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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1436 Session of  
2019

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BRIGGS, VITALI, COMITTA, WARREN, KULIK AND PASHINSKI,  
MAY 8, 2019

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REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, MAY 8, 2019

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AN ACT

1 Providing for fair workweek employment standards and for powers  
2 and duties of the Department of Labor and Industry; and  
3 imposing penalties.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Fair Workweek  
8 Employment Standards Act.

9 Section 2. Definitions.

10 The following words and phrases when used in this act shall  
11 have the meanings given to them in this section unless the  
12 context clearly indicates otherwise:

13 "Chain." A set of establishments that do business under the  
14 same trade name or service mark and that are characterized by  
15 standardized options for decor, marketing, packaging, products

1 and services, regardless of the type of ownership of each  
2 individual establishment.

3 "Covered employer." A retail establishment, hospitality  
4 establishment or food services establishment that, worldwide,  
5 employs 250 or more employees and has 20 or more locations  
6 regardless of where the employees perform work, including, but  
7 not limited to, chain establishments or franchises associated  
8 with a franchisor or network of franchises that employ more than  
9 250 employees in aggregate. The term includes an individual,  
10 partnership, association, corporation or business trust or any  
11 person or group of persons, or a successor of such, that employs  
12 another person in a retail establishment, hospitality  
13 establishment or food services establishment, including a person  
14 acting directly or indirectly in the interest of the employer in  
15 relation to the employee.

16 "Department." The Department of Labor and Industry of the  
17 Commonwealth.

18 "Employee." An individual employed or permitted to work at  
19 or for a covered employer within the geographic boundaries of  
20 this Commonwealth who is required under Federal or State law to  
21 be paid at an overtime rate for hours in excess of a maximum  
22 number per workweek, including, but not limited to, full-time  
23 employees, part-time employees and seasonal and temporary  
24 workers and whose job duties involve the provision of retail  
25 trade services, food services or hospitality services at or for  
26 a covered employer.

27 "Food services establishment." A food services contractor,  
28 caterer, mobile food service, drinking place, full-service  
29 restaurant, limited-service restaurant, cafeteria, grill buffet,  
30 buffet or snack and nonalcoholic beverage bar, as defined under

1 the 2017 NAICS 722.

2 "Hospitality establishment." A hotel or motel as defined  
3 under the 2017 NAICS 721110 or other classification.

4 "NAICS." The North American Industry Classification System.

5 "On-call shift." Any time that a covered employer requires  
6 an employee to be available to work, or to contact the covered  
7 employer or the covered employer's designee or wait to be  
8 contacted by the covered employer or its designee, to determine  
9 whether the employee must report to work at that time.

10 "Posted work schedule." The written work schedule that a  
11 covered employer is required to provide to employees under  
12 section 3(c) and post under section 3(d).

13 "Retail establishment." The fixed point-of-sale location of  
14 a retail business as defined under the 2017 NAICS 441 through  
15 448 and 451 through 454.

16 "Secretary." The Secretary of Labor and Industry of the  
17 Commonwealth.

18 "Service mark." As defined in 54 Pa.C.S. § 1102 (relating to  
19 definitions).

20 "Shift." The consecutive hours a covered employer requires  
21 an employee to work or to be on call to work, provided that  
22 breaks totaling two hours or less may not be considered an  
23 interruption of consecutive hours.

24 "Successor." A person to whom a covered employer that quits,  
25 sells out, exchanges or disposes of a business sells or  
26 otherwise conveys in bulk and not in the ordinary course of the  
27 covered employer's business, a major part of the property,  
28 whether real or personal, tangible or intangible, of the covered  
29 employer's business.

30 "Ticketed event." A sporting, entertainment, civic,

1 charitable or other event that requires a ticket for admission.  
2 The ticket may be electronic, physical or a name on a list held  
3 by the event organizer.

4 "Trade name." As defined in 54 Pa.C.S. § 1102.

5 "Work schedule." All of an employee's shifts and on-call  
6 shifts, including specific start and end times for each shift,  
7 during a workweek.

8 "Workweek." A period of seven consecutive days beginning on  
9 a designated day.

10 "Written communication." Communication by print or  
11 electronic means, including e-mail, text messages, use of  
12 scheduling applications or other forms of communication that can  
13 be saved in their original format.

14 Section 3. Advance notice of work schedules.

15 (a) General rule.--Upon hiring an employee, a covered  
16 employer shall provide the employee with a written, good faith  
17 estimate of the employee's work schedule. The covered employer  
18 shall revise the good faith estimate when there is a significant  
19 change to the employee's work schedule due to changes in the  
20 employee's availability or to the covered employer's business  
21 needs. The good faith estimate is not a binding contractual  
22 offer binding the covered employer. An estimate made without a  
23 good faith basis shall be a violation of this section. The good  
24 faith estimate shall contain:

25 (1) The average number of work hours the employee can  
26 expect to work each week over a typical 90-day period.

27 (2) Whether the employee can expect to work any on-call  
28 shifts.

29 (3) A subset of days and a subset of times or shifts  
30 that the employee can typically expect to work or days of the

1 week and times or shifts on which the employee will not be  
2 scheduled to work.

3 (b) Work schedule requests.--At the time of hire and during  
4 employment, an employee has the right to make work schedule  
5 requests. A covered employer may grant or deny the request for  
6 any reason that is not unlawful. The work schedule requests may  
7 include, but are not limited to:

8 (1) Requests not to be scheduled for work shifts during  
9 certain days or times or at certain locations.

10 (2) Requests not to work on-call shifts.

11 (3) Requests for certain hours, days or locations of  
12 work.

13 (4) Requests for more or fewer work hours.

14 (c) Written work schedule.--At the commencement of  
15 employment, a covered employer shall provide an employee with a  
16 written work schedule that runs through the last date of the  
17 currently posted schedule. Thereafter, a covered employer shall  
18 provide advanced written notice of work hours as provided under  
19 subsection (d). Nothing under this section shall be construed to  
20 prohibit a covered employer from providing greater advance  
21 notice of employees' work schedules and changes in schedules as  
22 required by this section.

23 (d) Advanced notice.--Written notice of the work schedule  
24 shall be provided in a conspicuous and accessible location where  
25 employee notices are customarily posted. If a covered employer  
26 posts the notice in electronic format, all employees in the  
27 workplace shall have access to the notice onsite. The posted  
28 work schedule shall include the employees' shifts at that work  
29 site, whether or not employees are scheduled to work or be on  
30 call, and shall be posted no later than 14 days before the first

1 day of the new schedule beginning January 1, 2020.

2 (e) Changes to work schedule.--If the covered employer  
3 requests changes to the written work schedule after the advanced  
4 notice required under subsection (d) has been posted, the  
5 following shall apply:

6 (1) The covered employer shall provide the employee with  
7 timely notice of the change by in-person conversation,  
8 telephone call, e-mail, text message or other accessible  
9 electronic or written format.

10 (2) The employee may decline to work any shifts not  
11 included in the employee's written work schedule. If the  
12 employee voluntarily consents to work the hours, the consent  
13 shall be recorded by written communication. A written  
14 communication of an employee's desire to work shifts made  
15 available under section 6 shall constitute written consent.

16 Section 4. Compensation for changed work schedules.

17 (a) General rule.--For each covered employer-initiated  
18 change to the posted work schedule that occurs after the  
19 advanced notice required under section 3(d) has been posted, a  
20 covered employer shall pay an employee predictability pay at the  
21 following rates, in addition to the employee's regular pay for  
22 hours actually worked by the employee:

23 (1) One hour at the employee's regular rate of pay when  
24 the covered employer adds time to a work shift or changes the  
25 date, time or location of a work shift, with no loss of  
26 hours.

27 (2) No less than one-half of the employee's regular rate  
28 of pay per hour for any scheduled hours the employee does not  
29 work for the following reasons:

30 (i) hours are subtracted from a regular or on-call

1 shift; or

2 (ii) a regular or on-call shift is canceled.

3 (3) No less than two-thirds of the employee's regular  
4 rate of pay per hour if a regular or on-call shift is  
5 canceled or reduced two days or less prior to the start of  
6 the shift.

7 (b) Exception.--A covered employer is not required to pay  
8 additional compensation under subsection (a) to an employee  
9 under this section or obtain written consent under section 3(d)  
10 if:

11 (1) An employee requests a shift change by written  
12 communication, including, but not limited to, voluntary  
13 additions or subtractions of hours that are initiated by the  
14 employee or the use of sick leave, vacation leave or other  
15 leave policies offered by the covered employer.

16 (2) A schedule change is the result of a mutually  
17 agreed-upon shift trade or coverage arrangement between  
18 employees, subject to any covered employer's policy regarding  
19 required conditions for employees to exchange shifts.

20 (3) The covered employer's operations cannot begin or  
21 continue due to:

22 (i) threats to the employees or the covered  
23 employer's property;

24 (ii) the failure of a public utility or the shutdown  
25 of public transportation;

26 (iii) a fire, flood or other natural disaster;

27 (iv) a state of emergency declared by the President  
28 of the United States or the Governor; or

29 (v) severe weather conditions that disrupt  
30 transportation or pose a threat to employee safety.

1 (4) An employee begins or ends work no more than 20  
2 minutes before or after the scheduled start or end time of  
3 the shift.

4 (5) An employee volunteers to work additional hours in  
5 response to a mass written communication from the covered  
6 employer about the availability of additional hours, provided  
7 that the mass communication is only used for additional hours  
8 that are the result of another employee being unable to work  
9 scheduled hours, and the communication makes clear that  
10 accepting the hours is voluntary and the employee has the  
11 right to decline the hours.

12 (6) Employee hours are subtracted due to termination of  
13 employment or the covered employer subtracts hours from an  
14 employee's work schedule for disciplinary reasons under a  
15 multiday suspension, provided the employer documents in  
16 writing the incident leading to the disciplinary action.

17 (7) A ticketed event is canceled, rescheduled,  
18 postponed, delayed, increases in expected attendance by 20%  
19 or more or changes in duration due to circumstances that are  
20 outside the covered employer's control and that occur after  
21 the covered employer provides the posted work schedule with  
22 the advanced notice required under section 3(d). Additional  
23 hours due to a change in a ticketed event's duration that  
24 fall within this exemption shall also be fully exempt from  
25 section 3(d).

26 Section 5. Right to rest between work shifts.

27 (a) General rule.--

28 (1) An employee may decline, without penalty, any work  
29 hours that are scheduled or otherwise occur:

30 (i) less than eleven hours after the end of the



1 previous day's shift; or  
2 (ii) during the eleven hours following the end of a  
3 shift that spanned two days.

4 (2) An employee may consent to work shifts under  
5 paragraph (1). Consent shall be provided by written  
6 communication, either for each shift or for multiple shifts  
7 and may be revoked by written communication at any time  
8 during employment.

9 (b) Compensation.--A covered employer shall compensate the  
10 employee for each instance that the employee works a shift  
11 described under subsection (a) in the amount of \$40 for each  
12 shift.

13 Section 6. Offer of work to existing employees.

14 (a) General rule.--Before hiring a new employee from an  
15 external applicant pool or a subcontractor, including hiring  
16 through the use of temporary services or staffing agencies, a  
17 covered employer shall offer work shifts to existing employees  
18 as provided under this section.

19 (b) Notice.--The covered employer shall provide written  
20 notice of available work shifts for at least 72 hours unless a  
21 shorter period is necessary in order for the work to be timely  
22 performed. The following shall apply:

23 (1) The notice shall be in English and in the primary  
24 language of the employees at the particular workplace and  
25 posted in a conspicuous location at the workplace that is  
26 readily accessible and visible to all employees. The notice  
27 shall also be provided electronically to each employee if the  
28 covered employer customarily communicates scheduling  
29 information in an electronic form to employees.

30 (2) The notice shall include a description of the

1 position and its required qualifications, the schedule of  
2 available shifts, the length of time the covered employer  
3 anticipates requiring coverage of the additional hours and  
4 the process by which an employee may notify the covered  
5 employer of the employee's desire to work the offered shifts.

6 (3) The covered employer may provide the notice  
7 concurrently at the location where the shifts described in  
8 the notice will be worked, locations other than the location  
9 where the work is to be performed and to external candidates.

10 (c) Existing employees.--A covered employer shall distribute  
11 shifts, in accordance with the criteria contained in the notice  
12 required under subsection (b) (2) to one or more existing  
13 employees who have accepted the shifts and who, to a reasonable  
14 covered employer acting in good faith, are qualified to perform  
15 the work, provided that:

16 (1) A covered employer shall distribute shifts to  
17 employees whose regular workplace is the location where the  
18 shifts described in the notice will be worked or, if no  
19 employee accepts the shifts within the time as provided under  
20 this section and it is a regular practice of the covered  
21 employer to schedule employees across multiple locations, to  
22 employees whose regular workplace is a covered location other  
23 than the location where the shifts will be worked. If it is  
24 not a regular practice of the covered employer, offering  
25 additional shifts to employees at a different location shall  
26 be at the option of the covered employer.

27 (2) The covered employer's system for distribution of  
28 hours may not discriminate on the basis of race, color,  
29 creed, religion, ancestry, national origin, sex, sexual  
30 orientation, gender identity, disability, age, marital or

1 familial status or on the basis of family caregiving  
2 responsibilities or status as a student, and the covered  
3 employer may not distribute hours in a manner intended to  
4 avoid application of the Patient Protection and Affordable  
5 Care Act (Public Law 111-148, 124 Stat. 119).

6 (d) External applicants.--A covered employer may hire  
7 individuals from an external applicant pool or subcontractors to  
8 perform the work described in, and in accordance with the  
9 criteria provided in, the notice posted under subsection (b) (2)  
10 if the covered employer provides notice of available work shifts  
11 as required under this section and:

12 (1) no employee accepts the offer of available work  
13 shifts within 24 hours of the end of the 72-hour-posting  
14 period;

15 (2) the covered employer receives written confirmation  
16 from eligible employees that they are not interested in  
17 accepting the available work shifts; or

18 (3) existing employees have accepted a subset of the  
19 offered work shifts, in which case the existing employees  
20 shall be awarded that subset of work shifts, and external  
21 applicants may be offered the remaining shifts.

22 (e) Construction.--This section shall not be construed to  
23 require a covered employer to offer employees work hours paid at  
24 a premium rate under Federal or State law or to prohibit a  
25 covered employer from offering the work hours.

26 (f) Notice of policy.--A covered employer shall notify an  
27 employee by written communication of the covered employer's  
28 policy for offering and distributing work shifts under this  
29 section at the time of hire and within 24 hours of any change in  
30 the policy and shall post the notice in an accessible location

1 in the workplace. The notice shall include:

2 (1) Where an employee can access written notices of  
3 available work shifts.

4 (2) The process by which an employee may notify the  
5 covered employer of the employee's desire to work the  
6 available work shifts.

7 (3) The criteria for distribution of work shifts among  
8 qualified and interested employees.

9 (g) Rules and regulations.--The department shall promulgate  
10 rules and regulations limiting the applicability of this section  
11 with regard to trainees who work for a limited time at a  
12 particular location.

13 Section 7. Exercise of rights protected and retaliation  
14 prohibited.

15 (a) General rule.--It shall be unlawful for a covered  
16 employer or any other person to interfere with, restrain or deny  
17 the exercise of, or the attempt to exercise, any right under  
18 this act.

19 (b) Adverse action prohibited.--No person shall take any  
20 adverse action that penalizes an employee for, or is reasonably  
21 likely to deter the employee from, exercising or attempting to  
22 exercise any right under this act.

23 (c) Applicability.--Protections under this section shall  
24 apply to any individual who mistakenly but in good faith alleges  
25 violations of this act.

26 (d) Rebuttable presumption.--It shall be considered a  
27 rebuttable presumption of retaliation if the covered employer or  
28 any other person takes an adverse action against an employee  
29 within 90 calendar days of the employee's exercise of rights  
30 protected under this section unless due to disciplinary reasons

1 for just cause, provided the covered employer documents in  
2 writing the incident relating to the employee's discipline. In  
3 the case of seasonal employment that ended before the close of  
4 the 90-calendar-day period, the presumption also applies if the  
5 covered employer fails to rehire a former employee at the next  
6 opportunity for work in the same position.

7 (e) Definition.--As used in this section, the term "adverse  
8 action" means the following:

9 (1) Threatening, intimidating, disciplining,  
10 discharging, demoting, suspending or harassing an employee.

11 (2) Assigning an employee to a lesser position in terms  
12 of job classification, job security or other condition of  
13 employment.

14 (3) Reducing the hours or pay of an employee or denying  
15 the employee additional hours.

16 (4) Discriminating against the employee, including  
17 actions or threats related to perceived immigration status or  
18 work authorization.

19 Section 8. Enforcement.

20 (a) Duties of secretary.--The secretary shall have the duty  
21 to:

22 (1) Enforce and administer the provisions of this act.

23 (2) Investigate any alleged violations of this act.

24 (3) Institute prosecutions and actions as provided under  
25 this act.

26 (b) Prohibition.--Nothing in this act shall authorize the  
27 secretary to initiate a civil action for unpaid wages which are  
28 subject to disposition under grievance and arbitration  
29 procedures of a collective bargaining agreement.

30 (c) Rules and regulations.--The department may promulgate

1 rules and regulations necessary to administer this act.

2 Section 9. Notice.

3 (a) Posting requirement.--Each covered employer shall post  
4 and keep posted, in conspicuous and accessible places on the  
5 premises of the covered employer where notices to employees and  
6 applicants for employment are customarily posted, a notice, to  
7 be prepared or approved by the department, providing the rights  
8 and privileges provided under this act, stating that retaliation  
9 against employees for exercising rights under this act is  
10 prohibited and providing other information as the department may  
11 require. The notice shall be posted in English and in the  
12 primary language of the employees at the particular worksite.

13 (b) Notice of right to report improper suspension.--An  
14 employee who receives reduced hours due to a multiday  
15 disciplinary suspension under section 4(b)(6) shall be given  
16 written notice. If the employee believes the suspension was  
17 improperly imposed to manipulate or reduce the employee's  
18 schedule in violation of this act, the employee may report the  
19 suspension to the department to investigate.

20 Section 10. Covered employer records.

21 (a) General rule.--A covered employer shall keep records  
22 necessary to demonstrate compliance with this act, including,  
23 but not limited to, good faith estimates of work schedules and  
24 any modifications, written consent for work shifts as required  
25 by this act, offers of work shifts to existing employees and  
26 responses to those offers and payroll records that specify the  
27 amount of additional compensation paid to employees under  
28 sections 4 and 5. Covered employers shall retain the records for  
29 a period of two years and shall allow the department access to  
30 the records, with appropriate notice and at a mutually agreeable

1 time, to monitor compliance with the requirements of this act.  
2 When an issue arises as to a covered employer's compliance with  
3 this act, if the covered employer does not maintain or retain  
4 adequate records documenting compliance or does not allow the  
5 department reasonable access to the records within 30 days of  
6 the department's request, it shall be presumed that the covered  
7 employer has violated this act, absent clear and convincing  
8 evidence otherwise.

9 (b) Work schedules.--Upon request by an employee, and in  
10 accordance with the rules and regulations of the department, a  
11 covered employer shall provide the employee with work schedules  
12 for all employees at the location in writing for any previous  
13 week for the past two years, including the originally posted and  
14 modified versions of work schedules.

15 Section 11. Collective bargaining.

16 Any provisions of this act may be waived in a bona fide  
17 collective bargaining agreement, but only if the waiver is  
18 explicitly provided in the agreement in clear and unmistakable  
19 terms and only if the agreement is in effect contractually.  
20 Unilateral implementation of terms and conditions of employment  
21 by either party to a collective bargaining relationship shall  
22 not constitute, or be permitted, as a waiver of any part of the  
23 provisions of this act.

24 Section 12. Enforcement and penalties.

25 (a) Reporting.--An employee or other individual may report  
26 to the department any suspected violation of this act.

27 (b) Duties of department.--The department shall take steps  
28 as it deems appropriate to resolve complaints and enforce this  
29 act, including, but not limited to, establishing a system to  
30 receive complaints regarding noncompliance with this act and

1 investigating alleged violations in a timely manner. The  
2 department may open an investigation on its own initiative.

3 (c) Filing complaint.--An individual alleging a violation of  
4 this act shall file a complaint with the department within two  
5 years of the date the individual knew or should have known of  
6 the alleged violation. The identity of a complainant shall  
7 remain confidential unless disclosure of the complainant's  
8 identity is necessary for resolution of any investigation by the  
9 department, or otherwise required by law. The department shall,  
10 to the extent practicable, notify the complainant that the  
11 department will be disclosing the complainant's identity prior  
12 to the disclosure.

13 (d) Investigation.--Upon receiving a complaint alleging a  
14 violation of this act, the department shall investigate the  
15 complaint. The department may designate representatives to  
16 inspect worksites and access records required to be maintained  
17 under section 10. The department shall keep complainants  
18 reasonably notified regarding the status of the complaint and a  
19 resulting investigation.

20 (e) Subpoena power.--The department shall have the power to  
21 subpoena records and testimony from any party to a complaint.  
22 The records shall be provided to the department within 30 days  
23 after receipt of the subpoena.

24 (f) Penalties and fines.--The department shall have the  
25 power to impose penalties and fines for a violation of this act  
26 and to provide or obtain appropriate relief. Remedies may  
27 include reinstatement and full restitution to the employee for  
28 lost wages and benefits, including predictability pay required  
29 under section 4 of this act. A covered employer that violates  
30 this act shall be fined:



- 1 (1) For a violation of section 9:  
2 (i) For a first violation, \$500.  
3 (ii) For a second violation, \$1,000.  
4 (iii) For a third or subsequent violation, \$2,000.  
5 (2) For a violation of any other provision of this act:  
6 (i) For a first violation, \$1,000.  
7 (ii) For a second violation, \$1,500.  
8 (iii) For a third or subsequent violation, \$3,000.

9 (g) Civil action.--The department, an individual aggrieved  
10 by a violation of this act or an entity, a member of which is  
11 aggrieved by a violation of this act, may bring a civil action  
12 in a court of competent jurisdiction against a covered employer  
13 that has violated this act. The following shall apply:

14 (1) If during the pendency of a determination by the  
15 department, prior to the issuance of a final decision, an  
16 employee brings a private action under this act in a court of  
17 competent jurisdiction seeking relief based upon the same  
18 facts and allegations as the employee's complaint under this  
19 act, or affirmatively or by consent opts to participate in  
20 litigation, that employee's complaint to the department shall  
21 be deemed withdrawn with respect to any respondent covered  
22 employer named as a defendant in a court action.

23 (2) Nothing in this act or its implementing regulations  
24 shall be construed to require a complaint to be filed with  
25 the department before bringing an action in court or before  
26 another governmental agency.

27 (3) Upon prevailing in an action brought under this  
28 section, an aggrieved individual shall recover the full  
29 amount of unpaid compensation, including predictability pay,  
30 to which the individual would have been entitled under this

1 act, any wages and benefits lost, presumed damages under  
2 subsection (f) and department regulations, other damages  
3 suffered as the result of the covered employer's violation of  
4 this act and an equal amount, up to a maximum of \$2,000, as  
5 liquidated damages. An aggrieved individual shall also be  
6 entitled to an award of reasonable attorney fees and costs.

7 (4) Upon prevailing in an action brought under this  
8 section, an aggrieved individual shall be entitled to any  
9 legal or equitable relief as may be appropriate to remedy the  
10 violation, which may not be duplicative of relief provided to  
11 the individual in administrative proceedings, including,  
12 without limitation, reinstatement in employment, back pay and  
13 injunctive relief.

14 (h) Statute of limitations.--The statute of limitations for  
15 a civil action brought under this section shall be two years  
16 from the date the alleged violation occurred.

17 Section 13. Applicability.

18 This act shall not apply to a covered employer in a city of  
19 the first class.

20 Section 14. Effective date.

21 This act shall take effect in 90 days.