

AMENDED IN ASSEMBLY MARCH 25, 2015

AMENDED IN ASSEMBLY MARCH 12, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 357

Introduced by Assembly Members Chiu and Weber
(Principal coauthor: Senator Leyva)
(Coauthors: Assembly Members Bonta, Chu, Gonzalez,
Roger Hernández, *Rendon*, and Thurmond)

February 17, 2015

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: 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~~ *weeks'* notice of their ~~schedules, and schedules.~~ *The bill would require a food and general retail establishment to pay those employees to receive additional pay, as specified, if those employees do not receive at least two week's notice of their work schedule. for each previously scheduled shift that the food and general retail establishment moves to another date or time or cancels and each previously unscheduled shift that the food and general retail establishment requires an employee to work, and would also require a food and general retail establishment to pay those employees a specified amount for each on-call shift for which the employee is required to be available but is not called in to work. The bill would specify that these provisions do not apply in certain circumstances, including, but not limited to, when operations cannot begin or continue due to causes not within the food and general retail establishment's control.* 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 ~~of~~ *of* 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: 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 Scheduling Act of 2015.

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

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

1 (e) According to census data, since 2006, the number of
2 “involuntary part time employees” in California nearly tripled to
3 1,100,000 employees. According to the federal Bureau of Labor
4 Statistics, less than one-half of the retail workforce nationwide
5 works full time, and the number of those working fewer than 20
6 hours per week has grown by 14 percent in the past decade.

7 (f) According to a survey conducted in 2014 of workers who
8 sell food in California, the largest producer of food in the United
9 States, they are twice as likely as the general populace to be unable
10 to afford sufficient quantities of the food they sell or the healthy
11 kinds of food their families need, despite the financial health of
12 the food retail industry. According to this same survey, workers
13 who were Black or Latino were far more likely to be sent home
14 early with no pay, to have a shift canceled on the same day it is
15 scheduled, to not be offered a lunch break, or not be paid for all
16 hours worked.

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

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

22 518. (a) For purposes of this section, a “food and general retail
23 establishment” means ~~an entity that conducts any type of retail~~
24 ~~sales activity or~~ a retail sales establishment, *including, but not*
25 *limited to, a food retail store, a grocery store, a general*
26 *merchandise store, a department store, and a health and personal*
27 *care store*, that has 500 or more employees in this state and has
28 10 or more other retail sales establishments located in the United
29 States of ~~America~~ *America*, and maintains two or more of the
30 following:

- 31 (1) A standardized array of merchandise.
- 32 (2) A standardized facade.
- 33 (3) A standardized decor and color scheme.
- 34 (4) Uniform apparel.
- 35 (5) Standardized signage.
- 36 (6) A trademark or a service mark.

37 (b) A food and general retail establishment shall provide its
38 employees with at least two ~~week’s~~ *weeks’* notice of their work
39 schedules.

1 ~~(e) If an employee is not provided with at least two week's~~
2 ~~notice of his or her work schedule, the employee shall receive~~
3 ~~additional pay. The amount of the additional pay shall increase as~~
4 ~~the time the employee receives notice of his or her work schedule~~
5 ~~decreases from the required two week's notice.~~

6 *(c) A food and general retail establishment shall provide an*
7 *employee with the following compensation, per shift, for each*
8 *previously scheduled shift that the food and general retail*
9 *establishment moves to another date or time or cancels, and each*
10 *previously unscheduled shift that the food and general retail*
11 *establishment requires an employee to work:*

12 *(1) One hour of pay at the employee's regular hourly rate if*
13 *less than seven days' notice but at least 24 hours' notice is given*
14 *to the employee.*

15 *(2) Two hours of pay at the employee's regular hourly rate for*
16 *each shift of four hours or less if less than 24 hours' notice is given*
17 *to the employee.*

18 *(3) Four hours of pay at the employee's regular hourly rate for*
19 *each shift of more than four hours if less than 24 hours' notice is*
20 *given to the employee.*

21 *(4) When an employee is required to come into work by a food*
22 *and general retail establishment, the compensation required by*
23 *this subdivision shall be in addition to the employee's regular pay*
24 *for working that shift. This paragraph does not apply to subdivision*
25 *(d).*

26 *(d) A food and general retail establishment shall provide an*
27 *employee with the following compensation for each on-call shift*
28 *for which the employee is required to be available but is not called*
29 *in to work:*

30 *(1) Two hours of pay at the employee's regular hourly rate for*
31 *each on-call shift of four hours or less.*

32 *(2) Four hours of pay at the employee's regular hourly rate for*
33 *each on-call shift of more than four hours.*

34 *(e) The requirements in subdivisions (c) and (d) shall not apply*
35 *under any of the following circumstances:*

36 *(1) Operations cannot begin or continue due to threats to*
37 *employees or property, or when civil authorities recommend that*
38 *work not begin or continue.*

1 (2) Operations cannot begin or continue because public utilities
 2 fail to supply electricity, water, or gas, or there is a failure in the
 3 public utilities or sewer system.

4 (3) Operations cannot begin or continue due to an act of God
 5 or other cause not within the food and general retail
 6 establishment’s control, including, but not limited to, an earthquake
 7 or a state of emergency declared by a local government or the
 8 Governor.

9 (4) Another employee previously scheduled to work that shift
 10 is unable to work due to illness, vacation, or employer-provided
 11 paid or unpaid time off when the food and general retail
 12 establishment did not receive at least seven days’ notice of the
 13 other employee’s absence.

14 (5) Another employee previously scheduled to work that shift
 15 has not reported to work on time, is fired, sent home, or told to
 16 stay at home as a disciplinary action.

17 (6) The food and general retail establishment requires the
 18 employee to work overtime, such as mandatory overtime.

19 (7) The employee trades shifts with another employee or requests
 20 from the food and general retail establishment a change in his or
 21 her shift, hours, or work schedule.

22 ~~(d) The~~

23 (f) The Labor Commissioner shall promulgate all regulations
 24 and rules of practice and procedures necessary to carry out the
 25 provisions of this section.

26 ~~(e)~~

27 (g) A violation of this section shall not be a misdemeanor under
 28 Section 553.

29 (h) This section shall not be construed to prohibit a food and
 30 general retail establishment from providing greater advance notice
 31 of an employee’s work schedule or changes in an employee’s work
 32 schedule than what is required by this section.

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

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

- 37 (1) A person who receives CalWORKs cash aid.
- 38 (2) A parent, guardian, or grandparent who has custody of one
 39 or more children who receive CalWORKs cash aid.
- 40 (3) A person who receives CalFresh food assistance.

1 (b) A food and general retail establishment, as defined in Section
2 518, shall allow an employee described in subdivision (a) to be
3 absent from work without pay, upon request, to attend any required
4 appointments at the county human services agency, provided that
5 the employee gives reasonable notice to the employer of the
6 planned absence prior to taking the time off.

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

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

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

14 11320.31. Sanctions shall not be applied for a failure or refusal
15 to comply with program requirements for reasons related to
16 employment, an offer of employment, an activity, or other training
17 for employment including, but not limited to, the following reasons:

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

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

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

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

- 1 (e) The employment, offer of employment, or work activity
2 does not provide for workers' compensation insurance.
- 3 (f) Accepting the employment or work activity would cause an
4 interruption in an approved education or job training program in
5 progress that would otherwise lead to employment and sufficient
6 income to be self-supporting, excluding work experience or
7 community service employment as described in subdivisions (d)
8 and (j) of Section 11322.6 and Section 11322.9 or other community
9 work experience assignments, except that a recipient may be
10 required to engage in welfare-to-work activities to the extent
11 necessary to meet the hours of participation required by Section
12 11322.8.
- 13 (g) Accepting the employment, offer of employment, or work
14 activity would cause the individual to violate the terms of his or
15 her union membership.
- 16 (h) The employment or offer of employment fails to comply
17 with the Fair Scheduling Act of 2015 (Sections 518 and 519 of the
18 Labor Code).
- 19 SEC. 6. No appropriation pursuant to Section 15200 of the
20 Welfare and Institutions Code shall be made for purposes of
21 implementing this act.