

AMENDED IN ASSEMBLY MARCH 12, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 357**

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**Introduced by Assembly Members Chiu and Weber**

(Principal coauthor: Senator Leyva)

**(Coauthors: Assembly Members Bonta, Chu, Gonzalez, and  
Roger Hernández, and Thurmond)**

February 17, 2015

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*An act to add Sections 518 and 519 to the Labor Code, and to amend Section 11320.31 of the Welfare and Institutions Code, relating to employment.*

LEGISLATIVE COUNSEL'S DIGEST

AB 357, as amended, Chiu. Employment: work hours: ~~scheduling~~. *Fair Scheduling Act of 2015.*

Existing law, with certain exceptions, establishes 8 hours as a day's work and a 40-hour workweek, and requires payment of prescribed overtime compensation for additional hours worked. *Existing law establishes the Division of Labor Standards Enforcement in the Department of Industrial Relations for the enforcement of labor laws, including wage claims. Existing federal law provides for the allocation of federal funds through the federal Temporary Assistance for Needy Families (TANF) block grant program to eligible states, with California's version of this program known as the California Work Opportunity and Responsibility to Kids (CalWORKs) program. Under the CalWORKs program, each county provides cash assistance and other benefits to qualified low-income families and individuals, and is prohibited from applying sanctions upon a recipient of CalWORKs for a failure or refusal to comply with program requirements for reasons*

*related to employment, an offer of employment, an activity, or other training for employment for specified reasons, including, but not limited to that the employment, offer of employment, or work activity does not provide workers' compensation insurance. Existing law establishes a statewide program to enable eligible low-income persons to receive food stamps under the federal Supplemental Nutrition Assistance Program (SNAP), known in California as CalFresh, and requires counties to implement the program.*

*This bill would make legislative findings and declarations relating to work hour scheduling for employees of food and general retail establishments. The bill would require a food and general retail establishment, as defined, to provide its employees with at least two week's notice of their schedules, and would require those employees to receive additional pay, as specified, if those employees do not receive at least two week's notice of their work schedule. The bill would prohibit a food and general retail establishment from discharging or discriminating against an employee because he or she is a person who receives, or is a parent, guardian, or grandparent who has custody of one or more children who receive, benefits under the CalWORKs program or a person who receives benefits under CalFresh. The bill would also require an employer to allow such an employee to, upon request, be absent from work without pay to attend any required appointments at the county human services agency, provided that the employee gives reasonable notice to the employer of the planned absence from work prior to taking time off of work. The bill would require the Labor Commissioner to promulgate all regulations and rules or practice and procedure necessary to carry out these provisions. The bill would also prohibit sanctions from being applied upon a recipient of CalWORKs for failure or refusal to comply with CalWORKs program requirements if the employment or offer of employment fails to comply with these provisions.*

*Existing law continuously appropriates moneys from the General Fund to defray a portion of county costs under the CalWORKs program.*

*This bill would instead provide that the continuous appropriation would not be made for purposes of implementing the bill.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. This act shall be known, and may be cited, as the  
2 ~~Fair-Schedule and Pay Equity Scheduling Act of 2015.~~

3 SEC. 2. The Legislature finds and declares the following:

4 (a) More than ~~one-half~~ *one-half* of food and general retail store  
5 employees nationally receive their work schedules one week or  
6 less in advance.

7 (b) According to a recent survey of employees at chain stores  
8 and large stores, only 40 percent of those surveyed have consistent  
9 minimum hours per week and the vast majority of employees find  
10 out from a supervisor if they are needed for the on-call shift a mere  
11 two hours before the shift starts. Retail industry research in New  
12 York City found that more than one-half of family caregivers in  
13 the retail industry are required to be available for on-call shifts,  
14 forcing them to arrange for child or elder care at the last minute.

15 (c) Women are also more likely than men to work part time and  
16 experience unpredictability in their work schedules; one study  
17 found that women were 64 percent of the frontline part-time  
18 workforce among retail workers.

19 (d) Unpredictable scheduling practices and last-minute work  
20 schedule changes cause workers who are already struggling with  
21 low wages to live in a constant state of insecurity about when they  
22 will work or how much they will earn on any given day. These  
23 practices also make it hard for employees to plan their finances  
24 and to plan for and obtain child care. These practices also prevent  
25 part-time employees from pursuing educational opportunities or  
26 holding a second or third job that those workers may need to make  
27 ends meet.

28 (e) According to census data, since 2006, the number of  
29 “involuntary part time employees” in California nearly tripled to  
30 1,100,000 employees. According to the federal Bureau of Labor  
31 Statistics, less than one-half of the retail workforce nationwide  
32 works ~~fulltime~~, *full time*, and the number of those working fewer  
33 than 20 hours per week has grown by 14 percent in the past decade.

34 (f) According to a survey conducted in 2014 of workers who  
35 sell food in California, the largest producer of food in the United  
36 States, they are twice as likely as the general populace to be unable  
37 to afford sufficient quantities of the food they sell or the healthy  
38 kinds of food their families need, despite the financial health of

1 the food retail industry. According to this same survey, workers  
2 who were Black or Latino were far more likely to be sent home  
3 early with no pay, to have a shift canceled on the same day it is  
4 scheduled, to not be offered a lunch break, or not be paid for all  
5 hours worked.

6 (g) For these reasons, to ensure family and financial stability  
7 for a vast segment of California's workforce, those employed by  
8 food and general retail establishments should be afforded some  
9 predictability and dignity in how they are scheduled to work.

10 *SEC. 3. Section 518 is added to the Labor Code, to read:*

11 *518. (a) For purposes of this section, a "food and general*  
12 *retail establishment" means an entity that conducts any type of*  
13 *retail sales activity or a retail sales establishment that has 500 or*  
14 *more employees in this state and has 10 or more other retail sales*  
15 *establishments located in the United States of America and*  
16 *maintains two or more of the following:*

17 *(1) A standardized array of merchandise.*

18 *(2) A standardized facade.*

19 *(3) A standardized decor and color scheme.*

20 *(4) Uniform apparel.*

21 *(5) Standardized signage.*

22 *(6) A trademark or a service mark.*

23 *(b) A food and general retail establishment shall provide its*  
24 *employees with at least two week's notice of their work schedules.*

25 *(c) If an employee is not provided with at least two week's notice*  
26 *of his or her work schedule, the employee shall receive additional*  
27 *pay. The amount of the additional pay shall increase as the time*  
28 *the employee receives notice of his or her work schedule decreases*  
29 *from the required two week's notice.*

30 *(d) The Labor Commissioner shall promulgate all regulations*  
31 *and rules of practice and procedures necessary to carry out the*  
32 *provisions of this section.*

33 *(e) A violation of this section shall not be a misdemeanor under*  
34 *Section 553.*

35 *SEC. 4. Section 519 is added to the Labor Code, to read:*

36 *519. (a) A food and general retail establishment, as defined*  
37 *in Section 518, shall not discharge or discriminate against an*  
38 *employee because he or she is any of the following:*

39 *(1) A person who receives CalWORKs cash aid.*

1 (2) A parent, guardian, or grandparent who has custody of one  
2 or more children who receive CalWORKs cash aid.

3 (3) A person who receives CalFresh food assistance.

4 (b) A food and general retail establishment, as defined in Section  
5 518, shall allow an employee described in subdivision (a) to be  
6 absent from work without pay, upon request, to attend any required  
7 appointments at the county human services agency, provided that  
8 the employee gives reasonable notice to the employer of the  
9 planned absence prior to taking the time off.

10 (c) The Labor Commissioner shall promulgate all regulations  
11 and rules of practice and procedures necessary to carry out the  
12 provisions of this section.

13 (d) A violation of this section shall not be a misdemeanor under  
14 Section 553.

15 SEC. 5. Section 11320.31 of the Welfare and Institutions Code  
16 is amended to read:

17 11320.31. Sanctions shall not be applied for a failure or refusal  
18 to comply with program requirements for reasons related to  
19 employment, an offer of employment, an activity, or other training  
20 for employment including, but not limited to, the following reasons:

21 (a) The employment, offer of employment, activity, or other  
22 training for employment discriminates on any basis listed in  
23 subdivision (a) of Section 12940 of the Government Code, as those  
24 bases are defined in Sections 12926 and 12926.1 of the  
25 Government Code, except as otherwise provided in Section 12940  
26 of the Government Code.

27 (b) The employment or offer of employment exceeds the daily  
28 or weekly hours of work customary to the occupation.

29 (c) The employment, offer of employment, activity, or other  
30 training for employment requires travel to and from the place of  
31 employment, activity, or other training and one's home that exceeds  
32 a total of two hours in round-trip time, exclusive of the time  
33 necessary to transport family members to a school or place  
34 providing care, or, when walking is the only available means of  
35 transportation, the round-trip is more than two miles, exclusive of  
36 the mileage necessary to accompany family members to a school  
37 or a place providing care. An individual who fails or refuses to  
38 comply with the program requirements based on this subdivision  
39 shall be required to participate in community service activities  
40 pursuant to Section 11322.9.

1 (d) The employment, offer of employment, activity, or other  
2 training for employment involves conditions that are in violation  
3 of applicable health and safety standards.

4 (e) The employment, offer of employment, or work activity  
5 does not provide for workers' compensation insurance.

6 (f) Accepting the employment or work activity would cause an  
7 interruption in an approved education or job training program in  
8 progress that would otherwise lead to employment and sufficient  
9 income to be self-supporting, excluding work experience or  
10 community service employment as described in subdivisions (d)  
11 and (j) of Section 11322.6 and Section 11322.9 or other community  
12 work experience assignments, except that a recipient may be  
13 required to engage in welfare-to-work activities to the extent  
14 necessary to meet the hours of participation required by Section  
15 11322.8.

16 (g) Accepting the employment, offer of employment, or work  
17 activity would cause the individual to violate the terms of his or  
18 her union membership.

19 (h) *The employment or offer of employment fails to comply with*  
20 *the Fair Scheduling Act of 2015 (Sections 518 and 519 of the Labor*  
21 *Code).*

22 *SEC. 6. No appropriation pursuant to Section 15200 of the*  
23 *Welfare and Institutions Code shall be made for purposes of*  
24 *implementing this act.*