

HOUSE BILL No. 6594

December 6, 2018, Introduced by Reps. Camilleri, Hammoud, Clemente, Greig and Wittenberg and referred to the Committee on Commerce and Trade.

A bill to require certain employers to accept and accommodate a request for changes to an employee's work schedule; to specify the procedure and grounds for denying a request; to require notice or posting of certain information; and to provide remedies and sanctions for a violation of the act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "employee scheduling accommodation act".

3 Sec. 2. As used in this act:

4 (a) "Bona fide business reason" means any of the following:

5 (i) The identifiable burden of additional costs to an
6 employer, including the cost of productivity loss, retraining or
7 hiring employees, or transferring employees from 1 facility to
8 another facility.

1 (ii) A significant detrimental effect on the employer's
2 ability to meet organizational needs or customer demand.

3 (iii) A significant inability of the employer, despite good-
4 faith efforts, to reorganize work among existing staff.

5 (iv) A significant detrimental effect on business performance.

6 (v) Insufficiency of work during the periods an employee
7 proposes to work.

8 (vi) The need to balance competing scheduling requests when it
9 is not possible to grant all of those requests without a
10 significant detrimental effect on the employer's ability to meet
11 organizational needs.

12 (b) "Career-related educational or training program" means an
13 educational or training program or program of study that is both of
14 the following:

15 (i) Offered by a public, private, or nonprofit career and
16 technical education school, institution of higher education, or
17 other entity that provides academic education, career and technical
18 education, or training, including remedial education or English as
19 a second language.

20 (ii) A program that leads to a recognized postsecondary degree
21 or certificate and provides career awareness information.

22 (c) "Caregiver" means an individual who is a significant
23 provider of any of the following:

24 (i) Ongoing care or education, including responsibility for
25 securing the ongoing care or education, of a child.

26 (ii) Ongoing care, including responsibility for securing the
27 ongoing care, of an individual with a serious health condition who

1 is in a family relationship with the individual who is age 65 or
2 older.

3 (d) "Child" means a biological, adopted, or foster child, a
4 stepchild, a legal ward, or a child of an individual standing in
5 loco parentis to that child, who is either under age 18 or is age
6 18 or older and incapable of self-care because of a mental or
7 physical disability.

8 (e) "Domestic partner" means the individual recognized as
9 being in a relationship with an employee under a domestic
10 partnership, civil union, or similar law of the state in which the
11 employee resides.

12 (f) "Employee" means an individual who performs services for
13 an employer in this state, who is compensated on an hourly basis,
14 and for whom the employer is required to provide a federal form
15 1099. Employee does not include an employee of the federal
16 government.

17 (g) "Employer" means a person, excluding this state and the
18 federal government, engaged in commerce or in an industry or
19 activity affecting commerce that employs 15 or more employees and
20 includes a person that acts, directly or indirectly, in the
21 interest of such an employer as to the employees of the employer,
22 and a successor in interest of an employer. For purposes of
23 determining the number of employees, all employees performing work
24 for compensation on a full-time, part-time, or temporary basis are
25 counted, except that if the number of those employees who perform
26 work for compensation fluctuates, the number may be determined for
27 a calendar year based on the average number of those employees who

1 performed work for compensation during the preceding calendar year.

2 (h) "Family relationship" means a relationship with a child,
3 spouse, domestic partner, parent, grandchild, grandparent, sibling,
4 or parent of a spouse or domestic partner.

5 (i) "Minimum number of expected work hours" means the minimum
6 number of hours an employee will be assigned to work on a weekly or
7 monthly basis.

8 (j) "Parent" means a biological or adoptive parent, a
9 stepparent, or an individual who stood in a parental relationship
10 to an employee when the employee was a child.

11 (k) "Parental relationship" means a relationship in which an
12 individual assumed the obligations incident to parenthood for a
13 child and discharged those obligations before the child reached
14 adulthood.

15 (l) "Part-time employee" means an individual who works fewer
16 than 30 hours per week on average during any 1-month period.

17 (m) "Retail, food service, or cleaning employee", subject to
18 subdivision (n), means an individual employee who is employed in
19 any of the following occupations:

20 (i) Retail sales occupations, including first-line supervisors
21 of sales workers, cashiers, gaming change individuals and booth
22 cashiers, counter and rental clerks, parts salespersons, and retail
23 salespersons.

24 (ii) Food preparation and serving related occupations,
25 including supervisors of food preparation and serving workers,
26 cooks and food preparation workers, food and beverage serving
27 workers, and other food preparation and serving related workers.

1 (iii) Building cleaning occupations, including janitors and
2 cleaners, maids and housekeeping cleaners, and building cleaning
3 workers.

4 (n) "Retail, food service, or cleaning employee" does not
5 include an individual employed in a bona fide executive,
6 administrative, or professional capacity, as defined for purposes
7 of section 13(a)(1) of the fair labor standards act of 1938, 29 USC
8 213(a)(1).

9 (o) "Serious health condition" means an illness, injury,
10 impairment, or physical or mental condition that involves
11 continuing treatment by a health care provider or inpatient care in
12 a hospital, hospice, or residential medical care facility.

13 (p) "Sibling" means a brother or sister, whether related by
14 half blood, whole blood, or adoption, or as a stepsibling.

15 (q) "Split shift" means a schedule of daily hours in which the
16 hours worked are not consecutive, except that a schedule in which
17 the total time out for meals does not exceed 1 hour is not treated
18 as a split shift.

19 (r) "Spouse" means an individual with whom an individual
20 entered into a marriage as defined or recognized under state law in
21 the state in which the marriage was entered into.

22 (s) "Work schedule" means those days and times within a work
23 period when an employee is required by an employer to perform the
24 duties of the employee's employment for which the employee will
25 receive compensation.

26 (t) "Work schedule change" means a modification to an
27 employee's work schedule, such as an addition or reduction of

1 hours, cancellation of a shift, or a change in the date or time of
2 a work shift, by an employer.

3 (u) "Work shift" means the specific hours of the workday
4 during which an employee works.

5 Sec. 3. (1) An employee may request of his or her employer a
6 change in the terms and conditions of employment related to any the
7 following:

8 (a) The number of hours the employee is required to work or be
9 on call for work.

10 (b) The times when the employee is required to work or be on
11 call for work.

12 (c) The location where the employee is required to work.

13 (d) The amount of notification the employee receives of work
14 schedule assignments.

15 (e) Minimizing fluctuations in the number of hours the
16 employee is scheduled to work on a daily, weekly, or monthly basis.

17 (2) If an employee applies to his or her employer to request a
18 change in the terms and conditions of employment under subsection
19 (1), the employer shall engage in a timely, good-faith interactive
20 process with the employee that includes a discussion of potential
21 work schedule changes that would meet the employee's needs. The
22 employer shall either grant or deny the request. If the employer
23 denies the request, the employer shall consider alternatives to the
24 proposed change that might meet the employee's needs and shall
25 grant or deny a request for an alternative change. The employer
26 shall provide the employee with a written statement of the reason
27 for denial of a request.

1 (3) If the employee making a request for a change provides
2 information that requires clarification, the employer shall explain
3 what further information is needed and give the employee reasonable
4 time to produce the information.

5 Sec. 4. (1) If an employee makes a request for a change in the
6 terms and conditions of employment under section 3 because of a
7 serious health condition of the employee, the employee's
8 responsibilities as a caregiver, or the employee's enrollment in a
9 career-related educational or training program, or if a part-time
10 employee makes a request for such a change for a reason related to
11 a second job, the employer shall grant the request unless the
12 employer has a bona fide business reason for denying the request.

13 (2) If an employee makes a request for a change in the terms
14 and conditions of employment under section 3 for a reason other
15 than the reasons set forth in subsection (1), the employer may deny
16 the request for any reason that is not unlawful. If the employer
17 denies such a request, the employer's statement of the reason for
18 denial under section 3(2) must indicate whether the reason was a
19 bona fide business reason.

20 Sec. 5. (1) Unless an employee is scheduled for less than 4
21 hours of work, the employer shall pay a retail, food service, or
22 cleaning employee for at least 4 hours at the employee's regular
23 pay rate for each day on which the employee reports for work under
24 specific instructions but is given less than 4 hours of work. If
25 the employee is scheduled for less than 4 hours, the employer shall
26 pay the employee for the employee's scheduled hours for that day
27 even if given less than the scheduled hours of work.

1 (2) An employer shall pay a retail, food service, or cleaning
2 employee for at least 1 hour at the employee's regular pay rate for
3 each day the employee is given specific instructions to contact the
4 employer, or wait to be contacted by the employer, less than 24
5 hours in advance of the start of a potential work shift to
6 determine whether the employee must report to work for the shift.

7 (3) An employer shall pay a retail, food service, or cleaning
8 employee for 1 additional hour at the retail, food service, or
9 cleaning employee's regular pay rate for each day during which the
10 employee works a split shift.

11 Sec. 6. (1) On or before a new retail, food service, or
12 cleaning employee's first day of work, the employer shall inform
13 the employee of the employee's work schedule and the minimum number
14 of work hours the employee is expected to be assigned to work per
15 month.

16 (2) Except as provided in subsections (3) and (6), if the
17 employee's work schedule changes after the notice under subsection
18 (1), the employer shall provide the employee with his or her new
19 work schedule not less than 14 days before the first day of the new
20 work schedule. If the minimum number of work hours the employee is
21 expected to be assigned changes, the employer shall provide
22 notification of the change not less than 14 days before the first
23 day the change takes effect.

24 (3) An employer may make work schedule changes, including
25 offering additional hours of work to a retail, food service, or
26 cleaning employee beyond those previously scheduled, but for each
27 work shift that is changed with less than 24 hours' notice, the

1 employer must provide 1 extra hour of pay at the employee's regular
2 rate. The requirement for the extra hour of pay does not apply if
3 the need to schedule the employee is due to the unforeseen
4 unavailability of an employee previously scheduled to work that
5 work shift or as provided in subsection (6).

6 (4) The notifications required under subsections (1) and (2)
7 must be made to the employee in writing. This subsection does not
8 prohibit an employer from using any additional means of notifying
9 an employee of the employee's work schedule.

10 (5) Each employer employing a retail, food service, or
11 cleaning employee subject to this act shall post, and keep posted,
12 the work schedule in a place in every establishment where the
13 retail, food service, or cleaning employee is employed and can
14 readily observe the work schedule. An employer may comply with this
15 subsection by making the schedule available and accessible by
16 electronic means to all employees.

17 (6) Subsections (2) and (3) do not apply to a situation in
18 which a retail, food service, or cleaning employee works in place
19 of another employee who has been scheduled to work a particular
20 shift if the change in schedule is mutually agreed upon by the
21 employees.

22 Sec. 7. Sections 5 and 6 do not apply during periods when
23 regular operations of the employer are suspended due to events
24 beyond the employer's control.

25 Sec. 8. (1) An employer shall not interfere with, restrain, or
26 deny the exercise of or the attempt to exercise a right of an
27 employee under this act.

1 (2) An employer shall not discharge, threaten to discharge,
2 demote, suspend, reduce work hours of, or take any other adverse
3 employment action against an employee in retaliation for exercising
4 his or her rights under this act or opposing a practice prohibited
5 by this act. Retaliation includes taking an adverse employment
6 action against an employee based on the employee's eligibility or
7 perceived eligibility to request or receive a change in the terms
8 and conditions of employment, as described in section 3, for a
9 reason stated in section 4(1).

10 (3) A person shall not discharge or in any other manner
11 discriminate against an individual because the individual has done
12 any of the following:

13 (a) Filed a charge or instituted or caused to be instituted a
14 proceeding under or related to this act.

15 (b) Given, or is about to give, information in connection with
16 an inquiry or proceeding relating to a right provided under this
17 act.

18 (c) Testified, or is about to testify, in an inquiry or
19 proceeding relating to a right provided under this act.

20 Sec. 9. (1) An employer that violates section 8 is liable to
21 an affected individual for damages and appropriate equitable
22 relief, including employment, reinstatement, and promotion.

23 (2) An action for damages or equitable relief under subsection
24 (1) may be brought in a court of competent jurisdiction by 1 or
25 more employees on their own behalf or on behalf of themselves and
26 other similarly situated employees.

27 (3) In an action under this section, the court shall, in

1 addition to damages and equitable relief, award reasonable attorney
2 fees, reasonable expert witness fees, and other costs of the action
3 to a prevailing plaintiff.

4 Sec. 10. An employer that willfully and repeatedly violates
5 section 6(1), (4), or (5) is responsible for a state civil
6 infraction and may be ordered to pay a civil fine of not more than
7 \$100.00 per violation. An employer that willfully and repeatedly
8 violates section 8(2) or (3) is responsible for a state civil
9 infraction and may be ordered to pay a civil fine of not more than
10 \$1,100.00 per violation.

11 Sec. 11. (1) Except as provided in subsection (2), an action
12 under this act must be brought within 2 years after the date of the
13 last alleged violation.

14 (2) An action for a willful violation of section 8 may be
15 brought within 3 years after the date of the last alleged
16 violation.

17 Sec. 12. (1) Each employer shall post, and keep posted, in a
18 conspicuous place on the premises of the employer where notices to
19 employees and applicants for employment are customarily posted, a
20 notice setting forth excerpts from, or summaries of, the pertinent
21 provisions of this act and information pertaining to the filing of
22 a complaint under this act.

23 (2) An employer that willfully violates this section is
24 responsible for a state civil infraction and may be ordered to pay
25 a civil fine of not more than \$100.00 for each separate offense.

26 Sec. 13. This act provides minimum requirements and does not
27 preempt, limit, or otherwise affect the applicability of any other

1 law, regulation, requirement, policy, or standard that provides for
2 greater rights for employees than are required in this act.

3 Sec. 14. This act does not apply to an employee covered by a
4 bona fide collective bargaining agreement if the terms of the
5 collective bargaining agreement include terms that govern work
6 scheduling practices.

7 Enacting section 1. This act takes effect 90 days after the
8 date it is enacted into law.