

2016 -- H 7634

=====
LC004617
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- HOURS AND SCHEDULING

Introduced By: Representatives Williams, Regunberg, Slater, and Maldonado

Date Introduced: February 12, 2016

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. The title of this act shall be "Fair Workweek for Rhode Island".

2 SECTION 2. Title 28 of the General Laws entitled "LABOR AND LABOR
3 RELATIONS" is hereby amended by adding thereto the following chapter:

4 CHAPTER 12.2

5 FAIR WORKWEEK OF RHODE ISLAND

6 **28-12.2-1. Definitions.** -- For the purpose of this chapter, the following definitions shall
7 apply unless the context clearly indicates or requires a different meaning or another definition is
8 provided:

9 (1) "Agency" means the department of labor and training. While the department of labor
10 and training shall be the primary enforcer of this chapter, this does not exclude the attorney
11 general or the human rights commission from taking additional action.

12 (2)(i) "Employee" means an individual charged with performing work for an employer,
13 this may include low level floor supervisors/managers.

14 (ii) For purposes of §§28-12.2-2, 28-12.2-3, 28-12.2-5, 28-12.2-7 and 28-12.2-8,
15 "employee" shall not include individuals employed in a bona fide executive, administrative or
16 professional capacity and forepersons, superintendents and supervisors.

17 (3) "Employer" means a person who owns, operates or is authorized to operate an
18 establishment that has employees;

19 (4) "On-call shift" or "on-call hours" means time that an employer requires an employee

1 to be available to work, and to contact the employer or its designee or wait to be contacted by the
2 employer or its designee to determine whether the employee must report to work at that time.

3 (5) "Predictability pay" means payments to an employee, calculated on an hourly basis at
4 the employee's regular rate of pay, as compensation for changes made by an employer to an
5 employee's schedule pursuant to §28-12.2-3, in addition to any wages earned for work performed
6 by that employee.

7 (6) "Regular rate" means the rate at which an employee is employed and shall be deemed
8 to include all remuneration for employment paid to, or on behalf of, the employee, but shall not
9 be deemed to include:

10 (i) Sums paid as gifts; payments in the nature of gifts made at Christmas time or on other
11 special occasions, as a reward for service, the amounts of which are not measured by or
12 dependent on hours worked, production, or efficiency;

13 (ii) Payments made for occasional periods when no work is performed due to vacation,
14 holiday, illness, failure of the employer to provide sufficient work, or other similar cause;
15 reasonable payments for traveling expenses, or other expenses, incurred by an employee in the
16 furtherance of their employer's interests and properly reimbursable by the employer; and other
17 similar payments to an employee which are not made as compensation for their hours of
18 employment;

19 (iii) Sums paid in recognition of services performed during a given period if either:

20 (A) Both the fact that payment is to be made and the amount of the payment are
21 determined at the sole discretion of the employer at or near the end of the period and not pursuant
22 to any prior contract, agreement, or promise causing the employee to expect such payments
23 regularly; or

24 (B) The payments are made pursuant to a bona fide profit-sharing plan or trust or bona
25 fide thrift or savings plan, meeting the requirements of the administrator set forth in appropriate
26 regulations which they shall issue, having due regard among other relevant factors, to the extent
27 to which the amounts paid to the employee are determined without regard to hours of work,
28 production, or efficiency; or

29 (C) The payments are talent fees (as such talent fees are defined and delimited by
30 regulations of the administrator) paid to performers, including announcers, on radio and television
31 programs;

32 (iv) Contributions irrevocably made by an employer to a trustee or third person pursuant
33 to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar
34 benefits for employees;

1 (v) Extra compensation provided by a premium rate paid for certain hours worked by the
2 employee in any day of the workweek because such hours are hours worked in excess of eight (8)
3 in a day or in excess of the maximum workweek applicable to such employee under subsection
4 (a) or in excess of the employee's normal working hours or regular working hours, as the case
5 may be;

6 (vi) Extra compensation provided by a premium rate paid for work by the employee on
7 Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the
8 workweek, where such premium rate is not less than one and one-half (1.5) times the rate
9 established in good faith for like work performed in non-overtime hours on other days;

10 (vii) Extra compensation provided by a premium rate paid to the employee, in pursuance
11 of an applicable employment contract or collective-bargaining agreement, for work outside of the
12 hours established in good faith by the contract or agreement as the basic, normal, or regular
13 workday (not exceeding eight (8) hours) or workweek, where such premium rate is not less than
14 one and one-half (1.5) times the rate established in good faith by the contract or agreement for
15 like work performed during such workday or workweek; or

16 (viii) Any value or income derived from employer-provided grants or rights provided
17 pursuant to a stock option, stock appreciation right, or bona fide employee stock purchase
18 program which is not otherwise excludable under any of subsections (i) through (vii) of this
19 section if:

20 (A) Grants are made pursuant to a program, the terms and conditions of which are
21 communicated to participating employees either at the beginning of the employee's participation
22 in the program or at the time of the grant;

23 (B) In the case of stock options and stock appreciation rights, the grant or right cannot be
24 exercisable for a period of at least six (6) months after the time of grant (except that grants or
25 rights may become exercisable because of an employee's death, disability, retirement, or a change
26 in corporate ownership, or other circumstances permitted by regulation), and the exercise price is
27 at least eighty-five percent (85%) of the fair market value of the stock at the time of grant;

28 (C) Exercise of any grant or right is voluntary; and

29 (D) Any determinations regarding the award of, and the amount of, employer-provided
30 grants or rights that are based on performance are:

31 (I) Made based upon meeting previously established performance criteria (which may
32 include hours of work, efficiency, or productivity) of any business unit consisting of at least ten
33 (10) employees or of a facility, except that, any determinations may be based on length of service
34 or minimum schedule of hours or days of work; or

1 (II) Made based upon the past performance (which may include any criteria) of one or
2 more employees in a given period so long as the determination is in the sole discretion of the
3 employer and not pursuant to any prior contract.

4 (7) "Retaliation" means: (i) Any form of intimidation, threat, reprisal, harassment,
5 discrimination or adverse employment action, including discipline, discharge, suspension,
6 transfer or assignment to a lesser position in terms of job classification, job security, or other
7 condition of employment, reduction in pay or hours or denial of additional hours, informing
8 another employer that the person has engaged in activities protected by this chapter, or reporting
9 or threatening to report the actual or suspected citizenship or immigration status of an employee,
10 former employee or family member of an employee to a federal, state or local agency, because
11 the employee or former employee exercised a right under this chapter;

12 (ii) Interference with or punishment for participating in any manner in an investigation,
13 proceeding or hearing under this chapter.

14 (8) "Retention pay" means minimum payments to an employee in each consecutive
15 fourteen (14) day period required to retain them as an employee.

16 (9) "Shift" means the consecutive hours an employer requires an employee to work or to
17 be on call to work, provided that breaks totaling two (2) hours or less shall not be considered an
18 interruption of consecutive hours.

19 (10) "Work schedule" means all of an employee's regular and on-call shifts, including
20 specific start and end times as well as location for each shift, during a consecutive seven (7) day
21 period.

22 **28-12.2-2. Advance notice of work schedules. --** (a) Upon hiring, an employer shall
23 provide each employee with a good faith estimate in writing of the number of hours and the days
24 and times the employee is expected to work each week.

25 (b) On or before the commencement of employment, the employer shall provide the
26 employee with a written work schedule for the employee's first fourteen (14) days. Thereafter, an
27 employer shall give each employee their individual work schedule in writing at least fourteen (14)
28 days prior to the first day of that work schedule. Employers shall not determine schedules based
29 on performance metrics.

30 (c) An employee may decline to work any hours not included in the written work
31 schedule required by subsection (b) of this section. When an employee consents to work such
32 hours, consent must be recorded in writing at or before the start of the shift for which consent is
33 required. The employer must contact the employee to notify them of any other change to the
34 employee's work schedule prior to the change taking effect and must provide the employee with a

1 revised written work schedule reflecting any changes within twenty-four (24) hours of making the
2 change.

3 (d) The employer shall post fourteen (14) days in advance of the start of each week a
4 written schedule that includes the shifts of all current employees at that worksite, whether or not
5 they are scheduled to work or be on call that week. The employer must update that posted
6 schedule within twenty-four (24) hours of any change. The schedule must be posted in a place
7 that is readily accessible and visible to all employees of the employer at that worksite.

8 **28-12.2-3. Compensation for changed shifts. --** (a) Less than fourteen (14) days before
9 the first scheduled hour of a shift, an employer may add hours of work pursuant to §28-12.2-2(c),
10 subtract hours from a shift, cancel a shift, or change the date or start or end time of a shift,
11 provided that the employer pays each affected employee one hour of predictability pay, in
12 addition to wages earned, for each shift that is changed, cancelled or added.

13 (b) An employer is required to pay an employee for a minimum of four (4) hours or the
14 number of hours in the employee's scheduled shift, whichever is less, at the employee's regular
15 rate of pay, on any day that the employee:

16 (1) Is scheduled or called to work and reports for duty; or

17 (2) Is notified less than twenty-four (24) hours before a regular or on-call shift that the
18 employee does not need to report to work or that the hours in the shift have been reduced.
19 Payment under this section shall be required instead of, rather than in addition to, predictability
20 pay owed under subsection (a) of this section.

21 (c) The written consent required by §28-12.2-2(c) and the predictability pay required by
22 subsection (a) shall not apply to any shift changes made at the request of the employee, including
23 employee-initiated requests to work specific hours other than those scheduled by the employer or
24 requests to use sick leave, vacation time, personal days, or other leave policies offered by the
25 employer, or when a schedule change is the result of a mutually agreed upon shift trade among
26 employees.

27 **28-12.2-4. Right to request flexible working arrangement. --** An employee has the
28 right to request a modified work schedule, additional shifts or hours, changes in days of work or
29 start and/or end times for the work day or a work shift, a predictable, stable work schedule,
30 permission to exchange work shifts with other employees, limitations on availability, part-time
31 employment, job sharing arrangements, working from home, telecommuting, the location where
32 the employee is required to work, reduction or change in work duties, or part-year employment.
33 An employer shall not retaliate against an employee for exercising their rights under this section.

34 **28-12.2-5. Right to rest. --** (a) An employee has the right to decline work hours that

1 occur:

2 (1) Less than eleven (11) hours after the end of the previous day's shift; or

3 (2) During the eleven (11) hours following the end of a shift that spanned two (2) days.

4 (b) An employee has the right to decline to work more than six (6) consecutive days.

5 (c) An employee who agrees in writing to work hours described in subsections (a) and (b)
6 of this section shall be compensated at one and a half (1.5) times the employee's regular rate of
7 pay for any hours worked:

8 (1) Within less than eleven (11) hours following the end of a previous shift; or

9 (2) In excess of six (6) consecutive days.

10 (d) Workers shall have a reasonable expectation to use the bathroom without penalty,
11 financial or in terms of promotion. In order to ensure this, all workers shall have at least fifteen
12 (15) minutes of paid unaccounted time to meet their bodily needs, per eight (8) hour shift. If a
13 doctor determines that a worker needs more than fifteen (15) minutes unaccounted time per eight
14 (8) hour shift, that worker shall be accommodated without any hesitation.

15 **28-12.2-6. Equal treatment for employees regardless of hours worked. --** (a) An
16 employer shall provide the same:

17 (1) Hourly wage;

18 (2) Eligibility to accrue employer-provided paid and unpaid time off and other benefits,
19 provided that this section shall not affect the minimum hourly requirements for receipt of
20 benefits, including, but not limited to, health care benefits;

21 (3) Promotional opportunities and other conditions of employment, to employees who
22 hold jobs that require substantially equal skill, effort, responsibility, and duties and that are
23 performed under similar working conditions, regardless of the number of hours that an employee
24 is scheduled to work or expected duration of employment.

25 (b) This section shall not be construed to prohibit differences in hourly wages based on
26 reasons other than the number of hours the employee is scheduled to work or expected duration of
27 employment, including on the basis of seniority, a merit system, or a system which measures
28 earnings by quantity per hour or quality of production.

29 **28-12.2-7. Retention pay. --** (a) Except as provided in subsection (b) of this section,
30 employers must pay all employees minimum retention pay of one hundred fifty dollars (\$150) in
31 each fourteen (14) day period. Any amounts paid for hours worked or paid time off, including
32 paid benefit time, shall be counted toward the retention pay.

33 (b) An employee who, with the employer's consent, does not work or takes unpaid leave
34 during a particular week shall waive the requirement of subsection (a) of this section, provided

1 that the employee designates in writing the specific week or weeks for which retention pay is
2 waived.

3 (c) On January 1, 2017, and each year thereafter, the retention pay required by this
4 section shall be adjusted based on the increase, if any, in the cost of living, and rounded to the
5 nearest multiple of five cents (\$.05). The increase in the cost of living shall be calculated based
6 on the percentage increase, if any, as of August of the immediately preceding year over the level
7 as of August of the previous year of the Consumer Price Index (All Urban Wage Earners and
8 Clerical Workers, U.S. State Average for All Items) or its successor index as published by the
9 United States Department of Labor or its successor agency. The state shall publish the adjusted
10 retention pay for the forthcoming year on its Internet home page by October 15 of each year, and
11 it shall become effective on January 1 of the forthcoming year.

12 **28-12.2-8. Offer of work to existing employees. --** (a) An employer must offer
13 additional hours of work to existing employees before hiring additional employees or
14 subcontractors including hiring through the use of temporary services or staffing agencies.

15 (b) Except as provided in subsection (d) of this section, the employer must post a notice
16 of available work, including the total hours of work being offered, the schedule of available
17 shifts, whether those shifts will occur at the same time each week, and the length of time the
18 employer anticipates requiring coverage of the additional hours.

19 (1) Before an employer may hire additional employee(s), either directly or through a
20 temporary services or staffing agency, with a duration of employment longer than seven (7)
21 consecutive days, the employer must post a notice of available hours for at least seven (7) days
22 before the employer may proceed with that hiring.

23 (2) Before an employer may hire additional employee(s), either directly or through a
24 temporary services or staffing agency, with a duration of employment less than seven (7)
25 consecutive days, the employer must post a notice of available hours for at least two (2) days
26 before the employer may proceed with that hiring.

27 (3) The employer shall post a notice in the workplace identifying the process by which
28 employees may notify the employer of their desire to work the offered hours and the criteria the
29 employer will use for distribution of hours, provided that the employer's system for distribution of
30 hours must not discriminate on the basis of race, color, creed, religion, ancestry, national origin,
31 sex, sexual orientation, gender identity, disability, age, marital or familial status, nor on the basis
32 of family caregiving responsibilities or status as a student. The employer shall update the notice if
33 the employer changes the criteria for distribution.

34 (4) The notices required by this section shall be either posted in a conspicuous place at

1 the workplace that is readily accessible and visible to all employees, or transmitted by electronic
2 means, so long as all employees are given access to the electronic notice at the workplace, or
3 both.

4 (c) The employer shall assign additional hours of work to an employee who has
5 responded to the offer of work, and who, in the employer's good faith and reasonable judgment,
6 has the skills and experience to perform the work. If more than one such employee has responded
7 to the offer of work, the employer shall distribute the work among interested employees
8 according to the employer's posted process. An employee's response to the offer of work shall
9 serve as written consent to the addition of those hours, if such consent is required by this chapter.

10 (d) Notwithstanding the requirements of subsection (b) of this section, offers to extend a
11 scheduled shift or offers of hours made less than two (2) days before the start of the offered shift
12 may be communicated at the employer's discretion.

13 (e) Employers shall make reasonable efforts to offer employees training opportunities to
14 gain the skills and experience to perform work for which the employer typically has additional
15 needs.

16 (f) This section shall not be construed to require any employer to offer employees work
17 hours paid at a premium rate under state law, nor to prohibit any employer from offering such
18 work hours.

19 (g) When hiring additional employees or subcontractors, including hiring through the use
20 of temporary services or staffing agencies, the employer shall document the time and method of
21 offering the additional hours of work to existing staff. Failure to preserve documentation pursuant
22 to this subsection for three (3) years after the date of hiring employees or subcontractors shall
23 give rise to a rebuttable presumption of a violation of this section.

24 **28-12.2-9. Exercise of rights protected; Retaliation prohibited.** -- (a) It shall be
25 unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of,
26 or the attempt to exercise, any right protected under this chapter.

27 (b) An employer shall not retaliate or discriminate against an employee because the
28 employee has exercised rights protected under this chapter. Such rights include, but are not
29 limited to:

30 (1) The right to decline hours of work pursuant to this chapter;

31 (2) The right to request a flexible working arrangement pursuant to this chapter;

32 (3) The right to file a complaint or inform any person about any employer's alleged
33 violation of this chapter;

34 (4) The right to cooperate with the agency in its investigations of alleged violations of

1 this chapter; and

2 (5) The right to inform any person of their potential rights under this section.

3 (c) Protections of this section shall apply to any person who mistakenly, but in good faith,
4 alleges violations of this section.

5 (d) There shall be a rebuttable presumption of unlawful retaliation under this section,
6 whenever an employer takes adverse action against a person within ninety (90) days of when that
7 person:

8 (1) Files a complaint with the agency or a court alleging a violation of any provision of
9 this chapter;

10 (2) Informs any person about an employer's alleged violation of this chapter;

11 (3) Cooperates with the agency or other persons in the investigation or prosecution of any
12 alleged violation of this chapter;

13 (4) Opposes any policy, practice, or act that is unlawful under this chapter; or

14 (5) Informs any person of their rights under this chapter.

15 **28-12.2-10. Notice, posting and records. --** (a) Employers shall give notice to
16 employees of their rights under this chapter. Under this section, employers are required to inform
17 employees that employees are entitled to predictability pay and retention pay and to decline shifts
18 as specified in this chapter; that retaliation against employees who exercise their rights under this
19 chapter is prohibited; and that each employee has the right to file a complaint or bring a civil
20 action to enforce the rights guaranteed by this chapter. Employers may comply with this section
21 by supplying each of their employees with a notice that contains the information required in this
22 subsection in English and in any language that is the language that the employer uses to
23 communicate with that employee.

24 (b) Every employer shall post in a conspicuous place at any workplace or job site where
25 any employee works a notice published by the agency informing employees of the current
26 retention pay and of their rights under this chapter. Every employer shall post such notices in
27 English and Spanish in a conspicuous and accessible place in each establishment where such
28 employees are employed.

29 (c) Any pay required by this chapter must be recorded in an attachment to the employee's
30 regular paycheck. Every employer shall designate in the written receipt required by state law the
31 amount of predictability pay, if any. The agency may require additional means of notification or
32 inclusion of additional information to employees if necessary to effectuate this section.

33 (d) An employer who willfully violates the notice and posting requirements of this
34 section shall be subject to a civil fine in an amount not to exceed one hundred dollars (\$100) for

1 each separate offense.

2 (e) Employers shall maintain records showing the hours worked daily by all employees,
3 the wages and predictability pay paid to all employees, and the initial work schedule and all
4 subsequent revisions to the work schedule of all employees. Employers shall retain payroll
5 records pertaining to employees for a period of three (3) years, and such records shall be available
6 upon request by the agency. An employee shall be permitted to inspect records pertaining to their
7 employment at a reasonable time and place. Failure to maintain records required under this
8 chapter shall give rise to a rebuttable presumption that the employer has violated this chapter, and
9 the employee's reasonable estimate regarding the initial work schedule and subsequent revisions
10 to the schedule, hours worked, and wages and predictability pay paid, may be relied upon.

11 (f) An employer who fails to keep true and accurate records, furnish a record in a timely
12 fashion, or who falsifies records required under this section, shall have violated this section and
13 be punished by civil penalties as provided in §28-12.2-12.

14 **28-12.2-11. Enforcement. --** (a) Rulemaking. The state shall have the authority to
15 coordinate implementation and enforcement of this chapter and may promulgate appropriate
16 guidelines or rules for such purposes. Any guidelines or rules promulgated by the state shall have
17 the force and effect of law and may be relied on by employers, employees, and other parties to
18 determine their rights and responsibilities under this chapter. Any such guidelines or rules may
19 establish procedures for ensuring fair, efficient and cost-effective implementation of this chapter,
20 including supplementary procedures for helping to inform employees of their rights under this
21 chapter and for monitoring employer compliance with this chapter.

22 (b) Civil enforcement. The agency or any person aggrieved by a violation of this chapter,
23 or any entity a member of which is aggrieved by a violation of this chapter may bring a civil
24 action in a court of competent jurisdiction against an employer violating this chapter. Such action
25 may be brought by a person aggrieved by a violation of this chapter without first filing an
26 administrative complaint.

27 (1) Upon prevailing in an action brought pursuant to this section, aggrieved persons shall
28 be entitled to such legal or equitable relief as may be appropriate to remedy the violation,
29 including, without limitation, reinstatement in employment, back pay and injunctive relief. Upon
30 prevailing in an action brought pursuant to this section, aggrieved persons shall recover the full
31 amount of any pay authorized by this chapter that was not paid plus any actual damages suffered
32 as the result of the employer's violation of this section plus an equal amount of liquidated
33 damages of twice the pay owed under this chapter. Any employee receiving less than the wage or
34 predictability pay to which the employee is entitled under this chapter upon prevailing in an

1 action under this section, shall recover the balance of the wages or predictability pay owed,
2 including interest thereon, and an additional amount equal to twice the wages or predictability
3 pay owed, and any other appropriate legal or equitable relief. In an action brought by the agency
4 any unpaid wages and actual damages recovered shall be payable to the individual employee to
5 whom the violation occurred.

6 (2) Any employee who has suffered discrimination in any manner or had adverse action
7 taken against that employee in retaliation for exercising rights protected under this chapter may
8 bring a civil action in a court of competent jurisdiction and, upon prevailing, shall recover actual
9 damages plus reinstatement in the case of discharge. In any case where an employee has been
10 discharged in retaliation for exercising rights under this chapter, the period of violation extends
11 from the day of discharge until the day the employee is reinstated, the day the employee agrees to
12 waive reinstatement or, in the case of an employee who may not be rehired, from the day of
13 discharge until the day legal judgment is final.

14 (3) Aggrieved persons prevailing in an action to enforce this chapter shall be entitled to
15 recover their costs and expenses of suit and reasonable attorney's fees.

16 (4) The statute of limitations for a civil action brought pursuant to this section shall be for
17 a period of four (4) years from the date the aggrieved person knew or should have known of the
18 alleged violation, except that civil actions brought to recover overtime pay owed under this
19 section must be brought within one year from the date the alleged violation occurred.

20 (5) Actions brought pursuant to this section may be brought as a class action pursuant to
21 the laws of the state of Rhode Island.

22 (c) Administrative enforcement. The agency is authorized to take appropriate steps to
23 enforce this section.

24 (1) Any person alleging a violation of this chapter shall have the right to file a complaint
25 with the agency within one year of the date the person knew or should have known of the alleged
26 violation. The agency shall maintain confidential the identity of any complainant unless
27 disclosure of such complainant's identity is necessary for resolution of the investigation or
28 otherwise required by law. The agency shall, to the extent practicable, notify such complainant
29 that the agency will be disclosing their identity prior to such disclosure.

30 (2) Any employee or former employee may contact the agency and report an allegation of
31 non-compliance with this chapter by an employer. Upon receipt of a claim from an employee, the
32 agency shall send a demand letter to the employer notifying the employer that the agency is in
33 receipt of a complaint of non-compliance with this chapter. The agency shall demand written
34 confirmation of compliance or corrective action within ten (10) days from the date of the letter.

1 The letter shall inform the employer that failure to comply may result in criminal charges, a civil
2 action seeking damages, attorneys' fees and other legal remedies where applicable. The letter
3 shall also inform the employer that retaliation against an employee for claiming rights under this
4 chapter is a basis for a private right of action seeking additional monetary damages to be
5 determined a court.

6 (3) If the employer disputes the claim, the employer shall forthwith provide written
7 documentation showing compliance with this chapter. Failure of the employer to provide timely
8 proof of compliance is itself a basis for further action. If the agency believes that a violation has
9 occurred, it shall issue to the offending person a notice of violation.

10 (4) The agency shall have the power to impose penalties payable to the general fund for
11 violations of this chapter and to grant an employee or former employee all appropriate relief and
12 shall make all reasonable efforts to secure relief for employees whose rights are found to be
13 violated. Any entity or person found to be in violation of this chapter shall be liable for a civil
14 penalty not to exceed five hundred dollars (\$500) for each act in violation.

15 (5) When an employer fails or refuses to comply with the agency's order, the agency may
16 file with the district court a petition requesting the court to order the employer to comply with the
17 order, thereupon the court shall issue an order to show cause directed to the employer why an
18 order directing compliance should not be issued. Notwithstanding the provisions of any law or
19 rule of civil procedure to the contrary, the court shall examine at the hearing on the order to show
20 cause all the evidence in the record and may amend the order in any way the court deems just and
21 equitable. If the state ordered an award of damages and if the court sustains any or all of the
22 award, it shall enter judgment on that order in the same manner as in any civil suit.

23 (6) The state shall annually report on its website the number and nature of the complaints
24 received pursuant to this chapter, the results of investigations undertaken pursuant to this chapter,
25 including the number of complaints not substantiated and the number of notices of violations
26 issued, the number and nature of adjudications pursuant to this chapter, and the average time for a
27 complaint to be resolved pursuant to this chapter.

28 **28-12.2-12. Relationship to other requirements. --** (a) This chapter provides for
29 minimum standards for work hours and shall not be construed to preempt or otherwise limit or
30 affect the applicability of any other law, regulation, requirement, policy, or standard that provides
31 for more generous compensation, rights, benefits, or protections. Nothing contained in this
32 chapter prohibits an employer from establishing more generous policies than those established
33 under this chapter.

34 (b) Nothing in this chapter shall be construed as creating or imposing any requirement in

1 conflict with any federal or state law, rule or regulation, nor shall anything in this chapter be
2 construed to diminish or impair the rights of an employee or employer under any valid collective
3 bargaining agreement.

4 (c) Nothing in this chapter shall be construed as diminishing the obligation of an
5 employer to comply with any contract, collective bargaining agreement, employment benefit plan
6 or other agreement providing more generous sick time to an employee than required herein.

7 (d) This chapter shall not apply to any employee covered by a bona fide collective
8 bargaining agreement when the terms of the collective bargaining agreement include terms that
9 govern work scheduling practices.

10 **28-12.2-13. Severability.** -- If any provision of this chapter or application thereof to any
11 person or circumstance is judged invalid, the invalidity shall not affect other provisions or
12 applications of the chapter which can be given effect without the invalid provision or application,
13 and to this end the provisions of this chapter are declared severable.

14 SECTION 3. This act shall take effect ninety (90) days following enactment provided
15 that in the case of employees covered by a collective bargaining agreement in effect on the
16 effective date prescribed herein, this act shall apply on the date of the termination of such
17 agreement.

=====
LC004617
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO LABOR AND LABOR RELATIONS -- HOURS AND SCHEDULING

1 This act would require employers to give their employees at least two (2) weeks' notice of
2 their work schedules. It would also require employers to pay their employees additional pay if
3 they change their previously scheduled shift. Finally, it would grant increased scheduling notice,
4 with corresponding remedies, to employees for violations of their rights.

5 This act would take effect ninety (90) days following enactment provided that in the case
6 of employees covered by a collective bargaining agreement in effect on the effective date
7 prescribed herein, this act would apply on the date of the termination of such agreement.

=====
LC004617
=====