours, such employee shall be paid  
45 for the scheduled hours of the employee involved for that day if given  
46 less than the scheduled hours of work; and

47 (b) for at least one hour at the regular rate of pay of the employee  
48 involved for each day the retail, food service, or cleaning employee is  
49 given specific instructions to contact the employer of the employee  
50 involved, or wait to be contacted by the employer, less than twenty-four  
51 hours in advance of the start of a potential work shift to determine  
52 whether the employee must report to work for such shift.

53 2. An employer shall pay a retail, food service, or cleaning employee  
54 for one additional hour at the employee's regular rate of pay for each  
55 day during which the employee works a split shift.

1 3. (a) On or before a new retail, food service, or cleaning employee's  
2 first day of work, the employer shall inform the employee in writing of  
3 the work schedule of the employee involved and the minimum number of  
4 expected work hours the employee will be assigned to work per month.

5 (b) Except as provided in paragraph (c) of this subdivision, if a  
6 retail, food service, or cleaning employee's work schedule changes from  
7 the work schedule of which the employee was informed pursuant to para-  
8 graph (a) of this subdivision, the employer shall provide the employee  
9 with the new work schedule of the employee involved not less than four-  
10 teen days before the first day of the new work schedule. If the expected  
11 minimum number of work hours that a retail, food service or cleaning  
12 employee will be assigned changes from the number of which the employee  
13 involved was informed pursuant to paragraph (a) of this subdivision, the  
14 employer shall also provide notification of that change, not less than  
15 fourteen days in advance of the first day this change will go into  
16 effect. Nothing in this paragraph shall be construed to prohibit an  
17 employer from providing greater advance notice of a retail, food service  
18 or cleaning employee's work schedule than is required under this subdi-  
19 vision.

20 (c) An employer may make work schedule changes as needed, including by  
21 offering additional hours of work to retail, food service or cleaning  
22 employees beyond those previously scheduled, but an employer shall be  
23 required to provide one extra hour of pay at the employee's regular rate  
24 for each shift that is changed with less than twenty-four hours' notice,  
25 except in the case of the need to schedule the employee due to the  
26 unforeseen unavailability of a retail, food service or cleaning employee  
27 previously scheduled to work that shift.

28 (d) The notifications required under paragraphs (a) and (b) of this  
29 subdivision shall be made to the employee involved in writing. Nothing  
30 in this paragraph shall be construed as prohibiting an employer from  
31 using any additional means of notifying a retail, food service or clean-  
32 ing employee of the work schedule of the employee involved.

33 (e) Every employer employing any retail, food service or cleaning  
34 employee shall post the schedule and keep it posted in a conspicuous  
35 place in every establishment where such employee is employed so as to  
36 permit the employee involved to observe readily a copy thereof. Avail-  
37 ability of that schedule by electronic means accessible by all retail,  
38 food service or cleaning employees of that employer shall be considered  
39 compliance with this paragraph.

40 (f) Nothing in this section shall be construed to prevent an employer  
41 from allowing a retail, food service or cleaning employee to work in  
42 place of another employee who has been scheduled to work a particular  
43 shift as long as the change in schedule is mutually agreed upon by the  
44 employees. An employer shall not be subject to the requirements of para-  
45 graph (b) or (c) of this subdivision for such voluntary shift trades.

46 4. Any pay provided to an employee pursuant to subdivisions one or two  
47 or paragraph (c) of subdivision three of this section shall be included  
48 in the employee's regular paycheck. The employer shall identify, in the  
49 corresponding written wage statement or pay stub, the total number of  
50 hours of additional pay provided for the pay period involved and whether  
51 the additional pay was due to the requirements of paragraph (a) of  
52 subdivision one of this section, the requirements of paragraph (b) of  
53 subdivision one of this section, the requirements of subdivision two of  
54 this section, or the requirements of paragraph (c) of subdivision three  
55 of this section.

1 5. The requirements in subdivisions one through three of this section  
2 shall not apply during periods when regular operations of the employer  
3 are suspended due to events beyond the employer's control.

4 § 184. Prohibited acts. 1. It shall be unlawful for any employer to  
5 interfere with, restrain, or deny the exercise or the attempt to exer-  
6 cise, any right of an employee as set forth in section one hundred  
7 eighty-two of this article or of a retail, food service or cleaning  
8 employee as set forth in section one hundred eighty-three of this arti-  
9 cle.

10 2. It shall be unlawful for any employer to discharge, threaten to  
11 discharge, demote, suspend, reduce work hours of, or take any other  
12 adverse employment action against any employee in retaliation for exer-  
13 cising the rights of an employee under this article or opposing any  
14 practice made unlawful by this article. For the purposes of section one  
15 hundred eighty-two of this article, such retaliation shall include  
16 taking an adverse employment action against any employee on the basis of  
17 that employee's eligibility or perceived eligibility to request or  
18 receive a change in the terms and conditions of employment, as described  
19 in such section, on the basis of a reason set forth in subdivision three  
20 of such section.

21 3. It shall be unlawful for any person to discharge or in any other  
22 manner discriminate against any individual because such individual:

23 (a) has filed any charge, or has instituted or caused to be instituted  
24 any proceeding, under or related to this article;

25 (b) has given or is about to give, any information in connection with  
26 any inquiry or proceeding relating to any right provided under this  
27 article; or

28 (c) has testified, or is about to testify, in any inquiry or proceed-  
29 ing relating to any right provided under this article.

30 § 185. Civil action. 1. Any person denied benefits due under this  
31 article or aggrieved by an action made unlawful by this article shall  
32 have a cause of action in any court of appropriate jurisdiction for  
33 damages, including any wages, salary, employment benefits or other  
34 compensation denied or lost to such individual by reasons of the  
35 violation and/or any actual monetary losses sustained by the individual  
36 as a direct result of the violation, as well as interest on such amount  
37 calculated at the prevailing rate, and such equitable relief as may be  
38 appropriate, including employment, reinstatement, and promotion, togeth-  
39 er with costs and such reasonable attorneys' fees as may be allowed by  
40 the court.

41 2. On behalf of any employee denied benefits due under this article or  
42 aggrieved by an action made unlawful by this article, the commissioner  
43 may bring a legal action necessary to collect damages due to the  
44 violation, and the employer shall be required to pay such damages.

45 3. Notwithstanding any other provision of law, an action to recover  
46 upon liability imposed by this article must be commenced within two  
47 years.

48 § 186. Other legal requirements. 1. This article provides minimum  
49 requirements and shall not be construed to preempt, limit, or otherwise  
50 affect the applicability of any other law, regulation, requirement,  
51 policy, or standard that provides for greater rights for employees than  
52 are required in this article.

53 2. Nothing in this article shall be construed as creating or imposing  
54 any requirement in conflict with any federal or state law, rule or regu-  
55 lation, nor shall anything in this article be construed to diminish or

1 impair the rights of an employee or employer under any valid collective  
2 bargaining agreement.

3 § 187. Savings clause. If any provision of this article or the appli-  
4 cation thereof to any person, employer, occupation or circumstance is  
5 held invalid, the remainder of the article and the application of such  
6 provision to other persons, employees, occupations, or circumstances  
7 shall not be affected thereby.

8 § 2. This act shall take effect on the one hundred eightieth day after  
9 it shall have become a law. Effective immediately, the addition, amend-  
10 ment and/or repeal of any rules or regulations necessary for the imple-  
11 mentation of this act on its effective date is authorized to be made on  
12 or before such date.