

REFERENCE TITLE: **employment; employee work scheduling**

State of Arizona
Senate
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Second Regular Session
2022

SB 1421

Introduced by
Senators Mendez: Gabaldon, Gonzales, Quezada, Terán; Representatives
Andrade, Dalessandro, Hernandez M, Salman

AN ACT

**AMENDING TITLE 23, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 7; RELATING
TO EMPLOYMENT PRACTICES.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 23, Arizona Revised Statutes, is amended by adding
3 chapter 7, to read:

4 CHAPTER 7

5 EMPLOYEE SCHEDULING

6 ARTICLE 1. GENERAL PROVISIONS

7 23-1201. Definitions

8 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "AGGRIEVED PARTY" MEANS AN EMPLOYEE WHO SUFFERS TANGIBLE OR
10 INTANGIBLE HARM DUE TO AN EMPLOYER'S VIOLATION OF THIS CHAPTER.

11 2. "BONA FIDE BUSINESS REASON" MEANS ANY OF THE FOLLOWING:

12 (a) AN ACTION THAT WOULD CAUSE AN EMPLOYER TO VIOLATE A LAW, RULE
13 OR ORDINANCE.

14 (b) A SIGNIFICANT AND IDENTIFIABLE BURDEN OF ADDITIONAL COSTS TO AN
15 EMPLOYER.

16 (c) A SIGNIFICANT AND IDENTIFIABLE DETRIMENTAL EFFECT ON AN
17 EMPLOYER'S ABILITY TO MEET ORGANIZATIONAL DEMANDS, INCLUDING ANY OF THE
18 FOLLOWING:

19 (i) A SIGNIFICANT INABILITY OF THE EMPLOYER, DESPITE THE EMPLOYER'S
20 BEST EFFORTS, TO REORGANIZE WORK AMONG EXISTING EMPLOYEES.

21 (ii) A SIGNIFICANT DETRIMENTAL EFFECT ON BUSINESS PERFORMANCE.

22 (iii) A SIGNIFICANT INABILITY TO MEET CUSTOMER NEEDS OR DEMANDS.

23 (iv) A SIGNIFICANT INSUFFICIENCY OF WORK DURING THE PERIODS AN
24 EMPLOYEE PROPOSES TO WORK.

25 3. "CAREER-RELATED EDUCATIONAL OR TRAINING PROGRAM" MEANS ANY OF
26 THE FOLLOWING:

27 (a) AN EDUCATIONAL OR TRAINING PROGRAM THAT RELATES TO AN
28 EMPLOYEE'S EMPLOYMENT.

29 (b) A PREAPPRENTICESHIP OR APPRENTICESHIP PROGRAM.

30 (c) A PROGRAM OF STUDY OFFERED BY A PUBLIC, PRIVATE OR NONPROFIT
31 CAREER AND TECHNICAL EDUCATION SCHOOL, AN INSTITUTION OF HIGHER EDUCATION
32 OR OTHER ENTITY THAT PROVIDES ACADEMIC EDUCATION, CAREER AND TECHNICAL
33 EDUCATION OR TRAINING, INCLUDING REMEDIAL EDUCATION OR ENGLISH AS A SECOND
34 LANGUAGE.

35 4. "CAREGIVING RESPONSIBILITIES" MEANS THE RESPONSIBILITY OF
36 PROVIDING EITHER:

37 (a) ONGOING CARE OR EDUCATION, INCLUDING SECURING THE ONGOING CARE
38 OF A CHILD.

39 (b) ONGOING CARE FOR, INCLUDING SECURING THE ONGOING CARE OF, AN
40 INDIVIDUAL WITH A SERIOUS HEALTH CONDITION WHO IS DEPENDENT ON AN EMPLOYEE
41 FOR SUPPORT AND CARE.

42 5. "EMPLOYEE":

43 (a) MEANS ANY INDIVIDUAL WHO RENDERS PERSONAL SERVICES WHOLLY OR
44 PARTLY IN THIS STATE TO AN EMPLOYER WHO PAYS OR AGREES TO PAY THE
45 INDIVIDUAL AT A FIXED RATE, BASED ON THE TIME SPENT PERFORMING THOSE

1 SERVICES OR ON THE NUMBER OF OPERATIONS ACCOMPLISHED OR QUANTITY PRODUCED
2 OR HANDLED.

3 (b) DOES NOT INCLUDE ANY OF THE FOLLOWING:

4 (i) AN INDEPENDENT CONTRACTOR, UNLESS THE INDEPENDENT CONTRACTOR IS
5 A MUSICIAN OR SUPPORTING TECHNICAL PERSON.

6 (ii) AN INDIVIDUAL WHO RENDERS SERVICES ONLY PARTLY IN THIS STATE,
7 UNLESS THE CONTRACT OF EMPLOYMENT OF THE EMPLOYEE HAS BEEN ENTERED INTO,
8 OR PAYMENTS UNDER THE CONTRACT ARE ORDINARILY MADE OR TO BE MADE, WITHIN
9 THIS STATE.

10 (iii) AN INDIVIDUAL ENGAGED IN ADMINISTRATIVE, EXECUTIVE OR
11 PROFESSIONAL WORK WHO PERFORMS PREDOMINANTLY INTELLECTUAL, MANAGERIAL OR
12 CREATIVE TASKS, EXERCISES DISCRETION AND INDEPENDENT JUDGMENT, EARNS A
13 SALARY AND IS PAID ON A SALARY BASIS.

14 (iv) A COPARTNER OF THE EMPLOYER.

15 6. "EMPLOYER":

16 (a) MEANS ANY PERSON THAT IN THIS STATE, DIRECTLY OR THROUGH AN
17 AGENT, ENGAGES PERSONAL SERVICES OF ONE OR MORE EMPLOYEES.

18 (b) INCLUDES ANY OF THE FOLLOWING:

19 (i) ANY SUCCESSOR TO THE BUSINESS OF ANY EMPLOYER, OR ANY LESSEE OR
20 PURCHASER OF ANY EMPLOYER'S BUSINESS PROPERTY TO CONTINUE THE SAME
21 BUSINESS, SO FAR AS THE EMPLOYER HAS NOT PAID THE EMPLOYEES IN FULL.

22 (ii) THIS STATE OR ANY COUNTY, CITY, TOWN, DISTRICT, AUTHORITY,
23 PUBLIC CORPORATION OR ENTITY AND ANY OF THEIR INSTRUMENTALITIES ORGANIZED
24 AND EXISTING UNDER LAW OR CHARTER.

25 (c) DOES NOT INCLUDE ANY OF THE FOLLOWING:

26 (i) THE UNITED STATES.

27 (ii) TRUSTEES AND ASSIGNEES IN BANKRUPTCY OR INSOLVENCY, AND
28 RECEIVERS, WHETHER APPOINTED BY FEDERAL OR STATE COURTS, AND PERSONS THAT
29 OTHERWISE FALL UNDER THE DEFINITION OF EMPLOYER SO FAR AS THE TIMES OR
30 AMOUNTS OF THEIR PAYMENTS TO EMPLOYEES ARE REGULATED BY LAWS OF THE UNITED
31 STATES, OR REGULATIONS OR ORDERS MADE IN PURSUANCE OF THE LAWS OF THE
32 UNITED STATES.

33 7. "FAMILY MEMBER" MEANS ANY OF THE FOLLOWING:

34 (a) THE SPOUSE OF AN EMPLOYEE.

35 (b) THE BIOLOGICAL, ADOPTIVE OR FOSTER PARENT OR CHILD OF THE
36 EMPLOYEE.

37 (c) THE GRANDPARENT OR GRANDCHILD OF THE EMPLOYEE.

38 (d) A PARENT-IN-LAW OF THE EMPLOYEE.

39 (e) A PERSON WITH WHOM THE EMPLOYEE WAS OR IS IN A RELATIONSHIP OF
40 IN LOCO PARENTIS.

41 (f) ANY INDIVIDUAL RELATED BY BLOOD OR AFFINITY TO THE EMPLOYEE,
42 WHOSE CLOSE ASSOCIATION WITH THE EMPLOYEE IS THE EQUIVALENT OF A FAMILY
43 RELATIONSHIP.

1 8. "FOOD SERVICES ESTABLISHMENT" MEANS THE FIXED POINT-OF-SALE
2 LOCATION FOR ESTABLISHMENTS DEFINED UNDER THE NORTH AMERICAN INDUSTRY
3 CLASSIFICATION SYSTEM AS FOOD SERVICES AND DRINKING PLACES.

4 9. "FRANCHISE" MEANS A CONTRACT OR AGREEMENT, WHETHER ORAL OR
5 WRITTEN, BY WHICH ALL OF THE FOLLOWING OCCUR:

6 (a) A FRANCHISEE IS GRANTED THE RIGHT TO ENGAGE IN THE BUSINESS OF
7 OFFERING, SELLING OR DISTRIBUTING GOODS OR SERVICES UNDER A MARKETING PLAN
8 OR SYSTEM PRESCRIBED IN SUBSTANTIAL PART BY A FRANCHISOR.

9 (b) OPERATING THE FRANCHISEE'S BUSINESS PURSUANT TO SUCH A PLAN OR
10 SYSTEM IS SUBSTANTIALLY ASSOCIATED WITH THE FRANCHISOR'S TRADEMARK,
11 SERVICE MARK, TRADE NAME, LOGOTYPE, ADVERTISING OR OTHER COMMERCIAL SYMBOL
12 DESIGNATING THE FRANCHISOR OF THE PLAN OR SYSTEM.

13 (c) THE FRANCHISEE IS REQUIRED TO GIVE TO THE FRANCHISOR VALUABLE
14 CONSIDERATION FOR THE RIGHT TO TRANSACT BUSINESS PURSUANT TO THE PLAN OR
15 SYSTEM. PAYMENT FOR TRADING STAMPS IN ITSELF IS NOT CONSIDERATION FOR THE
16 RIGHT TO TRANSACT BUSINESS PURSUANT TO A PLAN OR SYSTEM.

17 10. "FRANCHISEE" MEANS A PERSON TO WHOM A FRANCHISE IS SOLD BY A
18 FRANCHISOR.

19 11. "FRANCHISOR" MEANS A PERSON, INCLUDING A SUBFRANCHISOR, THAT
20 SELLS A FRANCHISE FOR \$100 OR MORE TO A FRANCHISEE OR SUBFRANCHISOR.

21 12. "HOSPITALITY ESTABLISHMENT" HAS THE SAME MEANING PRESCRIBED IN
22 THE NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM FOR HOTELS AND MOTELS.

23 13. "ON-CALL SHIFT" MEANS ANY TIME THAT AN EMPLOYER REQUIRES AN
24 EMPLOYEE TO BE AVAILABLE TO WORK OR TO CONTACT THE EMPLOYER OR WAIT TO BE
25 CONTACTED BY THE EMPLOYER FOR THE PURPOSE OF DETERMINING WHETHER THE
26 EMPLOYEE MUST REPORT TO WORK. DURING THE SHIFT, ON-CALL STATUS APPLIES
27 REGARDLESS OF WHETHER THE EMPLOYEE IS LOCATED ON OR OFF THE EMPLOYER'S
28 PREMISES.

29 14. "REGULAR RATE OF PAY" MEANS A REGULAR HOURLY RATE AS DEFINED BY
30 THE INDUSTRIAL COMMISSION OF ARIZONA.

31 15. "RETAIL ESTABLISHMENT" HAS THE SAME MEANING PRESCRIBED IN THE
32 NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM FOR RETAIL TRADE.

33 16. "SEASONAL EMPLOYMENT" MEANS A PERIOD OF EMPLOYMENT THAT IS
34 CYCLICAL IN NATURE, OCCURS AT APPROXIMATELY THE SAME TIME EACH YEAR, OFTEN
35 TO ACCOMMODATE A SEASONAL INCREASE IN BUSINESS, AND LASTS FOR A DURATION
36 OF LESS THAN TWELVE MONTHS DURING ANY YEAR.

37 17. "SERIOUS HEALTH CONDITION" MEANS ANY OF THE FOLLOWING:

38 (a) AN ILLNESS, INJURY, IMPAIRMENT OR PHYSICAL OR MENTAL CONDITION
39 THAT REQUIRES INPATIENT CARE IN A HOSPITAL, HOSPICE OR RESIDENTIAL MEDICAL
40 CARE FACILITY.

41 (b) AN ILLNESS, DISEASE OR CONDITION THAT IN THE MEDICAL JUDGMENT
42 OF THE TREATING HEALTH CARE PROVIDER POSES AN IMMINENT DANGER OF DEATH, IS
43 TERMINAL IN PROGNOSIS WITH A REASONABLE POSSIBILITY OF DEATH IN THE NEAR
44 FUTURE OR REQUIRES CONSTANT CARE.

1 (c) ANY PERIOD OF DISABILITY DUE TO PREGNANCY OR PERIOD OF ABSENCE
2 FOR PRENATAL CARE.

3 18. "SUBFRANCHISOR" MEANS A PERSON TO WHOM AN AREA FRANCHISE IS
4 SOLD BY A FRANCHISOR.

5 19. "SUCCESSOR" MEANS AN ENTITY THAT IS SUBSTANTIALLY THE SAME
6 ENTITY AS THE PREDECESSOR AS DETERMINED BY CONSIDERING THE TOTALITY OF THE
7 FOLLOWING CIRCUMSTANCES:

8 (a) SUBSTANTIAL CONTINUITY OF THE SAME BUSINESS OPERATIONS.

9 (b) THE USE OF THE SAME PLANT.

10 (c) THE CONTINUITY OF THE WORKFORCE.

11 (d) THE SIMILARITY OF JOBS AND WORKING CONDITIONS.

12 (e) THE SIMILARITY OF SUPERVISORY PERSONNEL.

13 (f) THE SIMILARITY IN MACHINERY.

14 (g) THE SIMILARITY OF EQUIPMENT AND PRODUCTION METHODS.

15 (h) THE SIMILARITY OF PRODUCTS OR SERVICES.

16 (i) THE ABILITY OF THE PREDECESSOR TO PROVIDE RELIEF.

17 20. "TIME OF HIRE" MEANS THE PERIOD AFTER AN OFFER OF EMPLOYMENT
18 AND ACCEPTANCE OF THE OFFER OF EMPLOYMENT AND ON OR BEFORE THE
19 COMMENCEMENT OF EMPLOYMENT.

20 21. "WAGES" MEANS ALL COMPENSATION FOR PERFORMING A SERVICE BY AN
21 EMPLOYEE FOR AN EMPLOYER, WHETHER PAID BY THE EMPLOYER OR ANOTHER PERSON,
22 INCLUDING THE CASH VALUE OF ALL COMPENSATION PAID IN A MEDIUM OTHER THAN
23 CASH.

24 22. "WORK SCHEDULE" MEANS THE HOURS, DAYS AND TIMES, INCLUDING
25 REGULAR WORK SHIFTS AND ON-CALL SHIFTS, WHEN AN EMPLOYEE IS REQUIRED BY AN
26 EMPLOYER TO PERFORM DUTIES OF EMPLOYMENT FOR WHICH THE EMPLOYEE WILL
27 RECEIVE COMPENSATION.

28 23. "WORK SHIFT" MEANS THE SPECIFIC AND CONSECUTIVE HOURS THE
29 EMPLOYER REQUIRES THE EMPLOYEE TO WORK OR TO BE ON CALL TO WORK.

30 24. "WORKWEEK" MEANS A FIXED PERIOD OF TIME ESTABLISHED BY AN
31 EMPLOYER THAT REFLECTS A REGULARLY RECURRING PERIOD OF ONE HUNDRED
32 SIXTY-EIGHT HOURS OR SEVEN CONSECUTIVE TWENTY-FOUR-HOUR PERIODS. A
33 WORKWEEK MAY BEGIN ON ANY DAY OF THE WEEK AND ANY HOUR OF THE DAY AND IS
34 NOT REQUIRED TO COINCIDE WITH A CALENDAR WEEK.

35 25. "WRITTEN" OR "WRITING" MEANS A PRINTED OR PRINTABLE
36 COMMUNICATION IN PHYSICAL OR ELECTRONIC FORMAT INCLUDING A COMMUNICATION
37 THAT IS TRANSMITTED THROUGH EMAIL, TEXT MESSAGE OR A COMPUTER SYSTEM OR IS
38 OTHERWISE SENT AND STORED ELECTRONICALLY.

39 26. "YEAR" MEANS ANY FIXED, CONSECUTIVE TWELVE-MONTH PERIOD OF
40 TIME.

41 23-1202. On-call pay

42 A. AN EMPLOYER SHALL PAY AN EMPLOYEE FOR A MINIMUM OF FOUR HOURS OR
43 THE NUMBER OF HOURS IN THE EMPLOYEE'S SCHEDULED WORK SHIFT, WHICHEVER IS
44 LESS, AT THE EMPLOYEE'S REGULAR RATE OF PAY, ON ANY DAY THAT THE EMPLOYEE
45 EITHER:

1 1. IS SCHEDULED OR CALLED TO WORK AND REPORTS FOR DUTY BUT, DUE TO
2 THE ACTIONS OF THE EMPLOYER, DOES NOT WORK THE EMPLOYEE'S SCHEDULED SHIFT
3 IN ITS ENTIRETY.

4 2. IS NOTIFIED LESS THAN TWENTY-FOUR HOURS BEFORE A SHIFT THAT THE
5 EMPLOYEE DOES NOT NEED TO REPORT TO WORK OR THAT THE HOURS IN THE SHIFT
6 HAVE BEEN REDUCED.

7 B. AN EMPLOYEE WHO INVOKES RIGHTS UNDER THIS SECTION AND SECTION
8 23-1256 FOR THE SAME SET OF UNDERLYING FACTS MAY COLLECT THE WAGES
9 DESCRIBED UNDER EITHER THIS SECTION OR SECTION 23-1256.

10 23-1203. Notice and posting requirements

11 A. THE INDUSTRIAL COMMISSION OF ARIZONA SHALL CREATE AND DISTRIBUTE
12 A POSTER GIVING NOTICE OF THE RIGHTS DESCRIBED IN THIS CHAPTER. THE
13 COMMISSION SHALL CREATE AND DISTRIBUTE THE POSTER IN ENGLISH, SPANISH AND
14 ANY OTHER LANGUAGE THAT IS NECESSARY FOR EMPLOYERS TO COMPLY WITH THIS
15 SECTION.

16 B. AN EMPLOYER SHALL DISPLAY THE POSTER DESCRIBED IN SUBSECTION A
17 OF THIS SECTION IN A CONSPICUOUS AND ACCESSIBLE PLACE AT ANY WORKPLACE OR
18 JOB SITE WHERE ANY OF THE EMPLOYER'S EMPLOYEES WORK. EMPLOYERS SHALL
19 DISPLAY THE POSTER IN ENGLISH AND IN THE PRIMARY LANGUAGE OR LANGUAGES OF
20 THE EMPLOYEES AT THE PARTICULAR WORKPLACE. IF DISPLAYING THE POSTER IS
21 NOT FEASIBLE, INCLUDING SITUATIONS WHEN THE EMPLOYEE WORKS REMOTELY OR
22 DOES NOT HAVE A REGULAR WORKPLACE OR JOB SITE, THE EMPLOYER MAY PROVIDE
23 THE POSTER ON AN INDIVIDUAL BASIS IN AN EMPLOYEE'S PRIMARY LANGUAGE IN A
24 PHYSICAL OR ELECTRONIC FORMAT THAT IS REASONABLY CONSPICUOUS AND
25 ACCESSIBLE.

26 23-1204. Employer recordkeeping; presumption

27 A. AN EMPLOYER SHALL RETAIN RECORDS THAT DOCUMENT THE EMPLOYER'S
28 COMPLIANCE WITH THIS CHAPTER, AS APPLICABLE TO THE EMPLOYER.

29 B. EACH EMPLOYER SHALL RETAIN RECORDS THAT INCLUDE BOTH OF THE
30 FOLLOWING:

31 1. PAYROLL RECORDS, INCLUDING DOCUMENTATION OF ADDITIONAL
32 COMPENSATION PAID TO AN EMPLOYEE UNDER SECTION 23-1202.

33 2. OTHER RECORDS THAT ARE SUBSTANTIALLY RELATED TO COMPLIANCE WITH
34 THIS CHAPTER, AS APPLICABLE TO THE EMPLOYER.

35 C. AN EMPLOYER OTHER THAN AN EMPLOYER DESCRIBED IN SECTION 23-1251
36 SHALL RETAIN RECORDS THAT INCLUDE AN EMPLOYEE'S REQUESTED CHANGES TO THE
37 EMPLOYEE'S WORK SCHEDULE UNDER SECTION 23-1231.

38 D. AN EMPLOYER DESCRIBED IN SECTION 23-1251 SHALL RETAIN RECORDS
39 THAT INCLUDE ALL OF THE FOLLOWING:

40 1. GOOD FAITH ESTIMATES OF EMPLOYEE WORK SCHEDULES.

41 2. THE EMPLOYER'S BONA FIDE BUSINESS REASON FOR DENYING AN
42 EMPLOYEE'S REQUEST FOR A LIMIT OR CHANGE IN THE EMPLOYEE'S WORK SCHEDULE
43 UNDER SECTION 23-1252.

44 3. ORIGINAL AND MODIFIED WORK SCHEDULES.

1 4. PAYROLL RECORDS, INCLUDING DOCUMENTATION OF ADDITIONAL
2 COMPENSATION PAID TO AN EMPLOYEE UNDER SECTION 23-1202, 23-1255 OR
3 23-1256.

4 5. MASS COMMUNICATIONS THAT ARE PROVIDED TO EMPLOYEES ABOUT THE
5 AVAILABILITY OF ADDITIONAL HOURS.

6 6. DOCUMENTATION OF AN INCIDENT LEADING TO EMPLOYEE DISCIPLINE THAT
7 RESULTS IN HOURS SUBTRACTED FROM THE EMPLOYEE'S WORK SCHEDULE.

8 7. NOTICES FOR ADDITIONAL HOURS OF WORK AVAILABLE FOR EMPLOYEES
9 PURSUANT TO SECTION 23-1258.

10 8. CONFIRMATION FROM AN EMPLOYEE THAT THE EMPLOYEE IS NOT
11 INTERESTED IN ACCEPTING ADDITIONAL HOURS OF WORK.

12 E. AN EMPLOYER SHALL RETAIN THE RECORDS PRESCRIBED IN SUBSECTIONS
13 A, B, C AND D OF THIS SECTION, AS APPLICABLE, FOR A PERIOD OF THREE YEARS.

14 F. AN EMPLOYER'S FAILURE TO RETAIN ADEQUATE RECORDS AS REQUIRED BY
15 THIS SECTION CREATES A REBUTTABLE PRESUMPTION THAT THE EMPLOYER VIOLATED
16 THIS CHAPTER WITH RESPECT TO THE EMPLOYEE FOR WHOM A RECORD WAS NOT
17 RETAINED.

18 23-1205. Retaliation prohibited

19 A. IT IS AN UNLAWFUL PRACTICE FOR AN EMPLOYER TO EITHER:

20 1. INTERFERE WITH, RESTRAIN, DENY OR ATTEMPT TO DENY THE EXERCISE
21 OF ANY RIGHT PROTECTED UNDER THIS CHAPTER.

22 2. RETALIATE OR IN ANY WAY DISCRIMINATE AGAINST AN INDIVIDUAL WITH
23 RESPECT TO HIRE OR TENURE OR ANY OTHER TERM OR CONDITION OF EMPLOYMENT
24 BECAUSE THE INDIVIDUAL HAS INQUIRED ABOUT THIS CHAPTER.

25 B. THE PROTECTIONS AFFORDED UNDER THIS SECTION APPLY TO ANY PERSON
26 WHO MISTAKENLY BUT IN GOOD FAITH AND WITH AN OBJECTIVELY REASONABLE BELIEF
27 ASSERTS A RIGHT PROTECTED BY THIS CHAPTER.

28 23-1206. Enforcement; civil penalty

29 A. THE INDUSTRIAL COMMISSION OF ARIZONA SHALL IMPLEMENT AND ENFORCE
30 THIS CHAPTER AND ADOPT RULES FOR THESE PURPOSES.

31 B. AN EMPLOYEE OR OTHER PERSON MAY REPORT TO THE COMMISSION ANY
32 SUSPECTED VIOLATION OF THIS CHAPTER. THE COMMISSION SHALL KEEP
33 CONFIDENTIAL THE NAME AND OTHER IDENTIFYING INFORMATION OF THE EMPLOYEE OR
34 PERSON THAT REPORTS THE VIOLATION, EXCEPT THAT THE COMMISSION MAY DISCLOSE
35 THIS INFORMATION AS AUTHORIZED BY THE EMPLOYEE OR OTHER PERSON AS
36 NECESSARY TO ENFORCE THIS SECTION OR FOR OTHER APPROPRIATE PURPOSES.

37 C. ANY PERSON THAT IS INJURED BY A VIOLATION OF THIS CHAPTER MAY
38 MAINTAIN A CIVIL ACTION TO ENFORCE THIS CHAPTER IN A COURT OF COMPETENT
39 JURISDICTION AND MAY BE AWARDED REASONABLE ATTORNEY FEES AND COSTS.

40 D. IN ADDITION TO ANY OTHER DAMAGES PROVIDED BY LAW, THE COMMISSION
41 MAY ASSESS A CIVIL PENALTY AS FOLLOWS:

42 1. \$500 FOR THE FIRST VIOLATION OF THIS CHAPTER.

43 2. \$1,000 FOR ANY SUBSEQUENT VIOLATION OF THIS CHAPTER THAT OCCURS
44 WITHIN TEN YEARS AFTER THE FIRST VIOLATION OF THIS CHAPTER.

1 E. IF THE COMMISSION DETERMINES THAT THE EMPLOYER PAID THE FULL
2 REMEDY DUE TO AN AGGRIEVED PARTY WITHIN FOURTEEN DAYS AFTER SERVICE OF AN
3 ORDER, THE COMMISSION SHALL WAIVE FIFTY PERCENT OF THE AMOUNT OF ANY CIVIL
4 PENALTY IMPOSED BY AN ORDER UNDER THIS SECTION.

5 23-1207. Scope

6 THIS CHAPTER DOES NOT:

- 7 1. LIMIT EMPLOYEE RIGHTS OR PROTECTIONS OTHERWISE PROVIDED BY LAW.
8 2. ESTABLISH A CONTRACTUAL RIGHT FOR AN AT-WILL EMPLOYEE.
9 3. ESTABLISH AN ADDITIONAL REMEDY FOR AN EMPLOYEE IF A REMEDY EQUAL
10 TO OR BETTER THAN A REMEDY IN SECTION 23-1202, 23-1255 OR 23-1256 IS
11 REQUIRED BY A COLLECTIVE BARGAINING AGREEMENT OR OTHER CONTRACT.

12 ARTICLE 2. SMALL EMPLOYERS

13 23-1231. Employee right to input into work schedule;
14 applicability

15 A. AT THE TIME OF HIRE AND DURING EMPLOYMENT, AN EMPLOYEE MAY
16 IDENTIFY ANY LIMIT OR CHANGES IN WORK SCHEDULE AVAILABILITY. THE EMPLOYEE
17 HAS THE RIGHT TO REQUEST NOT TO BE SCHEDULED FOR WORK SHIFTS DURING
18 CERTAIN TIMES OR AT CERTAIN LOCATIONS AND THE RIGHT TO IDENTIFY
19 PREFERENCES FOR ONE OR ANY COMBINATION OF THE FOLLOWING:

- 20 1. SPECIFIC HOURS OF WORK.
21 2. SPECIFIC EMPLOYER LOCATIONS.
22 3. CHANGES IN DAYS OF WORK OR START OR END TIMES FOR THE WORK DAY
23 OR A WORK SHIFT.
24 4. A STABLE WORK SCHEDULE.
25 5. PERMISSION TO EXCHANGE WORK SHIFTS WITH OTHER EMPLOYEES.
26 6. WORKING FROM HOME.
27 7. TELECOMMUTING OR REMOTE WORK.
28 8. A REDUCTION OR CHANGE IN WORK DUTIES.
29 9. PART-YEAR EMPLOYMENT.
30 10. PART-TIME EMPLOYMENT.
31 11. JOB SHARING ARRANGEMENTS.
32 12. ADDITIONAL SHIFTS OR HOURS.

33 B. AN EMPLOYER MAY REQUIRE THE EMPLOYEE TO EXPLAIN THE REASON FOR
34 THE REQUEST MADE UNDER SUBSECTION A OF THIS SECTION AND PROVIDE REASONABLE
35 VERIFICATION OF THAT REASON AT THE TIME THE EMPLOYEE SUBMITS THE REQUEST.

36 C. IF AN EMPLOYER SUSPECTS THAT AN EMPLOYEE IS ABUSING THE RIGHT TO
37 MAKE A REQUEST UNDER SUBSECTION A OF THIS SECTION, THE EMPLOYER MAY
38 REQUIRE REASONABLE VERIFICATION OF THE NEED FOR ANY REQUEST MADE UNDER
39 SUBSECTION A OF THIS SECTION AT ANY TIME.

40 D. THE EMPLOYER SHALL PAY ANY REASONABLE COSTS FOR PROVIDING
41 VERIFICATION THAT IS MEDICAL VERIFICATION REQUIRED UNDER THIS SECTION,
42 INCLUDING LOST WAGES, THAT ARE NOT PAID UNDER A HEALTH BENEFIT PLAN IN
43 WHICH THE EMPLOYEE IS ENROLLED.

44 E. AN EMPLOYER MAY NOT REQUIRE THAT THE VERIFICATION REQUIRED UNDER
45 THIS SECTION EXPLAIN THE NATURE OF A HEALTH CONDITION OR ILLNESS OR

1 DETAILS RELATED TO DOMESTIC VIOLENCE, SEXUAL ASSAULT, HARASSMENT OR
2 STALKING THAT IS THE REASON FOR THE EMPLOYEE'S REQUEST.

3 F. THIS SECTION DOES NOT APPLY TO EMPLOYEES WHO ARE EMPLOYED BY AN
4 EMPLOYER DESCRIBED IN SECTION 23-1251.

5 ARTICLE 3. LARGE EMPLOYERS

6 23-1251. Applicability

7 A. THIS ARTICLE APPLIES TO AN EMPLOYEE EMPLOYED BY AN EMPLOYER, AND
8 TO AN EMPLOYER, THAT IS ONE OR MORE OF THE FOLLOWING:

9 1. A RETAIL ESTABLISHMENT THAT EMPLOYS ONE HUNDRED OR MORE
10 EMPLOYEES IN THE UNITED STATES REGARDLESS OF WHERE THOSE EMPLOYEES ARE
11 EMPLOYED AND TWENTY-FIVE OR MORE EMPLOYEES IN THIS STATE, INCLUDING A
12 CHAIN, AN INTEGRATED ENTERPRISE OR A FRANCHISE ASSOCIATED WITH A
13 FRANCHISOR OR NETWORK OF FRANCHISES THAT EMPLOYS MORE THAN ONE HUNDRED
14 EMPLOYEES IN AGGREGATE NATIONWIDE AND TWENTY-FIVE OR MORE EMPLOYEES IN
15 AGGREGATE IN THIS STATE.

16 2. A HOSPITALITY ESTABLISHMENT THAT EMPLOYS ONE HUNDRED OR MORE
17 EMPLOYEES IN THE UNITED STATES REGARDLESS OF WHERE THOSE EMPLOYEES ARE
18 EMPLOYED AND TWENTY-FIVE OR MORE EMPLOYEES IN THIS STATE, INCLUDING A
19 CHAIN, AN INTEGRATED ENTERPRISE OR A FRANCHISE ASSOCIATED WITH A
20 FRANCHISOR OR NETWORK OF FRANCHISES THAT EMPLOYS MORE THAN ONE HUNDRED
21 EMPLOYEES IN AGGREGATE NATIONWIDE AND TWENTY-FIVE OR MORE EMPLOYEES IN
22 AGGREGATE IN THIS STATE.

23 3. A FOOD SERVICES ESTABLISHMENT THAT EMPLOYS ONE HUNDRED OR MORE
24 EMPLOYEES IN THE UNITED STATES REGARDLESS OF WHERE THOSE EMPLOYEES ARE
25 EMPLOYED AND TWENTY-FIVE OR MORE EMPLOYEES IN THIS STATE, INCLUDING A
26 CHAIN, AN INTEGRATED ENTERPRISE OR A FRANCHISE ASSOCIATED WITH A
27 FRANCHISOR OR NETWORK OF FRANCHISES THAT EMPLOYS MORE THAN ONE HUNDRED
28 EMPLOYEES IN AGGREGATE NATIONWIDE AND TWENTY-FIVE OR MORE EMPLOYEES IN
29 AGGREGATE IN THIS STATE. IN ADDITION TO EMPLOYING ONE HUNDRED OR MORE
30 EMPLOYEES NATIONWIDE AND TWENTY-FIVE EMPLOYEES IN THIS STATE, A FOOD
31 SERVICE ESTABLISHMENT THAT IS A FULL-SERVICE RESTAURANT ALSO MUST HAVE
32 FORTY OR MORE FULL-SERVICE RESTAURANT LOCATIONS NATIONWIDE, INCLUDING
33 LOCATIONS THAT ARE A PART OF A CHAIN, INTEGRATED ENTERPRISE OR FRANCHISE
34 WHERE THE FRANCHISOR OWNS OR OPERATES FORTY OR MORE SUCH ESTABLISHMENTS IN
35 AGGREGATE.

36 B. TO DETERMINE THE NUMBER OF EMPLOYEES EMPLOYED BY AN EMPLOYER,
37 THE CALCULATION IS BASED ON THE NUMBER OF EMPLOYEES EMPLOYED ON EACH
38 WORKING DAY DURING EACH OF TWENTY OR MORE WORKWEEKS IN THE CURRENT
39 CALENDAR YEAR OR IMMEDIATELY PRECEDING CALENDAR YEAR.

40 C. SEPARATE ENTITIES THAT FORM AN INTEGRATED ENTERPRISE ARE
41 CONSIDERED A SINGLE EMPLOYER UNDER THIS SECTION. SEPARATE ENTITIES WILL
42 BE CONSIDERED AN INTEGRATED ENTERPRISE AND A SINGLE EMPLOYER UNDER THIS
43 SECTION WHERE A SEPARATE ENTITY CONTROLS THE OPERATION OF ANOTHER ENTITY.
44 THE FACTORS TO CONSIDER IN DETERMINING WHETHER SEPARATE ENTITIES FORM AN
45 INTEGRATED ENTERPRISE INCLUDE ALL OF THE FOLLOWING:

1 1. THE DEGREE OF INTERRELATION BETWEEN THE OPERATIONS OF MULTIPLE
2 ENTITIES.

3 2. THE DEGREE TO WHICH THE ENTITIES SHARE COMMON MANAGEMENT.

4 3. THE DEGREE TO WHICH THE ENTITIES HAVE CENTRALIZED CONTROL OF
5 LABOR RELATIONS.

6 4. THE DEGREE OF COMMON OWNERSHIP OR FINANCIAL CONTROL OVER THE
7 ENTITIES.

8 23-1252. Employee right to input into work schedule

9 A. AT THE TIME OF HIRE AND DURING EMPLOYMENT, AN EMPLOYEE MAY
10 IDENTIFY ANY LIMIT OR CHANGES IN WORK SCHEDULE AVAILABILITY. THE EMPLOYEE
11 HAS THE RIGHT TO REQUEST NOT TO BE SCHEDULED FOR WORK SHIFTS DURING
12 CERTAIN TIMES OR AT CERTAIN LOCATIONS AND THE RIGHT TO IDENTIFY
13 PREFERENCES FOR ONE OR ANY COMBINATION OF THE FOLLOWING:

14 1. SPECIFIC HOURS OF WORK.

15 2. SPECIFIC EMPLOYER LOCATIONS.

16 3. CHANGES IN DAYS OF WORK OR START OR END TIMES FOR THE WORK DAY
17 OR A WORK SHIFT.

18 4. A STABLE WORK SCHEDULE.

19 5. PERMISSION TO EXCHANGE WORK SHIFTS WITH OTHER EMPLOYEES.

20 6. WORKING FROM HOME.

21 7. TELECOMMUTING OR REMOTE WORK.

22 8. A REDUCTION OR CHANGE IN WORK DUTIES.

23 9. PART-YEAR EMPLOYMENT.

24 10. PART-TIME EMPLOYMENT.

25 11. JOB SHARING ARRANGEMENTS.

26 12. ADDITIONAL SHIFTS OR HOURS.

27 B. THE EMPLOYER AND EMPLOYEE SHALL ENGAGE IN AN INTERACTIVE PROCESS
28 TO DISCUSS REQUESTS MADE UNDER SUBSECTION A OF THIS SECTION. THE
29 INTERACTIVE PROCESS SHALL BE A TIMELY, GOOD FAITH PROCESS THAT INCLUDES A
30 DISCUSSION BETWEEN THE EMPLOYER AND THE EMPLOYEE FOR THE PURPOSE OF
31 ARRIVING AT A MUTUALLY BENEFICIAL ARRANGEMENT FOR A WORK SCHEDULE THAT
32 MEETS THE NEEDS OF THE EMPLOYEE AND THE EMPLOYER. THE DISCUSSION MAY
33 INCLUDE THE PROPOSAL OF ALTERNATIVES BY THE EMPLOYEE AND THE EMPLOYER.

34 C. UNLESS THE EMPLOYER HAS A BONA FIDE BUSINESS REASON NOT TO GRANT
35 AN EMPLOYEE'S REQUEST MADE UNDER SUBSECTION A OF THIS SECTION, THE REQUEST
36 SHALL BE GRANTED IF THE EMPLOYEE MAKES THE REQUEST BASED ON ANY OF THE
37 FOLLOWING:

38 1. A SERIOUS HEALTH CONDITION OF THE EMPLOYEE.

39 2. THE EMPLOYEE'S CAREGIVING RESPONSIBILITIES FOR A FAMILY MEMBER.

40 3. AN ADDITIONAL EMPLOYMENT COMMITMENT OF THE EMPLOYEE.

41 4. CHANGES IN THE EMPLOYEE'S ACCESS TO THE WORKPLACE DUE TO CHANGES
42 IN THE EMPLOYEE'S TRANSPORTATION OR HOUSING ARRANGEMENTS.

43 5. THE EMPLOYEE'S PARTICIPATION IN A CAREER-RELATED EDUCATIONAL OR
44 TRAINING PROGRAM.

1 D. THE EMPLOYEE SHALL MAKE REASONABLE EFFORTS MAKE A REQUEST UNDER
2 SUBSECTION A OF THIS SECTION IN WRITING. THE EMPLOYER SHALL DOCUMENT ALL
3 REQUESTS MADE BY AN EMPLOYEE UNDER SUBSECTION A OF THIS SECTION,
4 REGARDLESS OF WHETHER THE REQUEST IS ORAL OR WRITTEN, PURSUANT TO SECTION
5 23-1204.

6 E. IF A REQUEST MADE UNDER THIS SECTION IS DENIED BASED ON A BONA
7 FIDE BUSINESS REASON, THE EMPLOYER SHALL PROVIDE A WRITTEN RESPONSE TO THE
8 REQUEST EXPLAINING THE COMPLETE OR PARTIAL DENIAL OF THE REQUEST AND THE
9 BONA FIDE BUSINESS REASON FOR THE DECISION.

10 F. IF A REQUEST MADE UNDER THIS SECTION IS NOT BASED ON
11 CIRCUMSTANCES IDENTIFIED UNDER SUBSECTION C OF THIS SECTION, THE EMPLOYER
12 MAY GRANT OR DENY THE REQUEST FOR ANY REASON THAT IS NOT UNLAWFUL.

13 G. AN EMPLOYER MAY REQUIRE THE EMPLOYEE TO PROVIDE REASONABLE
14 VERIFICATION OF THE NEED FOR A REQUEST DESCRIBED IN SUBSECTION C OF THIS
15 SECTION.

16 H. IF AN EMPLOYER SUSPECTS THAT AN EMPLOYEE IS ABUSING THE RIGHT TO
17 MAKE A REQUEST UNDER SUBSECTION A OF THIS SECTION, THE EMPLOYER MAY
18 REQUIRE REASONABLE VERIFICATION OF THE NEED FOR ANY REQUEST MADE UNDER
19 SUBSECTION A OF THIS SECTION.

20 I. THE EMPLOYER SHALL PAY ANY REASONABLE COSTS FOR PROVIDING
21 MEDICAL VERIFICATION REQUIRED UNDER THIS SECTION, INCLUDING LOST WAGES,
22 THAT ARE NOT PAID UNDER A HEALTH BENEFIT PLAN IN WHICH THE EMPLOYEE IS
23 ENROLLED.

24 J. AN EMPLOYER MAY NOT REQUIRE THAT THE VERIFICATION REQUIRED UNDER
25 THIS SECTION EXPLAIN THE NATURE OF A HEALTH CONDITION OR ILLNESS OR
26 DETAILS RELATED TO DOMESTIC VIOLENCE, SEXUAL ASSAULT, HARASSMENT OR
27 STALKING THAT IS THE REASON FOR THE EMPLOYEE'S REQUEST.

28 23-1253. Good faith estimate of work schedule

29 A. AN EMPLOYER SHALL PROVIDE A NEW EMPLOYEE WITH A WRITTEN GOOD
30 FAITH ESTIMATE OF THE EMPLOYEE'S WORK SCHEDULE AT THE TIME OF HIRE. THE
31 GOOD FAITH ESTIMATE SHALL INCLUDE THE AVERAGE NUMBER OF HOURS THE EMPLOYEE
32 CAN EXPECT TO WORK EACH WORKWEEK AND WHETHER THE EMPLOYEE CAN EXPECT TO
33 WORK ON-CALL SHIFTS.

34 B. THE EMPLOYER SHALL REVISE THE GOOD FAITH ESTIMATE FOR AN
35 EMPLOYEE BOTH:

36 1. ONCE EVERY YEAR CALCULATED FROM THE POINT OF THE LAST GOOD FAITH
37 ESTIMATE.

38 2. IF THERE IS A SIGNIFICANT CHANGE TO THE EMPLOYEE'S WORK SCHEDULE
39 DUE TO CHANGES IN THE EMPLOYEE'S AVAILABILITY OR TO THE EMPLOYER'S
40 BUSINESS NEEDS.

41 C. THE EMPLOYER SHALL INITIATE AN INTERACTIVE PROCESS DESCRIBED IN
42 SECTION 23-1252, SUBSECTION B WITH THE EMPLOYEE TO DISCUSS ANY SIGNIFICANT
43 CHANGE FROM THE GOOD FAITH ESTIMATE AND, IF APPLICABLE, STATE A BONA FIDE
44 BUSINESS REASON FOR THE CHANGE.

1 D. THE EMPLOYER SHALL PROVIDE THE GOOD FAITH ESTIMATE IN ENGLISH
2 AND IN THE EMPLOYEE'S PRIMARY LANGUAGE.

3 23-1254. Advance notice of work schedule

4 A. AN EMPLOYER SHALL PROVIDE AN EMPLOYEE WITH A WORK SCHEDULE IN
5 WRITING AT LEAST FOURTEEN CALENDAR DAYS BEFORE THE FIRST DAY OF THE WORK
6 SCHEDULE.

7 B. THE EMPLOYER SHALL POST THE WRITTEN WORK SCHEDULE IN A
8 CONSPICUOUS AND ACCESSIBLE LOCATION, IN ENGLISH AND IN THE PRIMARY
9 LANGUAGE OR LANGUAGES OF THE EMPLOYEES AT THE PARTICULAR WORKPLACE.

10 C. THE EMPLOYER SHALL PROVIDE A NEW EMPLOYEE AT THE TIME OF HIRE,
11 OR AN EXISTING EMPLOYEE ON RETURNING TO WORK AFTER A LEAVE OF ABSENCE,
12 WITH A WRITTEN WORK SCHEDULE THAT RUNS THROUGH THE LAST DATE OF THE POSTED
13 WORK SCHEDULE THAT IS IN EFFECT AT THE TIME OF HIRE OR DATE OF THE RETURN
14 TO WORK.

15 D. THE WRITTEN WORK SCHEDULE SHALL INCLUDE ALL REGULAR AND ON-CALL
16 SHIFTS FOR THE WORK PERIOD.

17 E. IF THE EMPLOYER REQUESTS CHANGES TO THE WRITTEN WORK SCHEDULE
18 AFTER THE ADVANCE NOTICE REQUIRED IN THIS SECTION:

19 1. THE EMPLOYER SHALL PROVIDE THE EMPLOYEE WITH TIMELY NOTICE OF
20 THE CHANGE BY AN IN-PERSON CONVERSATION, A TELEPHONE CALL, AN EMAIL, A
21 TEXT MESSAGE OR ANOTHER ACCESSIBLE ELECTRONIC OR WRITTEN FORMAT.

22 2. THE EMPLOYEE MAY DECLINE TO WORK ANY HOURS NOT INCLUDED IN THE
23 EMPLOYEE'S WRITTEN WORK SCHEDULE.

24 23-1255. Right to rest between work shifts

25 A. UNLESS THE EMPLOYEE REQUESTS OR CONSENTS TO WORK THE HOURS, THE
26 EMPLOYER MAY NOT SCHEDULE OR REQUIRE THE EMPLOYEE TO WORK EITHER:

27 1. LESS THAN TEN HOURS AFTER THE END OF THE PREVIOUS CALENDAR DAY'S
28 WORK SHIFT.

29 2. LESS THAN TEN HOURS FOLLOWING THE END OF A WORK SHIFT THAT
30 SPANNED TWO CALENDAR DAYS.

31 B. THE EMPLOYER SHALL COMPENSATE AN EMPLOYEE WHO WORKS HOURS
32 DESCRIBED UNDER SUBSECTION A OF THIS SECTION AT ONE AND ONE-HALF TIMES THE
33 EMPLOYEE'S REGULAR RATE OF PAY FOR THE HOURS WORKED IN A SHIFT THAT BEGAN
34 LESS THAN TEN HOURS AFTER THE PREVIOUS SHIFT ENDED.

35 C. AN EMPLOYEE COMPENSATED AS DESCRIBED IN SUBSECTION B OF THIS
36 SECTION MAY NOT BE ADDITIONALLY COMPENSATED UNDER SECTION 23-1256 FOR WORK
37 SCHEDULE CHANGES.

38 23-1256. Compensation for work schedule changes

39 A. AN EMPLOYER SHALL COMPENSATE AN EMPLOYEE FOR EACH
40 EMPLOYER-REQUESTED CHANGE TO THE EMPLOYEE'S WRITTEN WORK SCHEDULE THAT
41 OCCURS AFTER THE ADVANCE NOTICE REQUIRED PURSUANT TO SECTION 23-1254 AS
42 FOLLOWS:

43 1. THE EMPLOYER SHALL COMPENSATE THE EMPLOYEE WITH ONE HOUR OF PAY
44 AT THE EMPLOYEE'S REGULAR RATE OF PAY, IN ADDITION TO WAGES EARNED, FOR
45 EITHER OF THE FOLLOWING REASONS:

1 (a) ADDING AN HOUR OR HOURS OF WORK TO ANY WORK SHIFT.
2 (b) CHANGING THE DATE OR START OR END TIME OF A WORK SHIFT WITH NO
3 LOSS OF HOURS.
4 2. THE EMPLOYER SHALL COMPENSATE THE EMPLOYEE WITH NOT LESS THAN
5 ONE-HALF TIMES THE EMPLOYEE'S REGULAR RATE OF PAY PER HOUR FOR ANY
6 SCHEDULED HOURS THE EMPLOYEE DOES NOT WORK FOR THE FOLLOWING REASONS:
7 (a) SUBTRACTING HOURS FROM A REGULAR WORK SHIFT BEFORE OR AFTER THE
8 EMPLOYEE REPORTS FOR DUTY.
9 (b) CHANGING THE DATE OR START OR END TIME OF A WORK SHIFT
10 RESULTING IN A LOSS OF HOURS.
11 (c) CANCELING A WORK SHIFT.
12 (d) SCHEDULING THE EMPLOYEE FOR AN ON-CALL SHIFT IF THE EMPLOYEE IS
13 NOT ASKED TO PERFORM WORK.
14 B. THE REQUIREMENTS FOR ADDITIONAL COMPENSATION IN THIS SECTION DO
15 NOT APPLY IN ANY OF THE FOLLOWING CIRCUMSTANCES:
16 1. MUTUALLY AGREED-ON WORK SHIFT SWAPS OR COVERAGE AMONG EMPLOYEES.
17 THE EMPLOYER MAY REQUIRE THAT WORK SHIFT SWAPS OR COVERAGE BE PREAPPROVED
18 BY THE EMPLOYER AND MAY ASSIST EMPLOYEES IN FINDING SUCH ARRANGEMENTS.
19 ASSISTANCE IS LIMITED TO HELPING AN EMPLOYEE IDENTIFY OTHER EMPLOYEES WHO
20 MAY BE AVAILABLE TO PROVIDE COVERAGE OR SHIFT SWAP AND DOES NOT INCLUDE
21 THE EMPLOYER ARRANGING THE SHIFT SWAP OR COVERAGE.
22 2. ADDITIONAL HOURS THAT THE EMPLOYEE VOLUNTEERS TO WORK IN
23 RESPONSE TO A MASS COMMUNICATION IN WRITING FROM THE EMPLOYER ABOUT THE
24 AVAILABILITY OF ADDITIONAL HOURS, PROVIDED THAT THE MASS COMMUNICATION
25 BOTH:
26 (a) IS USED ONLY FOR ADDITIONAL HOURS THAT ARE THE RESULT OF
27 ANOTHER EMPLOYEE BEING UNABLE TO WORK SCHEDULED HOURS.
28 (b) IS CLEAR THAT ACCEPTING THE ADDITIONAL HOURS IS VOLUNTARY AND
29 THAT THE EMPLOYEE HAS THE RIGHT TO DECLINE THE HOURS.
30 3. ADDITIONAL HOURS THAT AN EMPLOYER REQUESTS EMPLOYEES WHO ARE
31 WORKING AT THE TIME THE REQUEST IS MADE, THROUGH AN IN-PERSON GROUP
32 COMMUNICATION, TO WORK IN ORDER TO ADDRESS PRESENT AND UNANTICIPATED
33 CUSTOMER NEEDS, IF THE HOURS ARE CONSECUTIVE TO THE HOURS THAT THE
34 EMPLOYEE IS ALREADY WORKING AND THE EMPLOYEE CONSENTS TO WORK THE HOURS.
35 4. ADDITIONAL HOURS THAT THE EMPLOYEE CONSENTS TO WORK AS THE
36 RESULT OF ACCEPTING AN OFFER OF WORK PURSUANT TO SECTION 23-1258.
37 5. EMPLOYEE-REQUESTED CHANGES, INCLUDING ADDITIONAL OR SUBTRACTED
38 HOURS, THAT THE EMPLOYEE VOLUNTARILY MAKES TO THE EMPLOYEE'S WORK SCHEDULE
39 AND THAT THE EMPLOYEE DOCUMENTS IN WRITING.
40 6. EMPLOYEE HOURS THAT ARE SUBTRACTED FOR DISCIPLINARY REASONS FOR
41 JUST CAUSE, PROVIDED THAT THE EMPLOYER DOCUMENTS IN WRITING THE INCIDENT
42 LEADING TO DISCIPLINE.
43 7. AN EMPLOYEE'S WORK SHIFT CANNOT BEGIN OR CONTINUE DUE TO THREATS
44 TO EMPLOYEES OR PROPERTY OR DUE TO THE RECOMMENDATION OF A PUBLIC
45 OFFICIAL.

1 8. 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 9. OPERATIONS CANNOT BEGIN OR CONTINUE DUE TO A NATURAL DISASTER OR
5 A SIMILAR CAUSE THAT IS NOT WITHIN THE EMPLOYER'S CONTROL.

6 23-1257. Pattern or practice of underscheduling

7 AN EMPLOYER MAY NOT ENGAGE IN A SYSTEMIC PATTERN OR PRACTICE OF
8 SIGNIFICANT UNDERSCHEDULING WHERE THE HOURS THAT EMPLOYEES ACTUALLY WORK
9 ARE SIGNIFICANTLY ABOVE THE HOURS IN THE WRITTEN WORK SCHEDULE REQUIRED BY
10 SECTION 23-1254.

11 23-1258. Access to hours for existing employees; notice

12 A. BEFORE HIRING NEW EMPLOYEES FROM AN EXTERNAL APPLICANT POOL OR
13 SUBCONTRACTORS, INCLUDING HIRING THROUGH THE USE OF TEMPORARY SERVICES OR
14 STAFFING AGENCIES, AN EMPLOYER SHALL OFFER ADDITIONAL HOURS OF WORK TO
15 EXISTING EMPLOYEES WHEN THOSE HOURS BECOME AVAILABLE AT THEIR PLACE OF
16 WORK.

17 B. THE EMPLOYER:

18 1. SHALL POST A WRITTEN NOTICE OF AVAILABLE HOURS OF WORK THAT
19 CONTAINS ALL OF THE FOLLOWING INFORMATION:

20 (a) A DESCRIPTION AND TITLE OF THE POSITION.

21 (b) THE REQUIRED QUALIFICATIONS FOR THE POSITION.

22 (c) THE TOTAL HOURS OF WORK BEING OFFERED.

23 (d) A SCHEDULE OF AVAILABLE WORK SHIFTS.

24 (e) WHETHER THE AVAILABLE WORK SHIFTS WILL OCCUR AT THE SAME TIME
25 EACH WEEK.

26 (f) THE LENGTH OF TIME THE EMPLOYER ANTICIPATES REQUIRING COVERAGE
27 OF THE ADDITIONAL HOURS.

28 2. SHALL POST WRITTEN NOTICE OF THE AVAILABLE HOURS OF WORK FOR AT
29 LEAST THREE CONSECUTIVE CALENDAR DAYS.

30 3. SHALL POST THE NOTICE DESCRIBED IN THIS SUBSECTION IN A
31 CONSPICUOUS AND ACCESSIBLE LOCATION WHERE EMPLOYEE NOTICES ARE CUSTOMARILY
32 POSTED. IF THE EMPLOYER POSTS THE NOTICES IN ELECTRONIC FORMAT, ALL
33 EMPLOYEES IN THE WORKPLACE MUST HAVE ACCESS TO THE NOTICE ON SITE.

34 4. SHALL POST THE NOTICE DESCRIBED IN THIS SUBSECTION IN ENGLISH
35 AND IN THE PRIMARY LANGUAGE OR LANGUAGES OF THE EMPLOYEES AT THE
36 WORKPLACE.

37 5. MAY POST THE NOTICE DESCRIBED IN THIS SUBSECTION CONCURRENTLY TO
38 EXTERNAL CANDIDATES.

39 6. SHALL OFFER ADDITIONAL HOURS OF WORK TO AN EXISTING EMPLOYEE WHO
40 HAS RESPONDED TO THE OFFER OF WORK AND WHO, TO A REASONABLE EMPLOYER
41 ACTING IN GOOD FAITH, IS QUALIFIED WITH THE SKILLS AND EXPERIENCE TO
42 PERFORM THE WORK IN THE FOLLOWING MANNER:

43 (a) THE EMPLOYER SHALL GIVE THE EMPLOYEE AT LEAST TWO CONSECUTIVE
44 CALENDAR DAYS, STARTING ON THE DATE OF THE EMPLOYER'S OFFER, TO ACCEPT THE
45 ADDITIONAL HOURS OF WORK.

1 (b) IF MORE THAN ONE QUALIFIED EMPLOYEE RESPONDS TO THE OFFER OF
2 ADDITIONAL HOURS OF WORK, THE EMPLOYER MAY DISTRIBUTE THE HOURS AMONG
3 INTERESTED EMPLOYEES OR MAY OFFER ALL OF THE AVAILABLE HOURS TO ONE
4 QUALIFIED EMPLOYEE. THE EMPLOYER MAY LIMIT DISTRIBUTION OF HOURS TO FULL
5 WORK SHIFTS RATHER THAN PARCELING HOURS AMONG EMPLOYEES. THE EMPLOYER MAY
6 CHOOSE AMONG QUALIFIED INTERNAL CANDIDATES FOLLOWING THE EMPLOYER'S USUAL
7 AND CUSTOMARY PROCEDURES, IF THE EMPLOYER'S USUAL AND CUSTOMARY PROCEDURE
8 IS NONDISCRIMINATORY AND HOURS ARE NOT DISTRIBUTED IN A MANNER INTENDED TO
9 AVOID APPLICATION OF THE PATIENT PROTECTION AND AFFORDABLE CARE ACT
10 (P.L. 111-148), AS AMENDED BY THE HEALTH CARE AND EDUCATION RECONCILIATION
11 ACT OF 2010 (P.L. 111-152).

12 (c) IF THE EMPLOYEE ACCEPTS ADDITIONAL HOURS OF WORK FOR SEASONAL
13 EMPLOYMENT, THE EMPLOYER MAY REASONABLY DELAY SCHEDULING THE HOURS AND
14 ALLOW NEW EMPLOYEES TO START WORKING FOR TRAINING PURPOSES, IF THE
15 EMPLOYER FOLLOWS THE EMPLOYER'S USUAL AND CUSTOMARY PRACTICES FOR TRAINING
16 NEW EMPLOYEES AND THE EMPLOYER PROVIDES THE EXISTING EMPLOYEE WITH A
17 PROSPECTIVE START DATE FOR THE ADDITIONAL HOURS.

18 (d) THE EMPLOYER IS ENCOURAGED TO MAKE REASONABLE EFFORTS TO OFFER
19 EMPLOYEES TRAINING OPPORTUNITIES TO GAIN THE SKILLS AND EXPERIENCE TO
20 PERFORM WORK FOR WHICH THE EMPLOYER TYPICALLY HAS ADDITIONAL NEEDS.

21 C. IF NO EMPLOYEE RESPONDS TO THE WRITTEN NOTICE OF ADDITIONAL
22 HOURS OF WORK WITHIN THREE CONSECUTIVE CALENDAR DAYS AFTER POSTING OR
23 ACCEPTS AN OFFER OF ADDITIONAL HOURS WITHIN TWO CONSECUTIVE CALENDAR DAYS
24 AFTER RECEIVING THE OFFER, THE EMPLOYER MAY IMMEDIATELY PROCEED WITH
25 HIRING NEW EMPLOYEES FROM AN EXTERNAL APPLICANT POOL OR SUBCONTRACTORS TO
26 WORK THE ADDITIONAL HOURS.

27 D. THIS SECTION DOES NOT REQUIRE THE EMPLOYER TO OFFER EMPLOYEES
28 WORK HOURS PAID AT THE OVERTIME PREMIUM OR PROHIBIT THE EMPLOYER FROM
29 OFFERING WORK HOURS PAID AT THE OVERTIME PREMIUM.

30 E. THE INDUSTRIAL COMMISSION OF ARIZONA SHALL CREATE AND DISTRIBUTE
31 A MODEL NOTICE IN ENGLISH, SPANISH AND OTHER LANGUAGES THAT ARE NECESSARY
32 FOR AN EMPLOYER TO COMPLY WITH THE NOTICE REQUIREMENTS OF THIS SECTION.