

# House Bill 3028

Sponsored by Representative CLEM

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Authorizes employee of employer that employs more than 1.3 million employees nationwide to request flexible or predictable work schedule. Requires employer to engage in interactive process with employee to attempt to establish mutually acceptable work schedule. Requires employer to provide alternate work schedule in certain cases.

Establishes unlawful employment practice of discharging or retaliating against employee who requests or discusses flexible or predictable work schedule or files complaint related to work scheduling.

Requires employer to pay employee additional compensation for certain shift changes or for being required to contact employer to determine whether employee is to report for scheduled shift.

## A BILL FOR AN ACT

1  
2 Relating to scheduling rights for employee of large employer; creating new provisions; and amending  
3 ORS 653.060.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Sections 2 and 3 of this 2017 Act are added to and made a part of ORS 653.010**  
6 **to 653.261.**

7 **SECTION 2. (1) As used in this section:**

8 **(a) "Bona fide business reason" means:**

9 **(A) Substantial cost to the employer, including the cost of lost productivity and expenses**  
10 **incurred in hiring additional employees or retraining current employees and in transferring**  
11 **an employee from one location to another;**

12 **(B) A detrimental effect on the ability of the employer to meet organization needs or**  
13 **customer demands;**

14 **(C) An inability to reorganize work among existing employees;**

15 **(D) Lack of work during the periods the employee has requested to work;**

16 **(E) A need to meet scheduling requests from more than one employee that, if granted,**  
17 **would result in a detrimental effect on the business; and**

18 **(F) Any reason specified by the Commissioner of the Bureau of Labor and Industries by**  
19 **rule.**

20 **(b) "Career-related educational or training program" means:**

21 **(A) An educational or training program;**

22 **(B) A program of study offered by a public, private or nonprofit career school, an insti-**  
23 **tution of higher education or another entity that provides academic, career or technical ed-**  
24 **ucation; or**

25 **(C) Training that leads to a post-secondary credential.**

26 **(c) "Employer" means an employer, other than the federal government, that employs**  
27 **more than 1.3 million employees nationwide.**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (d) "Family member" has the meaning given that term in ORS 659A.150.

2 (e) "Interactive process" means a timely, good faith process that includes a discussion  
3 between the employer and the employee, and that may include the proposal of alternatives  
4 by the employee and the employer, in an attempt to arrive at a mutually beneficial ar-  
5 rangement for a schedule that meets the needs of the employee and the employer.

6 (f) "Serious health condition" has the meaning given that term in ORS 659A.150.

7 (g) "Work schedule" means the days and times that an employee is required by an em-  
8 ployer to perform the duties for which the employee will receive compensation.

9 (h) "Work schedule change" means any modification to an element of an employee's work  
10 schedule. Elements of an employee's work schedule include, but are not limited to, the fol-  
11 lowing:

12 (A) The starting or ending time of an employee's work day or work shift.

13 (B) A part-time employment arrangement.

14 (C) A job sharing arrangement.

15 (D) The ability to work from home.

16 (E) A telecommuting arrangement.

17 (F) Work location.

18 (G) Work duties.

19 (2) When an employer hires an employee, the employer shall provide the employee with  
20 a written work schedule that includes the times and the number of hours the employee is  
21 scheduled to work.

22 (3)(a) An employee may request a flexible or predictable work schedule from the  
23 employee's employer.

24 (b) If presented with a request from an employee for a flexible or predictable work  
25 schedule, the employer shall engage in an interactive process.

26 (c) The employer shall notify the employee in writing of the employer's decision to grant  
27 or deny the employee's request for a flexible or predictable work schedule. If the request is  
28 completely or partially denied, the written notification must include an explanation of the  
29 reason for the denial.

30 (d) The employer is not obligated to provide an alternate work schedule for the employee  
31 after engaging in the interactive process. However, unless the employer has a bona fide  
32 business reason not to grant the employee's request for a flexible or predictable work  
33 schedule, the employer shall grant the request if the request is based on:

34 (A) A serious health condition of the employee;

35 (B) The employee's caregiving responsibilities for a family member;

36 (C) A second job of the employee; or

37 (D) The employee's participation in a career-related educational or training program.

38 (4) An employer shall post in a location that is accessible and visible to all employees at  
39 a work location a physical copy of the work schedules of all employees at the work location.  
40 The posted schedules must include all of the employer's employees at the work location, re-  
41 gardless of the specific hours a particular employee is scheduled to work, and must be up-  
42 dated as soon as practicable after work schedule changes are made.

43 **SECTION 3.** (1)(a) If an employee scheduled to work a work shift of at least four hours  
44 reports for work as required by an employer and is given less than four hours of work, the  
45 employer shall pay the employee for four hours at the employee's regular rate of pay, re-

1 **ardless of the hours actually worked.**

2 **(b) If an employee scheduled to work a work shift of less than four hours reports for**  
 3 **work as required by an employer and is given less than the scheduled hours of work, the**  
 4 **employer shall pay the employee at the employee’s regular rate of pay for the number of**  
 5 **hours that the employee was scheduled to work, regardless of the hours actually worked.**

6 **(2)(a) Information about wages paid in accordance with this section must be included**  
 7 **with the information required to be provided to employees under ORS 652.610. This informa-**  
 8 **tion must include the total number of hours for which wages were paid in accordance with**  
 9 **this section, which must be identified as reporting time wages.**

10 **(b) The Commissioner of the Bureau of Labor and Industries may adopt by rule additional**  
 11 **requirements for notification or inclusion of additional information for employees.**

12 **(3) Subsection (1) of this section does not apply if circumstances beyond the control of**  
 13 **the employer prevent the employee from performing the work the employee was scheduled**  
 14 **to perform.**

15 **SECTION 4. (1) As used in this section, “work schedule” and “work schedule change”**  
 16 **have the meanings given those terms in section 2 of this 2017 Act.**

17 **(2)(a) After an employer has provided an employee with an initial work schedule as re-**  
 18 **quired under section 2 of this 2017 Act, the employer must provide the employee with notice**  
 19 **in writing of a work schedule change at least 21 days prior to the first day the new work**  
 20 **schedule begins.**

21 **(b) If the employer changes the employee’s work schedule after providing notice under**  
 22 **this subsection, the employer must notify the employee of the subsequent change and of the**  
 23 **new work schedule within 24 hours of making the change.**

24 **(3)(a) After an employee has been provided written notification of the employee’s work**  
 25 **schedule, an employer may change a work shift of the employee less than 21 days but at least**  
 26 **24 hours before the changed shift is to begin only if the employer compensates the employee**  
 27 **for one hour of work at the employee’s regular rate of pay for each shift changed, in addition**  
 28 **to the compensation owed to the employee for the hours actually worked.**

29 **(b) After an employee has been provided written notification of the employee’s work**  
 30 **schedule, an employer may change a work shift of the employee with less than 24 hours’**  
 31 **notice only if the employer compensates the employee for four hours of work at the**  
 32 **employee’s regular rate of pay for each shift changed, in addition to the compensation owed**  
 33 **to the employee for the hours actually worked.**

34 **(4) Work shift changes for which additional compensation must be paid under this section**  
 35 **include, but are not limited to:**

- 36 **(a) Shortening the duration of a work shift;**
- 37 **(b) Changing the starting or ending time of a work shift; and**
- 38 **(c) Increasing the duration of a work shift.**

39 **(5)(a) An employer shall pay an employee for four hours at the employee’s regular rate**  
 40 **of pay, in addition to the compensation owed to the employee for the hours actually worked,**  
 41 **if:**

42 **(A) The employer requires the employee to be available to report to work immediately**  
 43 **upon notification from the employer;**

44 **(B) The employee is required to contact the employer within a specified period prior to**  
 45 **reporting to work for a scheduled work shift to ascertain whether the employee is required**

1 to report for work for that work shift; or

2 (C) An employee is required to work a work shift in one 24-hour period in which the  
3 hours worked are not consecutive. For purposes of this subparagraph, a work break of less  
4 than one hour is not an interruption of consecutive hours of the work shift.

5 (b) An employer shall pay an employee at the employee's regular rate of pay for each  
6 hour the employee is required to be available to receive notification to report to work, or for  
7 one hour at the employee's regular rate of pay if the employee must contact the employer  
8 to determine whether the employee is required to report to work.

9 (6) This section does not apply to a work shift change made at the request of an em-  
10 ployee, including, but not limited to, a request:

11 (a) To work a work shift other than the shift scheduled by the employer;

12 (b) To use sick leave, vacation leave, personal days off or other leave to which the em-  
13 ployee is entitled under a policy of the employer; or

14 (c) To use leave required by law.

15 (7) This section does not apply to a work shift change that results from an employee  
16 working a shift in place of another employee, if the shift change is agreed to by both em-  
17 ployees.

18 (8) An employer may not require an employee to search for or find a replacement em-  
19 ployee to work any hours of the employee's work schedule that the employee is unable to  
20 work.

21 **SECTION 5.** ORS 653.060 is amended to read:

22 653.060. (1) An employer may not discharge or in any other manner discriminate against an  
23 employee because:

24 (a) The employee has made a complaint that the employee has not been paid wages in accord-  
25 ance with ORS 653.010 to 653.261.

26 (b) The employee has caused to be instituted or is about to cause to be instituted any pro-  
27 ceedings under or related to ORS 653.010 to 653.261.

28 (c) The employee has testified or is about to testify in any such proceedings.

29 (d) **The employee has requested or discussed a flexible or predictable work schedule or a**  
30 **work schedule change under section 2 of this 2017 Act or has made a complaint that the**  
31 **employer has violated the provisions of section 2, 3 or 4 of this 2017 Act.**

32 (2) A violation of this section is an unlawful employment practice under ORS chapter 659A. A  
33 person unlawfully discriminated against under this section may file a complaint under ORS 659A.820  
34 with the Commissioner of the Bureau of Labor and Industries.

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