

# MAINE STATE LEGISLATURE

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# 131st MAINE LEGISLATURE

## FIRST REGULAR SESSION-2023

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Legislative Document

No. 1190

S.P. 486

In Senate, March 14, 2023

### **An Act to Ensure a Fair Workweek by Requiring Notice of Work Schedules**

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

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator TIPPING of Penobscot.  
Cosponsored by Representative ROEDER of Bangor and  
Senator: INGWERSEN of York, Representatives: GEIGER of Rockland, GERE of  
Kennebunkport, SKOLD of Portland.

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 terms  
7 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 250 or more employees worldwide.

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

17 **§620-A. Advance notice of work schedules and changes in work schedules**

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

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

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

32 B. Transmitting to all employees the work schedule by electronic means.

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

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

8           **4. Compensation for schedule changes.** Subject to the exceptions in subsection 5,  
9 an employer shall provide an employee with the following compensation per shift for each  
10 previously scheduled shift that the employer moves to another date or time or cancels and  
11 each previously unscheduled shift that the employer adds to the employee's work schedule:

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

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

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

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

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

22           A. Operations cannot begin or continue due to threats to employees or property or a  
23 civil authority's recommendation that operations not begin or continue;

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

26           C. Operations cannot begin or continue due to an act of God or other cause not within  
27 the employer's control, such as a state of emergency declared by the Governor pursuant  
28 to Title 37-B, section 742;

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

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

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

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

37           **§620-B. Notice of employee rights**

38           **1. Notice.** The bureau shall publish and make available to employers, in English,  
39 Spanish, French and all languages spoken by more than 5% of the workforce in this State,  
40 a notice suitable for posting by employers in the workplace informing applicants for  
41 employment and employees of their rights under this subchapter. The bureau shall update

1 this notice on December 1st of any year in which there is a change in the languages spoken  
2 by more than 5% of the workforce of this State.

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

8 **§620-C. Requirements governing retention of records**

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

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

19 **§620-D. Exercise of rights protected; retaliation prohibited**

20 **1. Rights.** An employer or any other person may not interfere with, restrain or deny  
21 the exercise of or the attempt to exercise any right protected under this subchapter. An  
22 employer or any other person may not discharge, threaten to discharge, demote, suspend or  
23 otherwise take adverse employment action against any employee in retaliation for  
24 exercising rights protected under this subchapter. These rights include but are not limited  
25 to:

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

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

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

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

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

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

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

40 **§620-E. Investigation and complaints**

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

1           **2. Complaints.** An employee or other person may report to the bureau any suspected  
2 violation of this subchapter. To the maximum extent permitted by law, the name and other  
3 identifying information of the employee or person reporting the violation are confidential  
4 except that, with the authorization of the employee or person reporting the violation, the  
5 bureau may disclose the employee's or person's name and identifying information as  
6 necessary to enforce this subchapter or for other appropriate purposes.

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

10 **§620-F. Penalties**

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

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

21 **§620-G. No limitation of other rights and remedies**

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

25 **§620-H. Rules**

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

32 **§620-I. Report**

33           No later than January 1, 2024, January 1, 2025 and January 1, 2026, and no later than  
34 January 1st of every even-numbered year thereafter, the bureau shall provide a written  
35 report regarding this subchapter to the joint standing committee of the Legislature having  
36 jurisdiction over labor matters. The report must include, but is not limited to, a discussion  
37 of the implementation and enforcement of this subchapter, including the number of  
38 violations and the penalties assessed in the prior year, or prior 2 years starting with the  
39 report due by January 1, 2026. The report may also include recommendations for possible  
40 improvements to this subchapter.

1 **SUMMARY**

2 This bill requires employers who employ 250 or more employees worldwide to provide  
3 hourly employees at least 2 weeks' prior notice of the employees' work schedules, with  
4 compensation owed for schedule changes under certain circumstances. The bill also  
5 requires these employers to keep certain business records for at least 3 years.

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