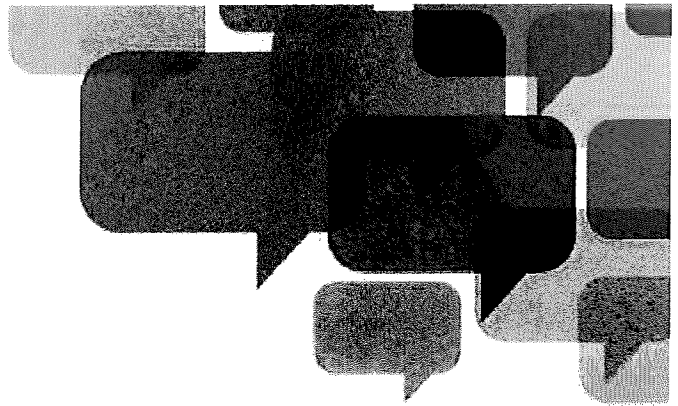




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April 6, 2023

Senator Mike Tipping, Chair
Representative Amy Roeder, Chair
Members of the Labor and Housing Committee

RE: Testimony in OPPOSITION to LD 1190, An Act to Ensure a Fair Workweek by Requiring Notice of Work Schedules

Dear Senator Tipping, Representative Roeder and members of the Labor and Housing Committee:

My name is Curtis Picard and I am the President and CEO of the Retail Association of Maine. I am a resident of Topsham. We have more than 350 members statewide and represent retailers of all sizes. Maine's retailers employ more than 85,000 Mainers. We are here today to testify in strong opposition to LD 1190.

This bill has certainly touched a nerve with not only retailers but all business sectors. I have heard from so many small business owners and employees asking why this bill was even introduced and are dismayed that the supporters feel this is an issue that needs draconian regulation. It shows a complete lack of understanding of how the work place works and how scheduling happens. It also presumes that the employer / employee relationship is contentious and a one-way street. The reality is that the employer / employee relationship is one of respect, open communication and flexibility. In fact, in the post-COVID world, workplaces have only gotten more flexible than the last time this bill was introduced in 2019 as LD 1345. Lastly, it prescribes ridiculously large costs on employers for schedule changes that are usually out of their control. LD 1190 would have an immediate chilling effect on Maine businesses.

Let's be clear about this bill. The language in these bills is model language that started in San Francisco and has only spread to a few municipalities and the state of Oregon. More than a dozen states have considered it and summarily rejected the concept. In fact, both CO and MD have rejected similar proposals this year.

LD 1190 amends the laws regarding employment practices by mandating that all businesses with 250 or more employees worldwide:

- Provide new employees with a written estimate of the minimum number of days, hours and shifts per month.
- Provide two weeks' notice of work schedules.
- For notice of schedule changes, the employer *"shall provide notice by in-person conversation or by telephone call and shall provide notice in writing, including e-mail, text message or other electronic communication."*

- Compensate the employee with one hour of pay when there is a schedule change with less than 7 days' notice.
- Compensate the employee with 2 hours of pay with less than 24 hours' notice on shifts of 4 hours or less.
- Compensate the employee with 4 hours of pay with less than 24 hours' notice on shifts of more than 4 hours.
- Employers would need to keep schedules on file for three years and subject to inspection.

There are some exemptions to the bill:

- If there are threats to employees or property.
- If civil authorities recommend that work not begin or continue.
- If utilities like electric, water or gas.
- An act of God or state of emergency declared by the governor.
- If the employee trades shifts or requests a change in shifts.

Let's focus on that last exemption for a moment. How exactly is an employer supposed to keep a record of shift changes? The bill requires three years of schedules kept on file and charting the minutia of schedule changes would be impossible. Beyond that, there are at least three people involved when an employee requests a change in shifts. There's the employee making the request; there's the employer or manager setting the schedule; and there's the other employee who would cover the change in schedule. Under this bill, there would be no penalty pay for the employee requesting the change, but there would be for the person covering the shift. Why would an employee agree to trade shifts if they can cash in on penalty pay for not agreeing to the shift swap?

Additionally, it is worth noting that since this proposal was last made in 2019, Maine passed the earned paid leave law to provide employees with additional paid time off. Under this proposal, an employer would compensate the person who called out for 8 hours of earned paid leave plus an additional 12 hours for the substitute employee. 20 hours of pay for an 8 hour shift!

Here's the reality: Scheduling is a complex process involving constantly changing variables. Businesses rely on employees to provide an unparalleled customer service experience for their clients and customers. Employees rely on their employers to provide jobs with schedules that fit their needs, which are as varied as the people who work in the many businesses. The fact is many employees choose certain industries specifically because the field allows them to work a flexible schedule and many businesses employ workers on a seasonal basis depending on the particular needs of that business. Employees are drawn to these employers to pick up flexible hours in order to supplement their income. Employers must consider the business needs of each facility when developing employee schedules. A variety of data points that may be used include: sales forecasts, productivity of the location, historic payroll and hour reports, workload, weather, marketing or other events, transportation (truck delivery), and guest/customer/client traffic patterns. Any mandated changes to scheduling disrupt each of these factors.

Given Maine's weather, it is easy to imagine a situation where work schedules can fluctuate at the last minute. One must look no further than this past winter to understand how a large snowstorm can bring the business community to a halt but also how a missed forecast can have just as big of an impact. And weather is not just bad weather. In the summer, a sunny, summer day can do half as much business for

a retailer as a rainy day that brings the tourists inside, or a restaurant may decide to open up the outdoor deck if the weather ends up being nice.

Here are some other examples: A delivery gets delayed because of traffic; a cruise ship cancels because of inclement weather at sea; a tour bus full of visitors rolls in right at closing time; an employee is scheduled to take a 30-minute lunch break at noon, but, due to business demands, the employee does not have the opportunity to take the lunch break until 12:30. An employee plays school sports, but the tournament schedule is not known until the day before the tournament. In each of these situations, the employer would be required to compensate the employee up to four hours of additional pay.

Businesses consider a broad range of factors when scheduling, including employee preferences and availability. Many employers ask employees to provide them with information on the employee's level of availability and interest in working more or less hours. That information is retained and employers routinely ask employees to update their files so that employee preference and availability can be factored in to scheduling development.

Many businesses utilize considerable resources to predict staffing needs. However, the farther in advance those predictions are made, the less accurate the forecasting model becomes. Inaccurate forecasting creates inefficiencies and disruption for both employees and employers.

Unintended consequences of "one size fits all" proposal: Despite an employer's best efforts to predict scheduling needs accurately, the need for employees in any given location is subject to external factors that may change frequently, unpredictably, and for reasons beyond the employer's control.

Businesses need flexibility to respond efficiently to the rapidly changing business environment in order to meet the needs of their clients, consumers, employees and the business. Restrictive constraints on flexible scheduling reduce the ability of employers to flex into different shifts depending upon changing business needs. The result may be fewer hours available for all team members.

Every business has unique business processes and every employee has unique needs. A "one size fits all" statute fails to recognize the unique needs of businesses and their employees as well as the negative impact that they will impose on employee opportunities.

The legislative schedule is notoriously ever-changing and unpredictable. Just last week, the Labor and Housing Committee canceled the remaining public hearings because of a lack of quorum during the budget discussions.

We have assembled a coalition of 30 business associations and chambers of commerce who are opposed to LD 1190. The list includes:

1. *Retail Association of Maine*
2. *Maine Grocers and Food Producers Association*
3. *Maine State Chamber of Commerce*
4. *NFIB Maine*
5. *Maine Tourism Association*
6. *Maine Golf*
7. *Maine Motor Transport Association*
8. *SkiMaine*

9. *International Franchise Association*
10. *Maine Campground Owners Association*
11. *HospitalityMaine*
12. *Mid-Maine Chamber of Commerce*
13. *Associated General Contractors*
14. *Maine Energy Marketers Association*
15. *Maine Auto Dealers Association*
16. *Portland Regional Chamber of Commerce*
17. *Professional Logging Contractors of Maine*
18. *Maine Jobs Council*
19. *Manufacturers Association of Maine*
20. *Kennebec Valley Chamber of Commerce*
21. *Maine Hospital Association*
22. *Maine Association of Broadcasters*
23. *Maine Forest Products Council*
24. *Associated Builders and Contractors of Maine*
25. *Maine Sporting Camp Association*
26. *Maine Insurance Agents Association*
27. *Maine Farm Bureau*
28. *Maine Beer and Wine Wholesalers*
29. *NE Retail Lumber Dealers Association*
30. *Maine Pellet Fuel Dealers Association*
31. *Maine Wild Blueberry Commission*

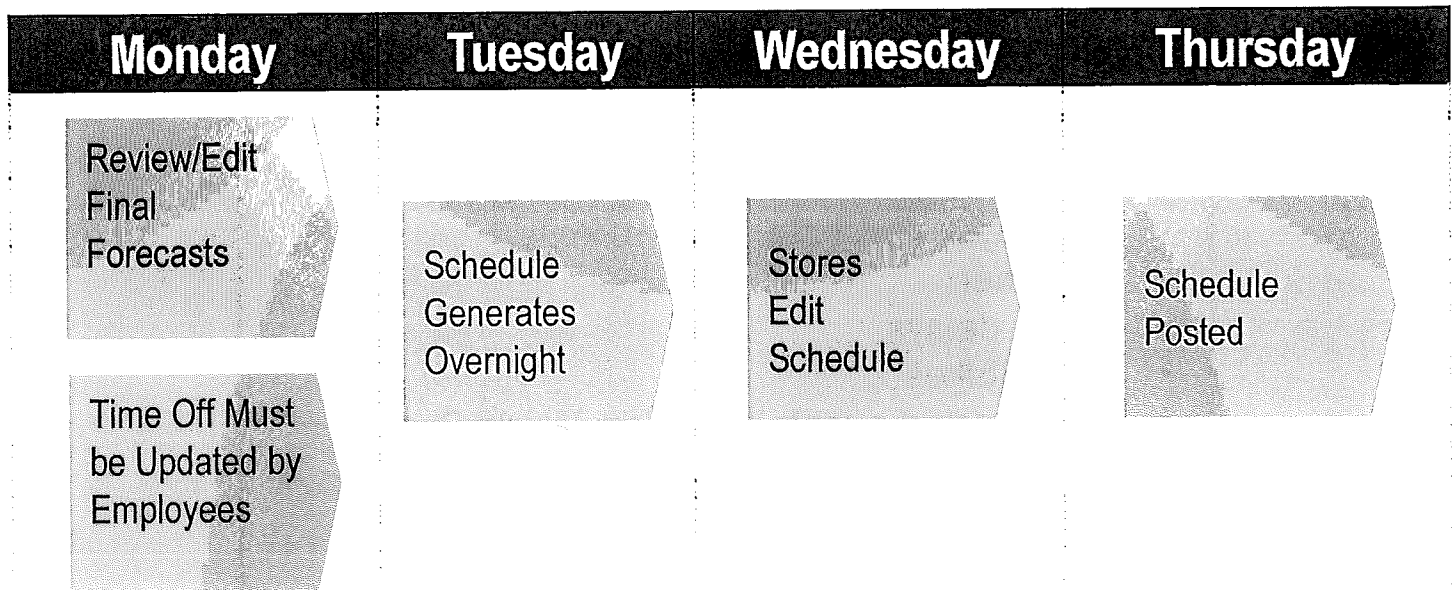
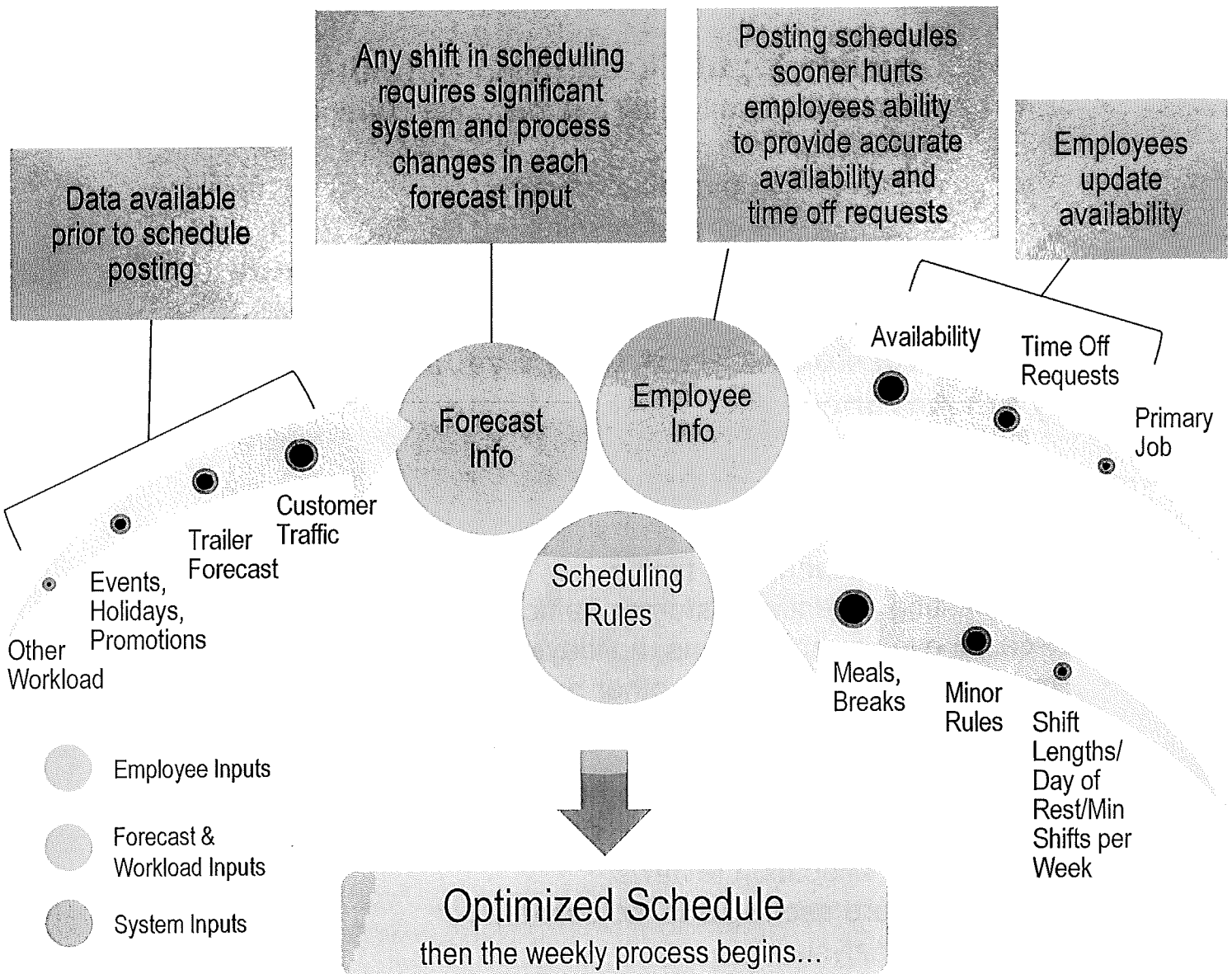
At the end of the day, LD 1190 sends the message to Maine's businesses that government knows better than they do about how to run their business. It would create a confrontational, litigious environment between employers and employees and we strongly urge the committee to unanimously vote LD 1190 Ought Not to Pass.

Thank you for the opportunity to share our thoughts.

Sincerely,

Curtis Picard, CAE
President and CEO

How Retailers Generate a Schedule



How Retailers Generate a Schedule

● Employees Provide Input Throughout Scheduling Process

- Employees provide availability and maintain current requests for additional hours or time off
- Employees can pick up additional shifts
- Employees can trade or switch shifts
- Employees can request changes to their posted schedule

● Forecast & Workload Data Is Only Available a Set Number of Days in Advance

Workload Data:

- Customer traffic patterns
- Truck and transportation timing
- Forecasting potential customer traffic
- Special events, promotions, holidays, sales or discounts
- In-store space, displays or other needs

Forecast Data:

- Historical sales data & sales forecasts
- Historic payroll and hours data
- Daily/weekly allocation reviews
- Individual store and regional adjustments
- New store analysis
- Hours based on productivity goals, sales plans, and competitive impacts

Why does a schedule change?

- Employee requests
- Weather
- Truck delays
- Port Strikes
- Unexpected events (parades, World Series)
- Illness
- Unexpected resignations