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:

Section 1. The labor law is amended by adding a new article 5-A to 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.

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

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

1. "Bona fide business reason" means:

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

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

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

LBD02667-01-7

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

(d) a significant detrimental effect on business performance;

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

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

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

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

3. "Caregiver" means an individual with the status of being a significant provider of:

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

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

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

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

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

(a) under age eighteen; or

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

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

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

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

8. "Family relationship" means a relationship with:

(a) a child, spouse, domestic partner, parent, grandchild, grandparent, sibling, or parent of a spouse or domestic partner; or

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

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

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

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

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

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

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

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

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

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

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

(b) continuing treatment by a health care provider.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Such process shall result in:

(i) either granting or denying the request;

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

(iii) in the event of a denial, stating the reason for denial, including whether any such reason is a bona fide business reason.

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

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

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

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

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

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

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

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

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

(b) Except as provided in paragraph (c) of this subdivision, if a retail, food service, or cleaning employee's work schedule changes from the work schedule of which the employee was informed pursuant to paragraph (a) of this subdivision, the employer shall provide the employee with the new work schedule of the employee involved not less than fourteen days before the first day of the new work schedule. If the expected minimum number of work hours that a retail, food service or cleaning employee will be assigned changes from the number of which the employee involved was informed pursuant to paragraph (a) of this subdivision, the employer shall also provide notification of that change, not less than fourteen days in advance of the first day this change will go into effect. Nothing in this paragraph shall be construed to prohibit an employer from providing greater advance notice of a retail, food service or cleaning employee's work schedule than is required under this subdivision.

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

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

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

(f) Nothing in this section shall be construed to prevent an employer from allowing a retail, food service or cleaning 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 employees. An employer shall not be subject to the requirements of paragraph (b) or (c) of this subdivision for such voluntary shift trades.

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

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

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

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

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

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

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

(c) has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this article.

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

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

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

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

2. Nothing in this article shall be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation, nor shall anything in this article be construed to diminish or

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

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

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rules or regulations necessary for the implementation of this act on its effective date is authorized to be made on or before such date.