

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1345

H.P. 973

House of Representatives, March 21, 2019

An Act To Ensure a Fair Workweek

Reference to the Committee on Labor and Housing suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative MELARAGNO of Auburn.
Cosponsored by President JACKSON of Aroostook and
Representatives: BROOKS of Lewiston, MASTRACCIO of Sanford, SHEATS of Auburn,
TEPLER of Topsham.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 26 MRSA c. 7, sub-c. 1-D** is enacted to read:

3 **SUBCHAPTER 1-D**

4 **NOTICE OF WORK SCHEDULES**

5 **§620. Definitions**

6 As used in this subchapter, unless the context otherwise indicates, the following
7 terms have the following meanings.

8 **1. Bureau.** "Bureau" means the Department of Labor, Bureau of Labor Standards.

9 **2. Employee.** "Employee" means an individual employed by an employer who is
10 compensated, at least partially, at an hourly rate.

11 **3. Employer.** "Employer" means an individual, sole proprietorship, partnership,
12 corporation, limited liability partnership or company, association or other legal or
13 commercial entity that employs 5 or more employees in the State. "Employer" does not
14 include a nonprofit corporation or governmental entity.

15 **4. Work schedule.** "Work schedule" means those days and times within a work
16 period that an employee is required by an employer to perform that employee's duties of
17 employment for which the employee will receive compensation.

18 **§620-A. Advance notice of work schedules and changes in work schedules**

19 **1. Initial estimate of minimum hours.** Prior to the start of a new employee's
20 employment, an employer shall provide the employee with a good faith estimate in
21 writing of the employee's expected minimum number of scheduled shifts per month,
22 excluding on-call shifts, and the days and hours of those shifts. The new employee may
23 request that the employer modify this estimated work schedule prior to the start of
24 employment. The employer shall consider any such request and in its sole discretion may
25 accept or reject the request. The employer shall notify the employee of its determination
26 prior to the start of employment. The estimate does not constitute a contractual offer, and
27 the employer may not be bound by the estimate.

28 **2. Two weeks' prior notice of work schedules.** An employer shall provide its
29 employees with at least 2 weeks' prior notice of their work schedules by doing the
30 following on a biweekly schedule:

31 **A.** Posting the work schedule in a conspicuous place at the workplace that is readily
32 accessible and visible to all employees; or

33 **B.** Transmitting the work schedule by electronic means.

34 For a new employee, an employer shall provide on the employee's first day of
35 employment an initial work schedule that runs through the date that the next biweekly

1 schedule for existing employees is scheduled to be posted or transmitted. Thereafter, the
2 employer shall include the new employee in an existing biweekly schedule with other
3 employees. For all employees, the work schedule must include any on-call shifts, as
4 applicable. If the employer changes the work schedule after it is posted and transmitted,
5 such changes are subject to the notice and compensation requirements set forth in
6 subsections 3 and 4.

7 **3. Notice of schedule change.** An employer shall provide an employee notice of
8 any change to the employee's work schedule that has been posted and transmitted
9 pursuant to subsection 2. The employer shall provide notice by in-person conversation or
10 by telephone call and shall provide notice in writing, including by e-mail, text message or
11 other electronic communication. This notice requirement does not apply to any schedule
12 changes that the employee requests, such as employee-requested sick leave, time off, shift
13 trades or additional shifts.

14 **4. Compensation for schedule changes.** Subject to the exceptions in subsection 5,
15 an employer shall provide an employee with the following compensation per shift for
16 each previously scheduled shift that the employer moves to another date or time or
17 Cancels and each previously unscheduled shift that the employer adds to the employee's
18 work schedule:

19 A. With less than 7 days' notice but 24 hours' or more notice to the employee, one
20 hour of pay at the employee's regular hourly rate;

21 B. With less than 24 hours' notice to the employee, 2 hours of pay at the employee's
22 regular hourly rate for each shift of 4 hours or less; and

23 C. With less than 24 hours' notice to the employee, 4 hours of pay at the employee's
24 regular hourly rate for each shift of more than 4 hours.

25 When the employee is required to come to work, the compensation mandated by this
26 subsection is in addition to the employee's regular pay for working that shift. This
27 subsection does not apply to on-call shifts.

28 **5. Exceptions.** The requirements in subsections 3 and 4 do not apply if:

29 A. Operations cannot begin or continue due to threats to employees or property or
30 civil authorities recommend that work not begin or continue;

31 B. Operations cannot begin or continue because utilities fail to supply electricity,
32 water or gas or there is a failure in the utilities or sewer system;

33 C. Operations cannot begin or continue due to an act of God or other cause not
34 within the employer's control, such as a state of emergency declared by the Governor;

35 D. Operations cannot begin or continue due to a government shutdown;

36 E. The employer requires the employee to work overtime in conjunction with a
37 previously scheduled shift; or

38 F. The employee trades shifts with another employee or requests from the employer
39 a change in shift or shifts, hours or work schedule.

1 6. Greater advance notice not prohibited. Nothing in this section may be
2 construed to prohibit an employer from providing greater advance notice of employees'
3 work schedules or changes in schedules than required by this section.

4 §620-B. Notice of employee rights

5 1. Notice. The bureau shall publish and make available to employers, in English,
6 Spanish, French and all languages spoken by more than 5% of the workforce in this State,
7 a notice suitable for posting by employers in the workplace informing applicants and
8 employees of their rights under this subchapter. The bureau shall update this notice on
9 December 1st of any year in which there is a change in the languages spoken by more
10 than 5% of the workforce of this State.

11 2. Posting of notice. An employer shall post the notice described in subsection 1 in
12 a conspicuous place at every workplace, job site or other location in this State under the
13 employer's control frequently visited by its employees. The notice must be posted in
14 English, Spanish, French and any language spoken by at least 5% of the employees at the
15 workplace, job site or other location at which it is posted.

16 §620-C. Requirements governing retention of records

17 An employer shall retain work schedule and payroll records pertaining to employees
18 for 3 years and shall allow the bureau access to the records, with appropriate notice and
19 during business hours, to monitor compliance with the requirements of this subchapter.

20 The bureau must have access to all places of labor subject to this subchapter during
21 business hours to inspect books and records, interview employees and investigate such
22 matters necessary or appropriate to determine whether an employer has violated any
23 provisions of this subchapter. If an employer does not maintain or retain adequate
24 records documenting compliance with this subchapter or does not allow the bureau
25 reasonable access to the records, it must be presumed that the employer did not comply
26 with this subchapter, absent clear and convincing evidence to the contrary.

27 §620-D. Exercise of rights protected; retaliation prohibited

28 1. Rights. An employer or any other person may not interfere with, restrain or deny
29 the exercise of or the attempt to exercise any right protected under this subchapter. An
30 employer or any other person may not discharge, threaten to discharge, demote, suspend
31 or otherwise take adverse employment action against any employee in retaliation for
32 exercising rights protected under this subchapter. These rights include but are not limited
33 to:

34 A. The right to request a modification to the initial work schedule provided under
35 section 620-A;

36 B. The right to inform any person about an employer's alleged violation of this
37 subchapter;

38 C. The right to file a complaint with the bureau alleging a violation of this
39 subchapter;

1 D. The right to cooperate with the bureau or other persons in the investigation or
2 prosecution of any alleged violation of this subchapter;

3 E. The right to oppose any policy, practice or act that is unlawful under this
4 subchapter; and

5 F. The right to inform any person of the person's rights under this subchapter.

6 **2. Retaliation.** Taking adverse action against an employee within 90 days of the
7 employee's exercise of rights protected under this subchapter raises a rebuttable
8 presumption that the party taking the adverse action did so in retaliation for the exercise
9 of those rights.

10 **§620-E. Investigation and complaints**

11 **1. Investigation.** The bureau may investigate possible violations of this subchapter.

12 **2. Complaints.** An employee or other person may report to the bureau any
13 suspected violation of this subchapter. To the maximum extent permitted by law, the
14 name and other identifying information of the employee or person reporting the violation
15 are confidential except that, with the authorization of the employee or person reporting
16 the violation, the bureau may disclose the employee's or person's name and identifying
17 information as necessary to enforce this section or for other appropriate purposes.

18 **3. Bureau discretion.** The bureau's decision to investigate or pursue a violation of
19 this subchapter is solely at the bureau's discretion. The filing of a report of a suspected
20 violation by an employee does not create any right of appeal to the bureau by the
21 employee.

22 **§620-F. Penalties**

23 **1. Civil violation.** An employer that violates any provision of this subchapter
24 commits a civil violation for which a fine of not more than \$50 per day, for each day or
25 portion of a day that the violation occurred or continued, may be adjudged.

26 **2. Civil action.** The Attorney General may bring an action to enjoin violations of
27 this subchapter and for any other available remedy, including, but not limited to: the
28 payment of lost wages; payment of an additional sum as liquidated damages in an amount
29 not to exceed lost wages; reinstatement; and reasonable attorney's fees and costs. This
30 action and an action to prosecute the civil violation pursuant to subsection 1 may be
31 joined in the same proceeding. Notwithstanding Title 14, section 1602-C, the court shall
32 award interest at a rate of 10% per annum on all amounts due and unpaid.

33 **§620-G. No limitation of other rights and remedies**

34 This subchapter does not in any way limit the rights and remedies that the law
35 otherwise provides to employees, including, but not limited to, the rights to be free from
36 wrongful termination and unlawful discrimination.

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§620-H. Rules

The Department of Labor may adopt routine technical rules, as defined in Title 5, chapter 375, subchapter 2-A, to implement the provisions of this subchapter. The rules must be consistent with this subchapter and may establish procedures for ensuring fair, efficient and cost-effective implementation and enforcement of this subchapter, including procedures for helping to inform employees of their rights under this subchapter and for monitoring employer compliance.

§620-I. Report

No later than January 1, 2020, January 1, 2021 and January 1, 2022, and no later than January 1st of every even-numbered year thereafter, the bureau shall provide a written report regarding this subchapter to the joint standing committee of the Legislature having jurisdiction over labor matters. The report must include, but is not limited to, a discussion of the implementation and enforcement of this subchapter, including the number of violations and the penalties assessed in the prior year, or prior 2 years starting with the report due by January 1, 2024. The report may also include recommendations for possible improvements to this subchapter.

SUMMARY

This bill requires employers who employ 5 or more employees in the State to provide hourly employees at least 2 weeks' prior notice of the employees' work schedules, with compensation owed for schedule changes under certain circumstances. The bill also requires these employers to keep certain business records for at least 3 years.

The bill provides that the Department of Labor, Bureau of Labor Standards may investigate possible violations and receive complaints of possible violations from the public. A fine of \$50 per day is due for any noncompliance. The Attorney General may also file a civil action seeking additional remedies. The department may adopt rules regarding compliance with and enforcement of these provisions, and the bureau is required to report to the Legislature periodically on violations of the law and the bureau's efforts.