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An Act To Adopt a Retail Workers' Bill of Rights

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

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

CHAPTER 43

PREDICTABLE SCHEDULING AND FAIR TREATMENT FOR RETAIL EMPLOYEES

§ 3501. Definitions

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

- 1. Bureau.** "Bureau" means the Bureau of Labor Standards within the Department of Labor.
- 2. Employee.** "Employee" means a person employed or permitted to work by an employer within the geographic boundaries of the State, including a person who, in a particular week, is scheduled for an on-call shift of at least 2 hours for an employer, regardless of whether the person is required to report to work for the shift.
- 3. Employer.** "Employer" means a person that owns or operates a retail establishment with 10 or more employees, including corporate officers and executives, in the State and who directly or indirectly or through an agent or any other person, including through the services of a temporary services or staffing agency or similar entity, employs or exercises control over the wages, hours or working conditions of a person. "Employer" does not include a nonprofit corporation or governmental entity.
- 4. Full-time.** "Full-time" means more than 30 hours of work in each work week.
- 5. On-call shift.** "On-call shift" means any shift for which an employee must, less than 24 hours in advance of the start of the shift, either contact the employer or wait to be contacted by the employer to learn whether the employer requires the employee to report to work for the shift.
- 6. Person.** "Person" means an individual, proprietorship, corporation, partnership, limited partnership, limited liability partnership or company, trust, business trust, estate, association, joint venture, agency, instrumentality or any other legal or commercial entity.
- 7. Part-time.** "Part-time" means 30 hours or less of work in each work week.

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

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

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

- A. Posting the work schedule in a conspicuous place at the workplace that is readily accessible and visible to all employees; or
- B. Transmitting the work schedule by electronic means, as long as all employees are given access to the electronic schedule at the workplace.

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

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

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

- A. With less than 7 days' notice but 24 hours or more notice to the employee, one hour of pay at the employee's regular hourly rate;
- B. With less than 24 hours' notice to the employee, 2 hours of pay at the employee's regular hourly rate for each shift of 4 hours or less; and
- C. With less than 24 hours' notice to the employee, 4 hours of pay at the employee's regular hourly rate for each shift of more than 4 hours.

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

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

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

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

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

- A. Operations cannot begin or continue due to threats to employees or property, or civil authorities recommend that work not begin or continue;
- B. Operations cannot begin or continue because public utilities fail to supply electricity, water or gas, or there is a failure in the public utilities or sewer system;
- C. Operations cannot begin or continue due to an act of God or other cause not within the employer's control, such as an earthquake or a state of emergency declared by the Governor;
- D. Another employee previously scheduled to work the relevant shift is unable to work due to illness, vacation or employer-provided paid or unpaid time off if the employer did not receive at least 7 days' prior notice of the absence;
- E. Another employee previously scheduled to work the relevant shift has not reported to work on time or is fired or sent home or told to stay home as a disciplinary action;
- F. The employer requires the employee to work overtime in conjunction with a previously schedule shift; or
- G. The employee trades shifts with another employee or requests from the employer a change in shift or shifts, hours or work schedule.

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

§ 3503. Equal treatment for part-time employees

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

2. Access to time off. Employers shall provide part-time employees with the same access to employer-provided paid and unpaid time off as that afforded to full-time employees for the same job classification. A part-time employee's eligibility for employer-provided paid or unpaid time off may be prorated based on the number of hours that the part-time employee works.

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

§ 3504. Offering additional work to part-time employees

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

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

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

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

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

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

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

§ 3505. Notice of employee rights

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

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

§ 3506. Requirements governing retention of records

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

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

§ 3507. Exercise of rights protected; retaliation prohibited

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

- A. The right to request a modification to the initial proposed work schedule provided under section 3502;
- B. The right to inform any person about an employer's alleged violation of this chapter;
- C. The right to file a complaint with the bureau alleging a violation of this chapter;
- D. The right to cooperate with the bureau or other persons in the investigation or prosecution of any alleged violation of this chapter;
- E. The right to oppose any policy, practice or act that is unlawful under this chapter; and

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

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

§ 3508. Investigation and complaints

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

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

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

§ 3509. Penalties

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

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

§ 3510. No limitation of other rights and remedies

This chapter 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.

§ 3511. 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 chapter. The rules must be consistent with this chapter and may establish procedures for ensuring fair, efficient and cost-effective implementation and enforcement of this chapter, including procedures for helping to inform employees of their rights under this chapter and for monitoring employer compliance.

§ 3512. Report

By 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 chapter 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 chapter, 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 chapter.

SUMMARY

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

1. Two weeks' prior notice of work schedules to employees, with compensation owed for schedule changes under certain circumstances;
2. Paying part-time employees the same wage as full-time employees;
3. Providing part-time employees the same paid or unpaid time off as full-time employees;
4. Providing part-time employees the same eligibility for promotions as full-time employees; and
5. Offering additional work to part-time employees before hiring new employees or using contractors or temporary staffing services under certain circumstances.

The bill also requires these employers to keep certain business records for at least 3 years. 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 of Labor may adopt rules to help implement compliance and enforcement of these provisions and must report to the Legislature periodically on violations of the law and its efforts.