

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 1217

H.P. 835

House of Representatives, April 2, 2015

**An Act To Require at Least 2 Weeks' Advance Notice of the Work
Schedule for Hourly Employees at Certain Businesses**

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

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

ROBERT B. HUNT
Clerk

Presented by Representative MELARAGNO of Auburn.
Cosponsored by Representative GOODE of Bangor, Senator GERZOFKY of Cumberland and Representatives: CHIPMAN of Portland, DAUGHTRY of Brunswick, DUNPHY of Old Town, GOLDEN of Lewiston, MASTRACCIO of Sanford, MOONEN of Portland, PIERCE of Falmouth, WARREN of Hallowell.

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

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

3 **SUBCHAPTER 1-C**

4 **NOTICE OF WORK SCHEDULES**

5 **§614. 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 Bureau of Labor Standards within the Department
9 of Labor.

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

12 **3. Employer.** "Employer" means an individual, sole proprietorship, partnership,
13 corporation, limited liability partnership or company, association or other legal or
14 commercial entity that employs 100 or more employees in the State. "Employer" does
15 not include a nonprofit corporation or governmental entity.

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

19 **§615. Advance notice of work schedules and changes in work schedules**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 F. The employer requires the employee to work overtime in conjunction with a
5 previously scheduled shift; or

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

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

11 **§616. Notice of employee rights**

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

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

23 **§617. Requirements governing retention of records**

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

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

34 **§618. Exercise of rights protected; retaliation prohibited**

35 **1. Rights.** An employer or any other person may not interfere with, restrain or deny
36 the exercise or the attempt to exercise any right protected under this subchapter. An
37 employer or any other person may not discharge, threaten to discharge, demote, suspend
38 or otherwise take adverse employment action against any employee in retaliation for
39 exercising rights protected under this subchapter. These rights include but are not limited
40 to:

- 1 A. The right to request a modification to the initial proposed work schedule provided
2 under section 615;
- 3 B. The right to inform any person about an employer's alleged violation of this
4 subchapter;
- 5 C. The right to file a complaint with the bureau alleging a violation of this
6 subchapter;
- 7 D. The right to cooperate with the bureau or other persons in the investigation or
8 prosecution of any alleged violation of this subchapter;
- 9 E. The right to oppose any policy, practice or act that is unlawful under this
10 subchapter; and
- 11 F. The right to inform any person of the person's rights under this subchapter.

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

16 **§619. Investigation and complaints**

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

18 **2. Complaints.** An employee or other person may report to the bureau any
19 suspected violation of this subchapter. To the maximum extent permitted by law, the
20 name and other identifying information of the employee or person reporting the violation
21 is confidential except that, with the authorization of the employee or person reporting the
22 violation, the bureau may disclose the employee's or person's name and identifying
23 information as necessary to enforce this section or for other appropriate purposes.

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

28 **§620. Penalties**

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

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

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§620-A. No limitation of other rights and remedies

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

§620-B. 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-C. Report

No later than January 1, 2016, January 1, 2017 and January 1, 2018, 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 not be 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, 2020. The report may also include recommendations for possible improvements to this subchapter.

SUMMARY

This bill requires employers who employ 100 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 must report to the Legislature periodically on violations of the law and the bureau's efforts.