

SENATE
STATE OF MINNESOTA
NINETY-FIRST SESSION

S.F. No. 736

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DATE	D-PG	OFFICIAL STATUS
01/31/2019	224	Introduction and first reading Referred to Jobs and Economic Growth Finance and Policy

1.1 A bill for an act

1.2 relating to employment; requiring fair scheduling of employee's hours; requiring

1.3 predictability pay; imposing civil penalties; amending Minnesota Statutes 2018,

1.4 sections 177.27, subdivisions 4, 7; 181.032; proposing coding for new law in

1.5 Minnesota Statutes, chapter 181.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. TITLE.

1.8 This act shall be known as the "Fair Scheduling Act."

1.9 Sec. 2. Minnesota Statutes 2018, section 177.27, subdivision 4, is amended to read:

1.10 Subd. 4. **Compliance orders.** The commissioner may issue an order requiring an

1.11 employer to comply with sections 177.21 to 177.435, 181.02, 181.03, 181.031, 181.032,

1.12 181.101, 181.11, 181.13, 181.14, 181.145, 181.15, 181.172, paragraph (a) or (d), 181.275,

1.13 subdivision 2a, 181.722, 181.79, ~~and~~ 181.939 to 181.943, ~~or~~ and 181.99, and with any rule

1.14 promulgated under section 177.28. The commissioner shall issue an order requiring an

1.15 employer to comply with sections 177.41 to 177.435 if the violation is repeated. For purposes

1.16 of this subdivision only, a violation is repeated if at any time during the two years that

1.17 preceded the date of violation, the commissioner issued an order to the employer for violation

1.18 of sections 177.41 to 177.435 and the order is final or the commissioner and the employer

1.19 have entered into a settlement agreement that required the employer to pay back wages that

1.20 were required by sections 177.41 to 177.435. The department shall serve the order upon the

1.21 employer or the employer's authorized representative in person or by certified mail at the

1.22 employer's place of business. An employer who wishes to contest the order must file written

1.23 notice of objection to the order with the commissioner within 15 calendar days after being

2.1 served with the order. A contested case proceeding must then be held in accordance with
2.2 sections 14.57 to 14.69. If, within 15 calendar days after being served with the order, the
2.3 employer fails to file a written notice of objection with the commissioner, the order becomes
2.4 a final order of the commissioner.

2.5 Sec. 3. Minnesota Statutes 2018, section 177.27, subdivision 7, is amended to read:

2.6 Subd. 7. **Employer liability.** If an employer is found by the commissioner to have
2.7 violated a section identified in subdivision 4, or any rule adopted under section 177.28, and
2.8 the commissioner issues an order to comply, the commissioner shall order the employer to
2.9 cease and desist from engaging in the violative practice and to take such affirmative steps
2.10 that in the judgment of the commissioner will effectuate the purposes of the section or rule
2.11 violated. The commissioner shall order the employer to pay to the aggrieved parties back
2.12 pay, gratuities, predictability pay under section 181.99, and compensatory damages, less
2.13 any amount actually paid to the employee by the employer, and for an additional ~~equal~~
2.14 ~~amount as liquidated damages~~ amount equal to twice the unpaid wages, overtime pay,
2.15 gratuities, and predictability pay under section 181.99. Any employer who is found by the
2.16 commissioner to have repeatedly or willfully violated a section or sections identified in
2.17 subdivision 4 shall be subject to a civil penalty of ~~up to \$1,000~~ at least \$5,000, but no more
2.18 than \$10,000, for each violation for each employee. In determining the amount of a civil
2.19 penalty under this subdivision, the appropriateness of such penalty to the size of the
2.20 employer's business and the gravity of the violation shall be considered. In addition, the
2.21 commissioner may order the employer to reimburse the department and the attorney general
2.22 for all appropriate litigation and hearing costs expended in preparation for and in conducting
2.23 the contested case proceeding, unless payment of costs would impose extreme financial
2.24 hardship on the employer. If the employer is able to establish extreme financial hardship,
2.25 then the commissioner may order the employer to pay a percentage of the total costs that
2.26 will not cause extreme financial hardship. Costs include but are not limited to the costs of
2.27 services rendered by the attorney general, private attorneys if engaged by the department,
2.28 administrative law judges, court reporters, and expert witnesses as well as the cost of
2.29 transcripts. Interest shall accrue on, and be added to, the unpaid balance of a commissioner's
2.30 order from the date the order is signed by the commissioner until it is paid, at an annual rate
2.31 provided in section 549.09, subdivision 1, paragraph (c). The commissioner may establish
2.32 escrow accounts for purposes of distributing damages.

3.1 Sec. 4. Minnesota Statutes 2018, section 181.032, is amended to read:

3.2 **181.032 REQUIRED STATEMENT OF EARNINGS BY EMPLOYER.**

3.3 (a) At the end of each pay period, the employer shall provide each employee an earnings
3.4 statement, either in writing or by electronic means, covering that pay period. An employer
3.5 who chooses to provide an earnings statement by electronic means must provide employee
3.6 access to an employer-owned computer during an employee's regular working hours to
3.7 review and print earnings statements.

3.8 (b) The earnings statement may be in any form determined by the employer but must
3.9 include:

3.10 (1) the name of the employee;

3.11 (2) the hourly rate of pay (if applicable);

3.12 (3) the total number of hours worked by the employee unless exempt from chapter 177;

3.13 (4) the total amount of gross pay earned by the employee during that period;

3.14 (5) the total amount of overtime pay earned by the employee during that period;

3.15 (6) the total amount of gratuities earned by the employee during that period;

3.16 (7) the total amount of any additional compensation paid to the employee during that
3.17 period, including any predictability pay under section 181.99;

3.18 (8) the total amount of expense reimbursements paid to the employee during that period;

3.19 ~~(5)~~ (9) a list of deductions made from the employee's pay;

3.20 ~~(6)~~ (10) the net amount of pay after all deductions are made;

3.21 ~~(7)~~ (11) the date on which the pay period ends; ~~and~~

3.22 ~~(8)~~ (12) the legal name of the employer and the operating name of the employer if
3.23 different from the legal name;

3.24 (13) the total amount of employer-provided leave used by the employee during that pay
3.25 period; and

3.26 (14) the total amount of employer-provided leave available for the employee to use.

3.27 (c) An employer must provide earnings statements to an employee in writing, rather
3.28 than by electronic means, if the employer has received at least 24 hours notice from an
3.29 employee that the employee would like to receive earnings statements in written form. Once
3.30 an employer has received notice from an employee that the employee would like to receive

4.1 earnings statements in written form, the employer must comply with that request on an
4.2 ongoing basis.

4.3 **Sec. 5. [181.915] EMPLOYER STATEMENT TO EMPLOYEES.**

4.4 An employer must provide each newly hired employee, before the employee begins the
4.5 employee's duties, and each current employee, annually, with a written statement, in English
4.6 and in the principal language of the employee, a written statement describing the terms and
4.7 conditions of the employee's employment. The statement must include, but is not limited
4.8 to, the following:

4.9 (1) the full name, mailing address, and phone number of the employer;

4.10 (2) the federal and state tax identification numbers of each employer, but not including
4.11 Social Security numbers of employers who are individuals;

4.12 (3) the place or places of employment;

4.13 (4) the hours of work per day and number of days per week that the employee will be
4.14 required to work;

4.15 (5) the wages the employer will pay the employee; per hour, day, week, or other measure;
4.16 and the frequency and nature of payment of those wages;

4.17 (6) the anticipated period of employment;

4.18 (7) the circumstances and rate for which an employee will be paid a premium for working
4.19 in excess of a set number of hours per day, week, or month, or for working on designated
4.20 nights, weekends, or holidays;

4.21 (8) a description of any provision to the employee by the employer, how long such
4.22 provision will be provided by the employer, and any costs for such provision the employer
4.23 will require the employee to pay, including but not limited to:

4.24 (i) transportation to and from work;

4.25 (ii) housing;

4.26 (iii) health insurance or health care;

4.27 (iv) any paid or unpaid leave or holidays;

4.28 (v) pension or retirement benefits;

4.29 (vi) personal protective equipment required for the work;

5.1 (vii) workers' compensation policies, including information about the employer insurance
 5.2 policy or policies, and rules regarding the reporting of accidents or injuries; and

5.3 (viii) unemployment compensation;

5.4 (9) the nature of the work to be performed by the employee;

5.5 (10) information regarding any existing strike, lockout, or concerted work stoppage,
 5.6 slowdown, or interruption of operations at the place of employment; and

5.7 (11) information regarding any known local, state, or federal investigations into the
 5.8 employer's health or safety practices over the prior five years, and the outcome of such
 5.9 investigations, if known.

5.10 **Sec. 6. [181.99] NOTICE OF EMPLOYEE SCHEDULES.**

5.11 Subdivision 1. **Definitions.** (a) For the purposes of this section, the terms defined in this
 5.12 subdivision have the meanings given them.

5.13 (b) "Commissioner" means the commissioner of labor and industry or authorized designee
 5.14 or representative.

5.15 (c) "Employee" means an individual employed by an employer.

5.16 (d) "Employer" means a person or entity that employs one or more employees. The term
 5.17 includes an individual, corporation, partnership, association, nonprofit organization, group
 5.18 of persons, state, county, town, city, school district, or other governmental subdivision.

5.19 (e) "Flexible working arrangement" means a change in an employee's terms and conditions
 5.20 of employment with respect to work schedule, including, but not limited to, a modified
 5.21 work schedule, changes in start or end times in a work schedule or work shift, a predictable,
 5.22 stable work schedule, part-time employment, job sharing arrangements, working from home,
 5.23 telecommuting, limitations on the employee's availability to work, the location of the
 5.24 employee's worksite, reduction or change in work duties, or part-year employment.

5.25 (f) "On-call shift" or "on-call hours" mean time that an employer requires an employee
 5.26 to be available to work, and to contact the employer or its designee or wait to be contacted
 5.27 by the employer or its designee to determine whether the employee must report to work at
 5.28 that time.

5.29 (g) "Predictability pay" means payments to an employee, calculated on an hourly basis
 5.30 at the employee's regular rate of pay, for applicable schedule changes pursuant to subdivision
 5.31 4. An employer must pay an employee predictability pay, when required by this section, in
 5.32 addition to any wages earned for work performed by the employee. An employer must pay

6.1 predictability pay to an employee in the same pay period in which it was incurred by the
6.2 employer.

6.3 (h) "Shift" means the consecutive hours an employer requires an employee to work or
6.4 to be on call to work. Breaks totalling two hours or less shall not be considered an interruption
6.5 of consecutive hours.

6.6 (i) "Work week" means a fixed, consecutive seven-day period.

6.7 (j) "Work schedule" means all of an employee's regular and on-call shifts during a work
6.8 week.

6.9 Subd. 2. **Advance notice of work schedules.** (a) An employer must give each employee
6.10 the employee's individual initial work schedule, in writing, at least 21 days before the first
6.11 day of that work schedule. An employer must contact each employee to notify the employee
6.12 of any change in the employee's work schedule before the change takes effect and must
6.13 provide the employee with a revised written work schedule reflecting any changes within
6.14 24 hours of making the change.

6.15 (b) On or before the beginning of an employee's employment, the employer must provide
6.16 the employee with a written work schedule for the employee's first 21 days of employment.

6.17 (c) An employer may not require an employee to work hours not included in the
6.18 employee's initial written work schedule without consent in writing by the employee.

6.19 (d) An employer must post a written schedule that includes the shifts of all current
6.20 employees at a worksite at least 21 days before the start of each work week, whether or not
6.21 they are scheduled to work or be on call that week. The employer must update that posted
6.22 schedule within 24 hours of any change. The written schedule must be posted in a place
6.23 that is readily accessible and visible to all employees at a worksite.

6.24 (e) An employee's work week must begin on the same day of the week each week, unless
6.25 the employer provides 21 days advance written notice of a change in the start day of the
6.26 work week.

6.27 (f) An employee has the right to request a change in work schedule, request to limit his
6.28 or her availability to work particular hours, or otherwise provide input into the employee's
6.29 work schedule.

6.30 (g) An employer must not require an employee to seek or find a replacement employee
6.31 for any shifts or hours an employee is unable to work.

7.1 Subd. 3. Flexible working arrangements. (a) An employee has a right to request a
7.2 flexible working arrangement at any time. Such a request must be in writing.

7.3 (b) An employer must consider an employee's request for a flexible working arrangement
7.4 in good faith and engage in an interactive process with the employee to consider the request
7.5 and determine whether the request can be granted in a manner consistent with the employer's
7.6 business operations or legal or contractual obligations. The employer must begin this
7.7 interactive process within two days of receiving the request. If information provided by the
7.8 employee making a request for a flexible working arrangement requires clarification, the
7.9 employer must explain what further information is needed and give the employee reasonable
7.10 time to produce the information.

7.11 (c) After engaging in the interactive process, an employer must notify the employee of
7.12 its decision regarding a flexible working arrangement, in writing, within two days of its last
7.13 communication with the employee during the interactive process.

7.14 (d) If an employee requests a flexible working arrangement because of a serious health
7.15 condition of the employee, the employee's responsibilities as a caregiver, or the employee's
7.16 enrollment in a career-related educational or training program, or if a part-time employee
7.17 makes the request for a reason related to a second job, the employer must grant the request.

7.18 Subd. 4. Predictability pay required. (a) Within 21 days of, but not less than 24 hours
7.19 from, the start of an employee's shift, an employer may do any of the following provided
7.20 the employer pays the affected employee one hour of predictability pay in addition to wages
7.21 earned for each changed shift, if any:

7.22 (1) subtract hours from a shift;

7.23 (2) add hours to a shift or add a shift;

7.24 (3) cancel a shift; or

7.25 (4) change the start or end time of a shift.

7.26 (b) Within 24 hours of the start of an employee's shift, an employer may do either of the
7.27 following provided the employer pays the affected employee one hour of predictability pay
7.28 in addition to wages earned for each changed shift:

7.29 (1) change the start or end time of a shift without changing the total number of hours in
7.30 the shift; or

7.31 (2) add hours to a shift.

8.1 (c) Whenever an employee is scheduled to work a shift, and the employer cancels the
8.2 shift or reduces the hours in the shift with less than 24 hours notice, the employer must pay
8.3 the employee the lesser of four hours of predictability pay or predictability pay equal to the
8.4 number of hours originally scheduled for the shift.

8.5 (d) An employer is not required to pay an employee any predictability pay under this
8.6 subdivision when a schedule change is the result of the employee's request, including, but
8.7 not limited to, a request to trade shifts with another employee, to use sick leave, vacation
8.8 time, or any other type of leave.

8.9 (e) An employer is not required to pay an employee any predictability pay under this
8.10 subdivision when a schedule change is the result of mutually agreed upon shift trade among
8.11 employees.

8.12 Subd. 5. **Exception for suspended operations.** The requirements of subdivisions 2 to
8.13 4 do not apply to an employer when that employer's operations are suspended:

8.14 (1) due to threats to employees or property;

8.15 (2) when civil authorities have recommended that work not begin or continue;

8.16 (3) due to failure of public utilities or sewer systems or because public utilities fail to
8.17 supply electricity, water, or gas; or

8.18 (4) due to a natural disaster or weather event.

8.19 Subd. 6. **Right to rest.** An employee has the right to decline work hours that occur: (1)
8.20 less than 11 hours after the end of the previous shift, or (2) during the 11 hours following
8.21 the end of a shift that spanned two days. An employer must pay an employee 1-1/2 times
8.22 the employee's regular rate of pay for any such hours worked.

8.23 Subd. 7. **No discrimination based on hours of work.** (a) An employer must not pay a
8.24 different regular rate of pay based on the number of hours an employee is scheduled to work
8.25 to employees whose jobs require equal skill, effort, and duties, and that are performed under
8.26 similar working conditions. An employer may pay different hourly wages based on other
8.27 reasons, such as seniority systems, merit, employee responsibilities, or systems that measure
8.28 earnings by quantity or quality of production.

8.29 (b) An employer must not condition eligibility for leave or time off based on the number
8.30 of hours an employee is scheduled to work for employees whose jobs require equal skill,
8.31 effort, and duties, and that are performed under similar working conditions. An employer
8.32 may prorate employee leave or time off based on the number of hours the employee works.

9.1 (c) An employer must not condition eligibility for raises or promotions based on the
9.2 number of hours an employee is scheduled to work for employees whose jobs require equal
9.3 skill, effort, and duties, and that are performed under similar working conditions. Employers
9.4 may condition eligibility for raises on other reasons, such as seniority systems, merit,
9.5 employee responsibilities, or the nature and amount of an employee's work experience.

9.6 Subd. 8. **Access to hours.** If an employer has additional hours of work available in
9.7 positions held by current employees, the employer must offer those hours to current qualified
9.8 employees before hiring new employees or contractors, including the use of temporary
9.9 services or staffing agencies.

9.10 Subd. 9. **Record-keeping requirements.** (a) An employer must keep an accurate record
9.11 of:

9.12 (1) the name, address, and occupation of each employee;

9.13 (2) the amount paid each pay period to each employee;

9.14 (3) the hours worked each day and each week by each employee; and

9.15 (4) each employee's initial work schedule and all subsequent revisions to that work
9.16 schedule.

9.17 (b) An employer must keep the records required by this subdivision for at least two years
9.18 after the entry date of the record. The records must be maintained at the place of employment,
9.19 at an office of the employer, or with a bank, accountant, or other central location, and must
9.20 be open to inspection and available upon request by the commissioner.

9.21 (c) An employer must allow an employee to inspect records required by this subdivision
9.22 and relating to that employee at a reasonable time and place.

9.23 (d) The commissioner may impose a civil penalty of up to \$1,000 on an employer for
9.24 each failure to keep, furnish, or allow inspection of records under this subdivision.

9.25 Subd. 10. **Employer retaliation.** No employer shall discharge or take any other adverse
9.26 action against any person in retaliation for asserting any claim or right under this section,
9.27 for assisting any other person in doing so, or for informing any person about their rights
9.28 under this section. An employer taking any adverse action against a person within one year
9.29 of a person's engaging in the foregoing activities shall raise a presumption that such action
9.30 was retaliation, which may be rebutted by clear and convincing evidence that such action
9.31 was taken for other permissible reasons.

10.1 Subd. 11. **Individual remedies.** In addition to any other remedies available in law or
10.2 equity, an employee may bring a civil action seeking redress for a violation or violations
10.3 of this section directly to any court of competent jurisdiction. An employee may recover
10.4 any and all damages recoverable at law plus an additional amount equal to twice those
10.5 damages, together with costs and disbursements including reasonable attorney fees, and
10.6 may receive injunctive and other equitable relief as determined by a court.

10.7 Subd. 12. **Encouragement of more generous policies.** (a) Nothing in this section shall
10.8 be construed to discourage employers from adopting or retaining policies that meet or
10.9 exceed, and do not otherwise conflict with, the minimum standards and requirements
10.10 provided in this section.

10.11 (b) This section does not apply to employees covered under a collective bargaining
10.12 agreement with an employer.