



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB5046

by Rep. Emanuel Chris Welch

SYNOPSIS AS INTRODUCED:

New Act
30 ILCS 105/5.886 new

Creates the Fair Scheduling Act. Requires employers to provide work schedules to employees at least 72 hours before the start of the first shift of the work schedule. Provides for reporting pay when an employee's work shift is canceled or reduced within 72 of the beginning of the shift. Prohibits retaliation by employers when employees seek to enforce rights under the Act. Authorizes private actions for damages. Provides for administration and enforcement by the Department of Labor. Provides for monetary penalties. Amends the State Finance Act to create the Fair Scheduling Act Enforcement Fund, a special fund in the State treasury. Sets forth the uses of moneys in the Fund. Effective immediately.

LRB100 18768 JLS 34004 b

FISCAL NOTE ACT
MAY APPLY

HOME RULE NOTE
ACT MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Fair
5 Scheduling Act.

6 Section 5. Purpose and findings. Unfair and unpredictable
7 scheduling practices cause tens of thousands of Illinois
8 workers to struggle to meet their responsibilities at home and
9 on the job, harming their ability to make ends meet and the
10 overall strength of the Illinois economy. When Illinois workers
11 do not know when they are scheduled to work, or for how many
12 hours, it is difficult to manage basic expenses, arrange child
13 care, continue their education, pursue job training, or get a
14 second job. This Act is intended to provide Illinois workers
15 with the predictability and financial stability they need,
16 create more stable, productive workplaces, and ensure the
17 health and well-being of Illinois workers. Therefore, the
18 General Assembly finds that it is in the interest of employees,
19 employers, and the people of Illinois to ensure that Illinois
20 workers have fair and predictable work schedules, and that this
21 Act shall be interpreted liberally to aid in this purpose.

22 Section 10. Definitions. As used in this Act:

1 "Department" means the Department of Labor

2 "Domestic violence" means abuse, as defined in Section 103
3 of the Illinois Domestic Violence Act of 1986.

4 "Employee" means any individual suffered or permitted to
5 work by an employer. An employee who is paid on a salary basis
6 and whose rate of pay per week is greater than the 40th
7 percentile of weekly earnings of full-time non-hourly workers
8 in the Midwest Census Region, exclusive of board, lodging, or
9 other facilities, as determined by the U.S. Department of
10 Labor, but never less than \$50,000 per year, or \$962 per week,
11 shall not be considered an employee for the purposes of this
12 Act. An employee shall be considered to be paid on a salary
13 basis if the employee regularly receives each pay period on a
14 weekly, or less frequent basis, a predetermined amount
15 constituting all or part of the employee's compensation that is
16 not subject to reduction because of variations in the quality
17 or quantity of the work performed and without regard to the
18 number of days or hours worked.

19 "Employer" means any individual, natural person,
20 partnership, corporation, nonprofit corporation, association,
21 general partnership, limited partnership, limited liability
22 company, joint venture, business, trust, estate, association,
23 person, governmental or quasi-governmental body, or any person
24 or group of persons acting directly or indirectly in the
25 interest of an employer in relation to an employee (including
26 through services of a temporary services or staffing agency or

1 similar entity) for whom one or more individuals are gainfully
2 employed.

3 "Family or household member" means a spouse, party to a
4 civil union, parent, child, any other individual related by
5 blood or current or prior marriage or civil union, other person
6 who shares a relationship through a child, persons whose close
7 relationship with the employee is the equivalent of a family
8 relationship, and persons jointly residing in the same
9 household.

10 "Sexual violence" means any conduct proscribed by the
11 Criminal Code of 2012 in Article 11 and in Sections 12-7.3,
12 12-7.4, and 12-7.5.

13 "Shift" means the consecutive hours an employer schedules
14 an employee to work or to be available to report to work at the
15 request or permission of the employer; provided that a break of
16 one hour or less shall not be considered an interruption of
17 consecutive hours.

18 "Work schedule" means all of an employee's shifts,
19 including specific start and end times for each shift during a
20 calendar week.

21 Section 15. Application to collective bargaining
22 agreements and employer practices.

23 (a) To the extent permitted by law, all or any portion of
24 this Act may be waived in a bona fide collective bargaining
25 agreement; provided, that the waiver is explicitly set forth in

1 the agreement in unambiguous terms and that the parties thereto
2 intend to and do thereby waive all or a specific portion of
3 this Act.

4 (b) Nothing in this Act shall be construed to affect any
5 policies or practices of an employer that provides greater,
6 additional, or more generous wages, benefits, or working
7 conditions to an employee than those required under this Act.

8 Section 20. Compensation for unpredictable schedules.

9 (a) Reporting pay. An employee who by request or permission
10 of the employer reports to work on any day or whose shift is
11 canceled or reduced within 72 hours of the scheduled start of
12 the shift is entitled to no less than one-half times the
13 employee's regular rate of pay for any scheduled hours the
14 employee does not work, except when greater compensation is
15 required by local, State, or federal law. Reporting pay is in
16 addition to any wages earned for work performed by the
17 employee.

18 (b) Work schedules. An employer shall provide all employees
19 with a written work schedule no later than 72 hours before the
20 start of the first shift on the work schedule. The employer
21 shall post a written work schedule in a conspicuous place at
22 the workplace that is readily accessible and visible to all
23 employees at the work location. The employer shall also
24 transmit electronically the same work schedule in a manner that
25 ensures that every employee receives the electronic schedule at

1 the workplace and remotely. The employer shall update the work
2 schedule and directly notify affected employees after making
3 changes to the work schedule. An employee who is a victim of
4 domestic violence or sexual violence or who has a family or
5 household member who is a victim of domestic violence or sexual
6 violence may request that his or her schedule not be posted or
7 transmitted to other employees and that the schedule be
8 submitted only to her or him in the method of delivery
9 determined by the employee making the request to ensure his or
10 her privacy and safety. An oral request shall be sufficient and
11 implemented immediately. An employer may request a written
12 statement from the employee that states that she or he is a
13 victim or has a family or household member who is a victim. The
14 statement shall satisfy any documentation or evidence needed
15 for the employer to implement the request. The employer may not
16 require a written statement more than once in a calendar year
17 from an employee for this purpose. The employee shall have up
18 to 4 calendar weeks to submit the written statement. In
19 addition, the Department may by rule establish requirements or
20 exceptions necessary to ensure the privacy and safety of
21 employees.

22 (c) Exceptions. The requirements of subsection (a) or (b)
23 of this Section do not apply under the following circumstances:

- 24 (1) operations cannot begin or continue when civil
25 authorities recommend that work not begin or continue or if
26 there is a credible threat of violence that causes a

1 reasonable person to fear for the safety of the employer,
2 employees, or property. Lawful actions by employees, any
3 union, or any other individuals shall not constitute a
4 credible threat of violence.

5 (2) operations cannot begin or continue because a
6 public utility fails to supply electricity, water, or gas
7 or there is a failure in the public utilities or sewerage
8 system;

9 (3) operations cannot begin or continue due to acts of
10 nature including, but not limited to, flood, fire
11 explosion, earthquake, tidal wave, drought, war, civil
12 unrest, strikes, or other cause not within the employer's
13 control; or

14 (4) mutually agreed upon work shift swaps or coverage
15 among employees.

16 (d) Nothing in this Act shall be construed to prohibit an
17 employer from:

18 (1) adopting policies related to scheduling that are
19 more beneficial to an employee than those required by this
20 Act;

21 (2) scheduling an employee for a shift with less than
22 72 hours' notice, provided the shift is mutually agreed
23 upon in writing by the employee and employer;

24 (3) granting an employee's request for time off.

25 Section 25. No preemption of higher standards for employees

1 by units of local government.

2 (a) The purpose of this Act is to ensure minimum labor
3 standards. Nothing in this Act shall preempt or prevent any
4 unit of local government, including any home rule unit, from
5 enacting or implementing laws or policies that provide a higher
6 standard that benefits employees, such as an increased notice
7 period or the amount of reporting pay required of employers in
8 Section 20 or the addition of any other provision that benefits
9 employees as it relates to scheduling of work hours.

10 (b) This Section is limitation under subsection (i) of
11 Section 6 of Article VII of the Illinois Constitution on the
12 concurrent exercise by home rule units of powers and functions
13 exercised by the State.

14 Section 30. Posting.

15 (a) An employer shall post and keep posted in a conspicuous
16 place on the premises of the employer where notices to
17 employees are customarily posted a notice prepared by the
18 Department summarizing the requirements of this Act and
19 information pertaining to the filing of a charge. If an
20 employer's workforce is comprised of a significant portion of
21 workers who are not literate in English, the employer is
22 responsible for providing the notice in a language in which the
23 employees are literate.

24 (b) An employer who willfully violates the posting
25 requirements of this Section shall be subject to a civil

1 penalty in an amount not to exceed \$100 for each separate
2 offense.

3 Section 35. Prohibited acts.

4 (a) It is unlawful and a violation of this Act for any
5 employer or any other person to discharge, threaten, penalize,
6 or in any other manner discriminate, retaliate, or take any
7 adverse action against an employee, including sexual
8 harassment and discrimination, because the employee or a person
9 or organization acting on the employee's behalf:

10 (1) exercises rights or attempts to exercise rights
11 under this Act;

12 (2) opposes practices the employee believes to be in
13 violation of this Act; or

14 (3) supports the exercise of rights under this Act.

15 (b) Exercising rights, opposing practices, or supporting
16 the exercise of rights under this Act includes:

17 (1) filing an action or instituting or causing to be
18 instituted any proceeding under or related to this Act;

19 (2) providing or preparing to provide any information
20 in connection with any inquiry or proceeding relating to
21 any right provided under this Act;

22 (3) testifying or preparing to testify in any inquiry
23 or proceeding relating to any right provided under this Act
24 in a public hearing or to a community organization; or

25 (4) informing any other person that his or her employer

1 engages in conduct that the employee reasonably and in good
2 faith believes violates any provisions of this Act.

3 (c) An agreement by an employee to waive his or her rights
4 under this Act is void as against public policy. The benefits
5 provided to employees under this Act may not be diminished by
6 an employment benefit program or plan entered into or renewed
7 after the effective date of this Act.

8 (d) It is unlawful for an employer to interfere with,
9 restrain, or deny the exercise of or the attempt to exercise
10 any right provided under or in connection with this Act,
11 including using the taking of paid time off as a negative
12 factor in an employment action such as hiring, termination,
13 evaluation, promotion, discipline, or counting the paid time
14 off under a no-fault attendance policy.

15 (e) It is unlawful for an employer to threaten or in any
16 other manner discriminate, retaliate, or take any adverse
17 action against an employee based on his or her actual or
18 perceived immigration or citizenship status.

19 Section 40. Enforcement.

20 (a) An employee aggrieved by a violation of this Act or any
21 rule adopted under this Act is entitled to recover any
22 appropriate damages or other relief set forth in subsection (b)
23 of this Section in a civil action or through a claim filed with
24 the Department. Actions may be brought by one or more employees
25 for and on behalf of themselves and other employees similarly

1 situated. An action under this Section shall be brought no
2 later than 3 years after the date of the last event that
3 constitutes an alleged violation for which the action is
4 brought.

5 (b) An employee aggrieved by a violation of this Act or any
6 rule adopted under this Act shall be entitled to recover:

7 (1) all actual and compensatory damages, including the
8 amount of any wages, compensation, or benefits owed or
9 other compensation denied or lost to the person by reason
10 of the violation, with interest at the prevailing rate as
11 is necessary to remedy violations of this Act, as well as
12 punitive damages;

13 (2) any equitable relief as may be appropriate; and

14 (3) reasonable attorney's fees, reasonable expert
15 witness fees, and other costs of the action.

16 (c) An employer that the Department or a court finds by the
17 preponderance of evidence to have knowingly, repeatedly, or
18 with reckless disregard violated any provision of this Section
19 or any rule adopted under this Section is subject to civil
20 money penalty of:

21 (1) \$250 for each separate offense if the other relief
22 imposed under subsection (b) is \$1,000 or less; or

23 (2) a minimum of \$500 and a maximum \$3,000 for each
24 separate offense if the damages or other relief imposed
25 under subsection (b) is more than \$1,000. In determining
26 the amount of the penalty, the gravity of the violation

1 shall be considered. Assessed penalties are payable to the
2 employee and shall include interest at the prevailing rate
3 necessary to remedy violations of this Section.

4 (d) Claims filed in circuit court shall be filed in the
5 county where the alleged violation occurred or where any
6 employee who is a party to this action resides, without regard
7 to exhaustion of remedies provided in this Act.

8 (e) Claims filed under this Act with the Department shall
9 be subject to the administrative procedures set forth herein
10 and by rule for the enforcement of this Act.

11 (f) The Department shall have the power to conduct
12 investigations in connection with the administration and
13 enforcement of this Section. The Department may compel, by
14 subpoena, the attendance and testimony of witnesses and the
15 production of books, payrolls, records, papers, and other
16 evidence in any investigation and may administer oaths to
17 witnesses. If, upon investigation, the Department finds cause
18 to believe that this Section has been violated, the Department
19 shall notify the parties, in writing, and the matter shall be
20 referred to an Administrative Law Judge to schedule a formal
21 hearing in accordance with hearing procedures established by
22 rule.

23 Any employer who has been ordered to pay wages, benefits,
24 and other compensation or other relief due under this Act, who
25 fails to seek timely review of the order as provided under this
26 Act and who fails to comply within 15 calendar days after such

1 demand or within 35 days after an administrative or court order
2 is entered shall also be liable to pay a penalty to the
3 Department of 20% of the amount found owing. All moneys
4 recovered as fees and penalties by the Department under this
5 Section, except those owing to the affected employee, shall be
6 deposited into the Fair Scheduling Act Enforcement Fund, a
7 special fund created in the State treasury. Money in the Fund
8 shall be used by the Department for administration,
9 investigation, and other expenses incurred in carrying out its
10 duties under this Act.

11 A final decision of an Administrative Law Judge issued
12 pursuant to this Section is subject to the provisions of the
13 Administrative Review Law and shall be enforceable in an action
14 brought in the name of the people of the State of Illinois by
15 the Attorney General.

16 Section 45. Administration; rules. The Department shall
17 administer and enforce this Act. The Department shall adopt
18 rules necessary to administer and enforce this Act in
19 accordance with the Illinois Administrative Procedure Act.

20 Section 97. Severability. The provisions of this Act are
21 severable under Section 1.31 of the Statute on Statutes.

22 Section 98. The State Finance Act is amended by adding
23 Section 5.886 as follows:

1 (30 ILCS 105/5.886 new)

2 Sec. 5.886. The Fair Scheduling Act Enforcement Fund.

3 Section 99. Effective date. This Act takes effect upon
4 becoming law.