

AMENDED IN ASSEMBLY APRIL 6, 2015
AMENDED IN ASSEMBLY MARCH 25, 2015
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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 weeks' notice of their schedules. The bill would require a food and general retail establishment to pay those employees additional pay, as specified, 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 *for up to 8 hours twice a year* 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 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) (1) For purposes of this section, a “food and general
 23 retail establishment” means a retail sales ~~establishment,~~
 24 *establishment that has a physical location with in-person sales,*
 25 including, but not limited to, a food retail store, a grocery store, a
 26 general merchandise store, a department store, and a health and
 27 personal care store, that ~~has meets all of the following:~~

28 (A) ~~Has 500 or more employees in this state and has 10~~ *state.*

29 (B) ~~Has 10 or more other such retail sales establishments located~~
 30 ~~in the United States of America, and maintains two~~ *America.*

31 (C) ~~Maintains two~~ or more of the following:

32 ~~(1)~~

33 (i) A standardized array of merchandise.

34 ~~(2)~~

35 (ii) A standardized facade.

36 ~~(3)~~

37 (iii) A standardized decor and color scheme.

38 ~~(4)~~

39 (iv) Uniform apparel.

40 ~~(5)~~

1 (v) Standardized signage.

2 ~~(6)~~

3 (vi) A trademark or a service mark.

4 (2) A “food and general retail establishment” does not include
5 an online retailer that does not have a physical location with
6 in-person sales in this state or a franchise, as defined in Section
7 31005 of the Corporations Code, that does not meet subparagraphs
8 (A) to (C), inclusive, of paragraph (1).

9 (b) A food and general retail establishment shall provide its
10 employees with at least two weeks’ notice of their work schedules.

11 (c) A food and general retail establishment shall provide an
12 employee with the following compensation, per shift, for each
13 previously scheduled shift that the food and general retail
14 establishment moves to another date or time or cancels, and each
15 previously unscheduled shift that the food and general retail
16 establishment requires an employee to work:

17 (1) One hour of pay at the employee’s regular hourly rate if less
18 than seven days’ notice but at least 24 hours’ notice is given to the
19 employee.

20 (2) Two hours of pay at the employee’s regular hourly rate for
21 each shift of four hours or less if less than 24 hours’ notice is given
22 to the employee.

23 (3) Four hours of pay at the employee’s regular hourly rate for
24 each shift of more than four hours if less than 24 hours’ notice is
25 given to the employee.

26 (4) When an employee is required to come into work by a food
27 and general retail establishment, the compensation required by
28 this subdivision shall be in addition to the employee’s regular pay
29 for working that shift. This paragraph does not apply to subdivision
30 (d).

31 (d) A food and general retail establishment shall provide an
32 employee with the following compensation for each on-call shift
33 for which the employee is required to be available but is not called
34 in to work:

35 (1) Two hours of pay at the employee’s regular hourly rate for
36 each on-call shift of four hours or less.

37 (2) Four hours of pay at the employee’s regular hourly rate for
38 each on-call shift of more than four hours.

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

1 (1) Operations cannot begin or continue due to threats to
2 employees or property, or when civil authorities recommend that
3 work not begin or continue.

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

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

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

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

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

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

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

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~~, *pay for up to eight hours twice a*
4 *year*, upon request, to attend any required appointments at the
5 county human services agency, provided that the employee gives
6 reasonable notice to the employer of the planned absence prior to
7 taking the time off.

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

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

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

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

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

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

27 (c) The employment, offer of employment, activity, or other
28 training for employment requires travel to and from the place of
29 employment, activity, or other training and one's home that exceeds
30 a total of two hours in round-trip time, exclusive of the time
31 necessary to transport family members to a school or place
32 providing care, or, when walking is the only available means of
33 transportation, the round-trip is more than two miles, exclusive of
34 the mileage necessary to accompany family members to a school
35 or a place providing care. An individual who fails or refuses to
36 comply with the program requirements based on this subdivision
37 shall be required to participate in community service activities
38 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
20 with the Fair Scheduling Act of 2015 (Sections 518 and 519 of the
21 Labor 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.