

# STATE OF NEW YORK

347

2017-2018 Regular Sessions

## IN SENATE

(Prefiled)

January 4, 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 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:

### TITLE 2

#### SPECIAL REQUIREMENTS

#### Section 171. Definitions.

172. Advanced notice requirements.

173. Exchange of shifts.

174. Prohibited acts.

175. Exceptions.

176. Enforcement.

#### § 171. Definitions. As used in this title:

11 1. "Employer" shall mean any person, corporation, limited liability  
12 company, limited liability partnership or association employing five  
13 hundred or more full-time employees nationwide or a proportional number  
14 of part-time employees, who employs a retail employee, food service  
15 employee or cleaning employee.

16 2. "Employee" shall mean an individual employed as a retail employee,  
17 food service employee or cleaning employee by an employer.

18 3. "Retail employee" shall mean any employee primarily engaged in the  
19 sale of items at a retail store engaged in the sale of items to consum-  
20 ers.

21 4. "Food service employee" shall mean any employee primarily engaged  
22 in the service of food or beverage to guests, patrons or customers in  
23 the hotel or restaurant industry, including but not limited to, wait  
24

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

LBD00157-01-7

1 staff, bartenders, captains and busing personnel; and who regularly  
2 receives tips from such guests, patrons or customers.

3 5. "Cleaning employee" shall mean any employee primarily engaged in  
4 activities involving cleaning in a commercial context at a commercial or  
5 residential setting including, but not limited to, janitors, maids,  
6 housekeeping cleaners and building cleaners.

7 § 172. Advanced notice requirements. 1. On or before the first day of  
8 employment of a retail employee, food service employee or cleaning  
9 employee, the employer or its designee shall provide notice to such  
10 employee in writing of the employee's work schedule and the minimum  
11 number of hours the employee will be assigned on a monthly basis. Upon  
12 the provisions of such notice to such an employee, the employer or its  
13 designee shall obtain from the employee a signed and dated written  
14 acknowledgement, in English and in the primary language of the employee,  
15 of receipt of the notice, which the employer shall preserve and maintain  
16 for a period of six years.

17 2. On or before the seventh day after the effective date of this  
18 section and every seven days thereafter, each employer or its designee  
19 shall provide each employee with the days that the employee has been  
20 assigned to work and the hours of work on those days in writing. Sched-  
21 uling notices shall additionally be posted in a conspicuous place in  
22 every workplace of the employer and may be requested by electronic  
23 means.

24 3. The provisions of this section shall not apply during any period  
25 where regular operations of the employer are suspended as a result of  
26 events beyond the employer's control.

27 § 173. Exchange of shifts. Any employees who work for the same employ-  
28 er in the same or substantially similar line of work may mutually agree  
29 to exchange work schedules between the two employees. For any change of  
30 schedule as a result of this section, the employer shall not be required  
31 to provide any notice to any other employees pursuant to section one  
32 hundred seventy-two of this title.

33 § 174. Prohibited acts. It shall be unlawful for any employer to:

34 1. interfere with, restrain or deny the exercise of, or attempt to  
35 exercise any rights provided to an employee by the provisions of this  
36 title;

37 2. discharge, threaten to discharge, demote, suspend, reduce work  
38 hours of or take any other adverse employment action against any employ-  
39 ee who exercises or attempts to exercise any rights provided by this  
40 title; or

41 3. discharge or discriminate in any other manner against an individual  
42 because such individual has filed any charge, instituted any proceeding,  
43 provided any information in connection with an investigation, or testi-  
44 fied or is about to testify in any proceeding as a result of the  
45 provisions of this title.

46 § 175. Exceptions. Nothing in this title shall be construed as prohib-  
47 iting or conflicting with any provision of law, obligation or collective  
48 bargaining agreement that imposes increased levels of protections for  
49 employees.

50 § 176. Enforcement. 1. For each violation of this title by an employ-  
51 er, the department may assess a civil penalty not to exceed fifty  
52 dollars.

53 2. In addition to any penalty assessed by the department pursuant to  
54 subdivision one of this section, any employee, who is not provided with  
55 the notice required by subdivision one of section one hundred seventy-  
56 two of this title on his or her first day of employment, shall have a

1 private right of action against his or her employer for damages equal to  
2 fifty dollars for each work day, after the first day of employment,  
3 during which the employee is not provided with the required notice, in  
4 an amount in the aggregate not to exceed five thousand dollars, plus  
5 court costs and attorney's fees.

6 3. In addition to any penalty assessed by the department pursuant to  
7 subdivision one of this section, any employee, who during any month is  
8 not scheduled to work the minimum hours of work for the month as stated  
9 in the notice provided to such employee pursuant to subdivision one of  
10 section one hundred seventy-two of this title, shall have a private  
11 right of action against his or her employer for damages equal to the  
12 employee's hourly pay rate multiplied by the number of hours which is  
13 the result of subtracting the hours the employee actually worked during  
14 the month from such employee's stated minimum hours of work for a month,  
15 plus court costs and attorney's fees.

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

23 § 3. This act shall take effect on the ninetieth day after it shall  
24 have become a law.