

HOUSE No. 1708

The Commonwealth of Massachusetts

PRESENTED BY:

Sean Garballey

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 establishing just schedules for employees.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Barbara L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>

HOUSE No. 1708

By Mr. Garballey of Arlington, a petition (accompanied by bill, House, No. 1708) of Sean Garballey and others establishing schedules for employees. Labor and Workforce Development.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act establishing just schedules for 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 and all subsequent revisions to the work
11 schedule, as required by section 148C of Chapter 149.

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

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

16

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

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

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

24 “Predictability Pay” shall mean payments to an employee, calculated on an hourly basis
25 at the employee’s regular hourly rate, as compensation required for scheduling changes
26 permitted under subsections e and f. An employer must pay an employee predictability pay,
27 when required by this section, in addition to any wages earned for work performed by the
28 employee. For purposes of this chapter, predictability pay shall be deemed to be wages,
29 including but not limited to section 150, 27(c), and 148(a).

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

32 “Shift” shall mean the consecutive hours an employer requires an employee to work or to
33 be on-call to work, provided that a break of one hour or less shall not be considered an
34 interruption of consecutive hours.

35 “Work schedule” shall mean all of an employee’s regular and on-call shifts during a
36 consecutive 7-day period.

37 (b) The employer shall give each employee his or her individual initial work schedule in
38 writing at least 21 days prior to the first day of that work schedule. The employer must contact
39 the employee to notify him or her of any change prior to the change taking effect and must
40 provide the employee with a revised written work schedule reflecting any changes within 24
41 hours of making the change. An employer cannot require an employee to work hours not
42 included in that initial work schedule without consent in writing by the employee. On or before
43 the commencement of employment, the employer shall provide the employee with a written
44 work schedule for the employee’s first 21 days. An employee’s work schedule must begin on
45 the same day of the week each week, unless the employer provides 21 days advance written
46 notice of a change in the start day of the work schedule.

47 (c) The employer shall post 21 days in advance of the start of each week a written
48 schedule that includes the shifts of all current employees at that worksite, whether or not they are
49 scheduled to work or be on call that week. The employer shall update that posted schedule
50 within 24 hours of any change. The schedule must be posted in a place that is readily accessible
51 and visible to all employees of the employer at that worksite.

52 (d) An employee has the right to request to change his or her work schedule, request to
53 limit his or her availability to work particular hours, or otherwise provide input into his or her
54 work schedule.

55 (e) Less than 21 days and more than 24 hours before the first scheduled hour of a shift, an
56 employer may subtract hours from the shift, cancel the shift, change the start or end time of a

57 shift, or add hours of work, as permitted by subsection (b) of this section, provided that the
58 employer pays the employee 1 hour of predictability pay, in addition to wages earned, for each
59 shift that is changed, as permitted by this subsection.

60 (f) Within 24 hours of the first scheduled hour of the shift, an employer must pay 1 hour
61 of predictability pay, in addition to wages earned, if the employer: (i) shortens a shift to 4 or
62 more hours; (ii) changes the start and end time of a shift, but does not alter the total number of
63 hours in that shift; or (iii) adds hours of work, as permitted by subsection (b) of this section.

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

69 (h) An employee has the right to decline work hours that occur: (i) less than 11 hours
70 after the end of the previous day's shift or (ii) during the 11 hours following the end of a shift
71 that spans two days. An employer must compensate an employee at one-and-a-half times the
72 employee's regular hourly rate, as defined in section 1A of chapter 151 and regulations
73 promulgated thereunder, for any such hours worked.

74 (i) The provisions of subsections (e) and (f) shall not apply to any shift changes made at
75 the request of the employee, including employee-initiated requests to work hours other than
76 those scheduled by the employer or requests to use sick leave, vacation time, personal days, or
77 other leave policies offered by the employer, or as required by law.

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

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

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

91 (m) This section provides minimum requirements pertaining to scheduling and shall not
92 be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation,
93 requirement, policy, or standard that provides for scheduling policies that create more rights or
94 extend other protections to employees.

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

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