

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H.B. 741
Apr 14, 2015
HOUSE PRINCIPAL CLERK

H

D

HOUSE DRH20184-LR-13B (12/08)

Short Title: Shift Workers' Bill of Rights.

(Public)

Sponsors: Representative Brockman.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE SHIFT WORKERS' BILL OF RIGHTS TO ENSURE THE FAIR
3 SCHEDULING AND TREATMENT OF SHIFT WORKERS AND PART-TIME
4 EMPLOYEES.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Chapter 95 of the General Statutes is amended by adding a new
7 Article to read:

8 "Article 2B.

9 "Shift Workers' Bill of Rights.

10 "§ 95-25.30. Title.

11 This Article shall be known and may be cited as the "Rights of Shift Workers' Act."

12 "§ 95-25.31. Findings; purpose.

13 (a) The General Assembly finds that:

- 14 (1) Erratic and on-call scheduling practices have become pervasive in some
15 businesses, particularly in stores, restaurants, and bars.
- 16 (2) Many employees working shifts experience significant fluctuations in their
17 work hours from week to week and month to month.
- 18 (3) Many businesses use computer software that automatically generates work
19 schedules for their employees. The schedules generated by such software are
20 frequently erratic and unpredictable and provide employees with minimal
21 notice of their upcoming shifts. Many employees are impacted by
22 unpredictable scheduling practices such as frequent and last-minute changes
23 to their work schedules and use of "on-call" scheduling.
- 24 (4) Unpredictable scheduling practices and last-minute work schedule changes
25 cause workers who are already struggling with low wages to live in a
26 constant state of insecurity about when they will work or how much they
27 will earn on any given day.
- 28 (5) Unpredictable work scheduling practices are detrimental to employees and
29 their families because they:
- 30 a. Lead to income instability, making it hard for employees to plan their
31 finances and obtain economic security.
- 32 b. Create work-family conflicts that make it difficult for employees to
33 plan their child care, caregiving duties, and transportation.
- 34 c. Prevent part-time employees from pursuing educational opportunities
35 or holding a second or third job that such workers may need to make
36 ends meet. Women are more likely than men to work part-time and



* D R H 2 0 1 8 4 - L R - 1 3 B *

1 experience unpredictability in their work schedules. Employers
2 sometimes treat part-time employees less favorably than full-time
3 employees.

4 (b) The purpose of this Article is to provide shift workers with more predictable, stable
5 work schedules that are essential to their ability to earn a living and ensure a healthy and decent
6 life for themselves and their families and to ensure that part-time employees and shift workers
7 are treated fairly and equally compared to their full-time counterparts.

8 **"§ 95-25.32. Definitions.**

9 The following definitions apply in this Article:

10 (1) Employee. – A person employed by an employer.

11 (2) Employer. – Any person that owns or operates a business with 20 or more
12 employees in the State that employs shift workers, including corporate
13 officers or executives, who directly or indirectly or through an agent or any
14 other person, including corporate officers or executives, who directly or
15 indirectly or through an agent or any other person, including through the
16 service of a temporary service or staffing agency or similar entity, employs
17 or exercises control over the wages, hours, or working conditions of any
18 individual. For the purpose of calculating the 20-employee threshold
19 referenced herein, employees performing work in other businesses in the
20 State that are owned or operated under the same trade name by the same
21 employer shall be counted. Notwithstanding the foregoing definition,
22 "employer" does not include a nonprofit corporation or governmental entity.

23 (3) Full-time. – Thirty-five or more hours of work in each workweek.

24 (4) On-call shift. – Any shift for which an employee must, less than 24 hours in
25 advance of the start of the shift, either contact the employer or wait to be
26 contacted by the employer to learn whether the employer requires the
27 employee to report to work for the shift.

28 (5) Part-time. – Fewer than 35 hours of work in each workweek.

29 (6) Shift worker. – An employee who, on a regular, rotating, or intermittent
30 basis, works an evening or night for an employer who maintains a work
31 schedule beyond the day shift. The term also includes any employee who
32 works on a day shift whose work schedule is subject to change on a regular,
33 rotating, or intermittent basis.

34 **"§ 95-25.33. Advance notice of work schedules and schedule changes.**

35 (a) Initial Estimate of Minimum Hours. – Prior to the start of employment:

36 (1) An employer shall provide a new employee with a good-faith estimate in
37 writing of the employee's expected minimum number of scheduled shifts per
38 month and the days and hours of those shifts. The estimate shall not include
39 on-call shifts. The estimate shall not constitute a contractual offer and the
40 employer shall not be bound by the estimate.

41 (2) The employee may request that the employer modify the proposed work
42 schedule provided under subdivision (1) of this subsection. The employer
43 shall consider any such request and in its sole discretion may accept or reject
44 the request, provided that the employer shall notify the employee of its
45 determination prior to the start of employment.

46 (b) Two Weeks' Notice of Work Schedules. – An employer shall provide its employees
47 with at least two weeks' notice of their work schedules by doing one of the following at least
48 every 14 days (on a "biweekly schedule"):

49 (1) Posting the work schedule in a conspicuous place at the workplace that is
50 readily accessible and visible to all employees.

1 (2) Transmitting the work schedule by electronic means, so long as all
2 employees are given access to the electronic schedule at the workplace. For
3 new employees, an employer shall provide the new employee on his or her
4 first day of employment with an initial work schedule that runs through the
5 date that the next biweekly schedule for existing employees is scheduled to
6 be posted or distributed; thereafter, the employer shall include the new
7 employee in an existing biweekly schedule with other employees. For all
8 employees, the work schedule shall include any on-call shifts, where
9 applicable. If the employer changes the work schedule after it is posted or
10 transmitted, the changes shall be subject to the notice and compensation
11 requirements set forth in subsection (c) of this section.

12 (c) Notice and Compensation for Schedule Changes. – An employer shall provide an
13 employee notice of any change to the employee's schedule that has been posted or transmitted
14 pursuant to subsection (b) of this section. The employer shall provide such notice by in-person
15 conversation, telephone call or e-mail, text message, or other electronic communication. This
16 notice requirement shall not apply to any schedule changes that the employee requests, such as
17 employee-requested sick leave, time off, shift trades, or additional shifts.

18 (d) Predictability Pay for Schedule Changes. – Subject to the exceptions in subsection
19 (f) of this section, an employer shall provide an employee with the following compensation per
20 shift for each previously scheduled shift that the employer moves to another date or time or
21 Cancels, or each previously unscheduled shift that the employer requires the employee to come
22 into work:

23 (1) With less than seven days' notice but 24 hours or more notice to the
24 employee, one hour of pay at the employee's regular hourly rate;

25 (2) With less than 24 hours' notice to the employee, two hours of pay at the
26 employee's regular hourly rate for each shift of four hours or less; and

27 (3) With less than 24 hours' notice to the employee, four hours of pay at the
28 employee's regular hourly rate for each shift of more than four hours.

29 Where the employee is required to come into work, the compensation mandated by this
30 subsection shall be in addition to the employee's regular pay for working that shift. This
31 subsection does not apply to on-call shifts.

32 (e) Pay for On-Call Shifts. – Subject to the exceptions in subsection (f) of this section,
33 an employer shall provide an employee with the following compensation for each on-call shift
34 for which the employee is required to be available but is not called in to work:

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

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

39 This subsection shall not apply when the employee is in fact called in for the on-call shift or
40 the employer provides the employee with 24 hours or more notice that the on-call shift has been
41 cancelled or moved to another date or time.

42 (f) Exceptions. – The requirements in subsections (d) and (e) of this section do not
43 apply under any of the following circumstances:

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

46 (2) Operations cannot begin or continue because public utilities fail to supply
47 electricity, water, or gas, or there is a failure in the public utilities or sewer
48 systems.

49 (3) Operations cannot begin or continue due to an Act of God or other cause not
50 within the employer's control, for example, an earthquake or a state of
51 emergency declared by the Governor.

1 (4) Another employee previously scheduled to work that shift is unable to work
2 due to illness, vacation, or employer-provided paid or unpaid time off where
3 the employer did not receive at least seven days' notice of the absence.

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

7 (6) The employer requires the employee to work overtime (i.e., mandatory
8 overtime).

9 (7) The employee trades shifts with another employee or requests from the
10 employer a change in shift, shifts, hours, or work schedule.

11 (g) Greater Notice Permitted. – Nothing in this section shall be construed to prohibit an
12 employer from providing greater advance notice of employees' work schedules or changes in
13 schedules than that required by this section.

14 **"§ 95-25.34. Equal treatment for part-time employees.**

15 (a) Hourly Wage. – Employers shall provide part-time employees with the same
16 starting hourly wage as that provided to starting full-time employees who hold jobs that require
17 equal skill, effort, and responsibility and that are performed under similar working conditions,
18 provided that hourly pay differentials between part-time and full-time employees are
19 permissible if such differentials are based on reasons other than the part-time status of the
20 employee, such as a seniority system, merit system, system which measures earnings by
21 quantity or quality of production, performance, or responsibilities. This subsection does not
22 affect the minimum hourly requirements for receipts of benefits, including, but not limited to,
23 health care benefits.

24 (b) Access to Time Off. – Employers shall provide part-time employees with the same
25 access to employer-provided paid and unpaid time off as that afforded to full-time employees
26 for the same job classification. A part-time employee's eligibility for employer-provided paid or
27 unpaid time off may be prorated based on the number of hours that the part-time employee
28 works.

29 (c) Eligibility for Promotions. – Employers shall provide part-time employees with the
30 same eligibility for promotions as that afforded to full-time employees for the same job
31 classification, provided that an employer may condition eligibility for promotion on the
32 employee's availability for full-time employment and on reasons other than the part-time status
33 of the employee, such as nature and amount of work experience.

34 **"§ 95-25.35. Notice of employee rights.**

35 (a) Notices. – The Commissioner of Labor shall no later than the effective date of this
36 Article, publish and make available to employers, in English, Spanish, and all languages
37 spoken by more than five percent (5%) of the State's workforce, a notice suitable for posting by
38 employers in the workplace informing applicants and employees of their rights under this
39 Article. The Commissioner shall update this notice on December 1 of any year in which there is
40 a change in the languages spoken by more than five percent (5%) of the State's workforce.

41 (b) Posting. – Employers shall post the notice described in subsection (a) of this section
42 in a conspicuous place at every workplace, jobsite, or other location in the State under the
43 employer's control frequently visited by its employees. The notice shall be posted in English,
44 Spanish, and any language spoken by at least five percent (5%) of the employees at the
45 workplace, jobsite, or other location at which it is posted.

46 **"§ 95-25.36 Records; retention requirements.**

47 (a) Records. – Employers shall retain work schedules and payroll records pertaining to
48 employees for three years and shall allow the Department of Labor access to such records, with
49 appropriate notice and during business hours, to monitor compliance with the requirements of
50 this Article.

1 (b) Access. – The Commissioner of Labor or that officer's designee shall have access to
2 all places of labor subject to this Article during business hours to inspect books and records,
3 interview employees, and investigate such matters necessary or appropriate to determine
4 whether an employer has violated any provisions of this Article.

5 (c) Presumption. – Where an employer does not maintain or retain adequate records
6 documenting compliance with this Article or does not allow the Department of Labor
7 reasonable access to such records, it shall be presumed that the employer did not comply with
8 this Article, absent clear and convincing evidence otherwise.

9 **"§ 95-25.37. Exercise of rights protected; retaliation prohibited.**

10 (a) It is unlawful for an employer or any other person to interfere with, restrain, or deny
11 the exercise of, or the attempt to exercise, any right protected under this Article.

12 (b) It is unlawful for an employer to discharge, threaten to discharge, demote, suspend,
13 or otherwise take adverse employment action against any employee in retaliation for exercising
14 rights protected under this Article. These rights include but are not limited to:

15 (1) The right to request a modification to the initial proposed work schedule.

16 (2) The right to inform any person about an Employer's alleged violation of this
17 Article.

18 (3) The right to file a complaint with the Department of Labor alleging a
19 violation of this Article.

20 (4) The right to cooperate with the Department of Labor or other persons in the
21 investigation or prosecution of any alleged violation of this Article.

22 (5) The right to oppose any policy, practice, or act that is unlawful under this
23 Article.

24 (6) The right to inform any person of his or her rights under this Article.

25 **"§ 95-25.38. Investigation; enforcement.**

26 (a) Authority. – The Commissioner of Labor is authorized to take appropriate steps to
27 enforce and coordinate enforcement of this Article, including the investigation of any possible
28 violations of this Article.

29 (b) Determination of Violation and Penalties. –

30 (1) Where the Commissioner has reason to believe that a violation has occurred,
31 it may order any appropriate temporary or interim relief to mitigate the
32 violation or maintain the status quo pending completion of a full
33 investigation.

34 (2) After investigating a possible violation of this Article, and providing the
35 employer the opportunity to respond to the allegations, if the Commissioner
36 determines that a violation has occurred, it may issue a determination of
37 violation. The determination of violation shall identify the violation and the
38 factual basis for the determination. The Commissioner shall serve the
39 determination of violation on the employer by U.S. Mail and the date of
40 service shall be the date of mailing. In the determination of violation, the
41 Commissioner may order any appropriate relief, including, but not limited
42 to, requiring the employer to offer payment of lost wages to the employee or
43 person whose rights under this Article were violated, and the payment of an
44 additional sum as an administrative penalty in the amount of fifty dollars
45 (\$50.00) to each employee or person whose rights under this Article were
46 violated for each day that the violation occurred or continued. To
47 compensate the State for the costs of investigating and remedying the
48 violation, the Commissioner may also order the violating employer to pay to
49 the State an amount that does not exceed its enforcement costs.

50 (c) Appeal Procedure. – An employer may appeal from a determination of violation in
51 accordance with the following procedures:

- 1 (1) Any appeal shall be filed in writing by the party filing the appeal within 15
2 days of the date of service of the determination of violation. The appellant
3 shall file the appeal with the North Carolina Office of Administrative
4 Hearings and serve a copy on the Commissioner. Failure by the appellant to
5 file a timely, written appeal shall constitute concession to the violation, and
6 the violation shall be deemed final upon expiration of the 15-day period.
- 7 (2) Following the filing of the appeal and service of a copy on the
8 Commissioner, the Department of Labor shall promptly afford the appellant
9 an opportunity to meet and confer in good faith regarding possible resolution
10 of the determination of violation in advance of further proceedings under
11 this subsection, with the intention that such meeting occur within 30 days of
12 the date the appeal is filed if feasible.
- 13 (3) After the expiration of 30 days following the date the appeal is filed, any
14 party may request in writing, with concurrent notice to all other parties, that
15 the Chief Administrative Law Judge appoint a hearing officer to hear and
16 decide the appeal. If no party requests appointment of a hearing officer, the
17 notice of violation shall be deemed final on the 60th day after the date the
18 appeal is filed.
- 19 (4) Within 15 days of receiving a written request for appointment of a hearing
20 officer, the Chief Administrative Law Judge shall appoint an impartial
21 hearing officer who is not part of the Agency and immediately notify the
22 Agency and appellant, and their respective counsel or authorized
23 representative, if any, of the appointment. The appointed hearing officer
24 shall be an Administrative Law Judge with not fewer than two years'
25 experience in labor or employment law or wage and hour matters, or an
26 attorney with not fewer than five years' experience in labor or employment
27 law or wage and hour matters.
- 28 (5) The hearing officer shall promptly set a date for a hearing. The hearing must
29 commence within 45 days of the date of the Chief Administrative Law
30 Judge's notice of appointment of the hearing officer and conclude within 75
31 days of such notice. The hearing officer shall conduct a fair and impartial
32 evidentiary hearing in conformance with the time limitations set forth in this
33 subdivision and in any applicable rules and regulations, so as to avoid undue
34 delay in the resolution of any appeal. The hearing officer shall have the
35 discretion to extend the times under this subdivision and any time
36 requirements under any applicable rules and regulations, only upon a
37 determination of a good cause.
- 38 (6) The appellant shall have the burden of proving by a preponderance of the
39 evidence that the basis for the determination of violation or the amount of
40 lost wages, interest, or penalty payments at issue in the appeal is incorrect.
- 41 (7) Within 30 days of the conclusion of the hearing, the hearing officer shall
42 issue a written decision affirming, modifying, or dismissing the
43 determination of violation. The decision of the hearing officer shall consist
44 of findings and a determination. The hearing officer's findings and
45 determination shall be the final administrative determination.
- 46 (8) The appellant may appeal a final administrative determination to the Wake
47 County Superior Court.
- 48 (9) Failure to appeal a determination of violation shall constitute a failure to
49 exhaust administrative remedies, which shall serve as a complete defense to
50 any petition or claim brought by the employer against the State regarding the
51 determination of violation.

1 **"§ 95-25.39. No limitation of other rights and remedies; severability.**

2 (a) This Article does not in any way limit the rights and remedies that the law otherwise
3 provides to employees, including, but not limited to, the rights to be free from wrongful
4 termination and unlawful discrimination.

5 (b) If any portion of this Article, or any application thereof to any person or
6 circumstance, is held to be invalid or unconstitutional by a decision of a court of competent
7 jurisdiction, that decision shall not affect the validity of the remaining portions or applications
8 of the Article.

9 (c) Nothing in this Article shall be interpreted or applied so as to create any right,
10 requirement, power, or duty in conflict with any federal or State law."

11 **SECTION 2.** This act becomes effective January 1, 2016.