

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 1101

H.P. 761

House of Representatives, March 25, 2015

An Act To Adopt a Retail Workers' Bill of Rights

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

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

ROBERT B. HUNT
Clerk

Presented by Representative COOPER of Yarmouth.
Cosponsored by Senator MIRAMANT of Knox and
Representatives: BEAVERS of South Berwick, BROOKS of Lewiston, DAUGHTRY of
Brunswick, MELARAGNO of Auburn, SHORT of Pittsfield, Senator: PATRICK of Oxford.

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

2 **Sec. 1. 26 MRSA c. 43** is enacted to read:

3 **CHAPTER 43**

4 **PREDICTABLE SCHEDULING AND FAIR TREATMENT FOR RETAIL**
5 **EMPLOYEES**

6 **§3501. Definitions**

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

9 **1. Bureau.** "Bureau" means the Bureau of Labor Standards within the Department
10 of Labor.

11 **2. Employee.** "Employee" means a person employed or permitted to work by an
12 employer within the geographic boundaries of the State, including a person who, in a
13 particular week, is scheduled for an on-call shift of at least 2 hours for an employer,
14 regardless of whether the person is required to report to work for the shift.

15 **3. Employer.** "Employer" means a person that owns or operates a retail
16 establishment with 10 or more employees, including corporate officers and executives, in
17 the State and who directly or indirectly or through an agent or any other person, including
18 through the services of a temporary services or staffing agency or similar entity, employs
19 or exercises control over the wages, hours or working conditions of a person.
20 "Employer" does not include a nonprofit corporation or governmental entity.

21 **4. Full-time.** "Full-time" means more than 30 hours of work in each work week.

22 **5. On-call shift.** "On-call shift" means any shift for which an employee must, less
23 than 24 hours in advance of the start of the shift, either contact the employer or wait to be
24 contacted by the employer to learn whether the employer requires the employee to report
25 to work for the shift.

26 **6. Person.** "Person" means an individual, proprietorship, corporation, partnership,
27 limited partnership, limited liability partnership or company, trust, business trust, estate,
28 association, joint venture, agency, instrumentality or any other legal or commercial entity.

29 **7. Part-time.** "Part-time" means 30 hours or less of work in each work week.

30 **§3502. Advance notice of work schedules and changes in work schedules**

31 **1. Initial estimate of minimum hours.** Prior to the start of a new employee's
32 employment, an employer shall provide the employee with a good faith estimate in
33 writing of the employee's expected minimum number of scheduled shifts per month,
34 excluding on-call shifts, and the days and hours of those shifts. The new employee may
35 request that the employer modify this estimated work schedule prior to the start of
36 employment. The employer shall consider any such request and in its sole discretion may

1 accept or reject the request. The employer shall notify the employee of its determination
2 prior to the start of employment. The estimate does not constitute a contractual offer and
3 the employer may not be bound by the estimate.

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

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

9 B. Transmitting the work schedule by electronic means, as long as all employees are
10 given access to the electronic schedule at the workplace.

11 For a new employee, an employer shall provide on the employee's first day of
12 employment an initial work schedule that runs through the date that the next biweekly
13 schedule for existing employees is scheduled to be posted or distributed. Thereafter, the
14 employer shall include the new employee in an existing biweekly schedule with other
15 employees. For all employees, the work schedule must include any on-call shifts, as
16 applicable. If the employer changes the work schedule after it is posted or transmitted,
17 such changes are subject to the notice and compensation requirements set forth in
18 subsections 3 and 4.

19 **3. Notice of schedule change.** An employer shall provide an employee notice of
20 any change to the employee's work schedule that has been posted or transmitted pursuant
21 to subsection 2. The employer shall provide such notice by in-person conversation,
22 telephone call, or by e-mail, text message or other electronic communication. This notice
23 requirement shall not apply to any schedule changes that the employee requests, such as
24 employee-requested sick leave, time off, shift trades or additional shifts.

25 **4. Compensation for schedule changes.** Except as provided in subsection 6, an
26 employer shall provide an employee with the following compensation per shift for each
27 previously scheduled shift that the employer moves to another date or time or cancels and
28 each previously unscheduled shift that the employer adds to the employee's work
29 schedule:

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

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

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

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

39 **5. Pay for on-call shifts.** Except as provided in subsection 6, an employer shall
40 provide an employee with the following compensation for each on-call shift for which the
41 employee is required to be available but is not called in to work:

1 A. Two hours of pay at the employee's regular hourly rate for each on-call shift of 4
2 hours or less; and

3 B. Four hours of pay at the employee's regular hourly rate for each on-call shift of
4 more than 4 hours.

5 This subsection does not apply when the employee is in fact called in for the on-call shift
6 or the employer provides the employee with 24 hours' or more notice that the on-call shift
7 has been cancelled or moved to another date or time.

8 **6. Exceptions.** The requirements in subsections 3 to 5 do not apply when:

9 A. Operations cannot begin or continue due to threats to employees or property, or
10 civil authorities recommend that work not begin or continue;

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

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

16 D. Another employee previously scheduled to work the relevant shift is unable to
17 work due to illness, vacation or employer-provided paid or unpaid time off if the
18 employer did not receive at least 7 days' prior notice of the absence;

19 E. Another employee previously scheduled to work the relevant shift has not
20 reported to work on time or is fired or sent home or told to stay home as a
21 disciplinary action;

22 F. The employer requires the employee to work overtime in conjunction with a
23 previously schedule shift; or

24 G. The employee trades shifts with another employee or requests from the employer
25 a change in shift or shifts, hours or work schedule.

26 **7. Greater notice not prohibited.** Nothing in this section may be construed to
27 prohibit an employer from providing greater advance notice of employees' work
28 schedules or changes in schedules than required by this section.

29 **§3503. Equal treatment for part-time employees**

30 **1. Hourly wage.** Employers shall provide part-time employees with the same
31 starting hourly wage as that provided to starting full-time employees who hold jobs that
32 require equal skill, effort and responsibility and that are performed under similar working
33 conditions, except that hourly pay differentials between part-time and full-time
34 employees are permissible if such differentials are based on reasons other than the part-
35 time status of the employee, such as a seniority system, merit system or system that
36 measures earnings by quantity or quality of production, performance or responsibilities.
37 This subsection does not affect the minimum hourly requirements for receipt of benefits,
38 including, but not limited to, health care benefits.

39 **2. Access to time off.** Employers shall provide part-time employees with the same
40 access to employer-provided paid and unpaid time off as that afforded to full-time

1 employees for the same job classification. A part-time employee's eligibility for
2 employer-provided paid or unpaid time off may be prorated based on the number of hours
3 that the part-time employee works.

4 **3. Eligibility for promotions.** Employers shall provide part-time employees with
5 the same eligibility for promotions as that afforded to full-time employees for the same
6 job classification, except that an employer may condition eligibility for promotion on the
7 employee's availability for full-time employment and on reasons other than the part-time
8 status of the employee, such as the nature and amount of the employee's work experience.

9 **§3504. Offering additional work to part-time employees**

10 **1. Offer required.** Except as otherwise provided in this section, before hiring new
11 employees or using contractors or workers from a temporary services or staffing agency
12 to perform work in a retail establishment, an employer must first offer the additional
13 work to an existing part-time employee or employees if:

14 A. The part-time employee or employees are qualified to do the additional work, as
15 reasonably determined by the employer; and

16 B. The additional work is the same or similar to work the part-time employee or
17 employees have performed for the retail establishment.

18 An employer is required to offer to a part-time employee only the number of hours
19 required to give the employee more than 30 hours of work in a week.

20 **2. Employer discretion.** An employer has discretion to divide the additional work
21 hours among part-time employees consistent with this section.

22 **3. Acceptance not required.** A part-time employee is not required to accept the
23 employer's offer of additional work hours under this section.

24 **4. Offer in writing.** When an employer is required to offer additional work hours to
25 a part-time employee, the employer shall make the offer in writing and shall retain each
26 written offer for no less than 3 years as required under section 3506.

27 **§3505. Notice of employee rights**

28 **1. Notice.** The bureau shall publish and make available to employers, in English,
29 Spanish, French and all languages spoken by more than 5% of the workforce in this State,
30 a notice suitable for posting by employers in the workplace informing applicants and
31 employees of their rights under this chapter. The bureau shall update this notice on
32 December 1st of any year in which there is a change in the languages spoken by more
33 than 5% of the workforce of this State.

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

1 **§3506. Requirements governing retention of records**

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

5 The bureau may have access to all places of labor subject to this chapter during
6 business hours to inspect books and records, interview employees and investigate such
7 matters necessary or appropriate to determine whether an employer has violated any
8 provisions of this chapter. If an employer does not maintain or retain adequate records
9 documenting compliance with this chapter or does not allow the bureau reasonable access
10 to the records, it must be presumed that the employer did not comply with this chapter,
11 absent clear and convincing evidence to the contrary.

12 **§3507. Exercise of rights protected; retaliation prohibited**

13 **1. Rights.** An employer or any other person may not interfere with, restrain or deny
14 the exercise or the attempt to exercise any right protected under this chapter. An
15 employer or any other person may not discharge, threaten to discharge, demote, suspend
16 or otherwise take adverse employment action against any employee in retaliation for
17 exercising rights protected under this chapter. These rights include but are not limited to:

18 A. The right to request a modification to the initial proposed work schedule provided
19 under section 3502;

20 B. The right to inform any person about an employer's alleged violation of this
21 chapter;

22 C. The right to file a complaint with the bureau alleging a violation of this chapter;

23 D. The right to cooperate with the bureau or other persons in the investigation or
24 prosecution of any alleged violation of this chapter;

25 E. The right to oppose any policy, practice or act that is unlawful under this chapter;
26 and

27 F. The right to inform any person of the person's rights under this chapter.

28 **2. Retaliation.** Taking adverse action against an employee within 90 days of the
29 employee's exercise of rights protected under this chapter raises a rebuttable presumption
30 that the party taking the adverse action did so in retaliation for the exercise of those
31 rights.

32 **§3508. Investigation and complaints**

33 **1. Investigation.** The bureau may investigate possible violations of this chapter.

34 **2. Complaints.** An employee or other person may report to the bureau any
35 suspected violation of this chapter. To the maximum extent permitted by law, the name
36 and other identifying information of the employee or person reporting the violation is
37 confidential except that, with the authorization of the employee or person reporting the

1 violation, the bureau may disclose the employee's or person's name and identifying
2 information as necessary to enforce this chapter or for other appropriate purposes.

3 **3. Bureau discretion.** The bureau's decision to investigate or pursue a violation of
4 this chapter is solely at the bureau's discretion. The filing of a report of a suspected
5 violation by an employee does not create any right of appeal to the bureau by the
6 employee.

7 **§3509. Penalties**

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

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

18 **§3510. No limitation of other rights and remedies**

19 This chapter does not in any way limit the rights and remedies that the law otherwise
20 provides to employees, including, but not limited to, the rights to be free from wrongful
21 termination and unlawful discrimination.

22 **§3511. Rules**

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

29 **§3512. Report**

30 By no later than January 1, 2016, January 1, 2017 and January 1, 2018, and no later
31 than January 1st of every even-numbered year thereafter, the bureau shall provide a
32 written report regarding this chapter to the joint standing committee of the Legislature
33 having jurisdiction over labor matters. The report must include, but not be limited to, a
34 discussion of the implementation and enforcement of this chapter, including the number
35 of violations and the penalties assessed in the prior year, or prior 2 years starting with the
36 report due by January 1, 2020. The report may also include recommendations for
37 possible improvements to this chapter.

1 **SUMMARY**

2 This bill amends the laws regarding the employment practices of employers at retail
3 establishments by requiring the following:

4 1. Two weeks' prior notice of work schedules to employees, with compensation
5 owed for schedule changes under certain circumstances;

6 2. Paying part-time employees the same wage as full-time employees;

7 3. Providing part-time employees the same paid or unpaid time off as full-time
8 employees;

9 4. Providing part-time employees the same eligibility for promotions as full-time
10 employees; and

11 5. Offering additional work to part-time employees before hiring new employees or
12 using contractors or temporary staffing services under certain circumstances.

13 The bill also requires these employers to keep certain business records for at least 3
14 years. The Department of Labor, Bureau of Labor Standards may investigate possible
15 violations and receive complaints of possible violations from the public. A fine of \$50
16 per day is due for any noncompliance. The Attorney General may also file a civil action
17 seeking additional remedies. The Department of Labor may adopt rules to help
18 implement compliance and enforcement of these provisions and must report to the
19 Legislature periodically on violations of the law and its efforts.