

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H.B. 366
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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH30134-LR-58 (03/01)

Short Title: Retail Workers' Bill of Rights. (Public)

Sponsors: Representatives Brockman, Fisher, and Harrison (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE RETAIL WORKERS' BILL OF RIGHTS TO ENSURE THE FAIR
3 SCHEDULING AND TREATMENT OF RETAIL EMPLOYEES.

4 The General Assembly of North Carolina enacts:

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

7 "Article 2B.

8 "Retail Workers' Bill of Rights.

9 **§ 95-25.30. Title.**

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

11 **§ 95-25.31. Findings; purpose.**

12 (a) The General Assembly finds that:

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



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1 sometimes treat part-time employees less favorably than full-time
2 employees.

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

7 **"§ 95-25.32. Definitions.**

8 The following definitions apply in this Article:

9 (1) Agency. – The North Carolina Department of Labor.

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

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

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

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

28 (6) Property services contractor. – Any contractor or subcontractor of an employer
29 that provides janitorial or security services to the employer at a retail
30 establishment covered by this Article.

31 (7) Retail establishment. – An establishment engaged in any retail business,
32 including, but not limited to, department stores, grocery stores, and restaurants.
33 The term also includes hotels and housekeeping and janitorial services.

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 shall
43 consider any such request and, in its sole discretion, may accept or reject the
44 request, provided that the employer shall notify the employee of its
45 determination prior to the start of employment.

46 (b) Two-Week Notice of Work Schedules. – An employer shall provide its employees with
47 at least two weeks' notice of their work schedules by doing one of the following at least every 14
48 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 employees
2 are given access to the electronic schedule at the workplace. For new
3 employees, an employer shall provide the new employee on his or her first day
4 of employment with an initial work schedule that runs through the date that the
5 next biweekly schedule for existing employees is scheduled to be posted or
6 distributed; thereafter, the employer shall include the new employee in an
7 existing biweekly schedule with other employees. For all employees, the work
8 schedule shall include any on-call shifts, where applicable. If the employer
9 changes the work schedule after it is posted or transmitted, the changes shall be
10 subject to the notice and compensation requirements set forth in subsection (c)
11 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 (f)
19 of this section, an employer shall provide an employee with the following compensation per shift
20 for each previously scheduled shift that the employer moves to another date or time or cancels, or
21 each previously unscheduled shift that the employer requires the employee to come in to work:

- 22 (1) With less than seven days' notice but 24 hours or more notice to the employee,
23 one hour of pay at the employee's regular hourly rate;
24 (2) With less than 24 hours' notice to the employee, two hours of pay at the
25 employee's regular hourly rate for each shift of four hours or less; and
26 (3) With less than 24 hours' notice to the employee, four hours of pay at the
27 employee's regular hourly rate for each shift of more than four hours.

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

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

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

38 Subsection (d) of this section shall not apply when the employee is in fact called in for the
39 on-call shift or the employer provides the employee with 24 hours' or more notice that the on-call
40 shift has been cancelled or moved to another date or time.

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

- 43 (1) Operations cannot begin or continue due to threats to employees or property or
44 when civil authorities recommend that work not begin or continue.
45 (2) Operations cannot begin or continue because public utilities fail to supply
46 electricity, water, or gas or there is a failure in the public utilities or sewer
47 systems.
48 (3) Operations cannot begin or continue due to an act of God or other cause not
49 within the employer's control; for example, an earthquake or a state of
50 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 the
3 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 to
5 work on time or is fired or 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 starting
16 hourly wage as that provided to starting full-time employees who hold jobs that require equal skill,
17 effort, and responsibility, and that are performed under similar working conditions, provided that
18 hourly pay differentials between part-time and full-time employees are permissible if such
19 differentials are based on reasons other than the part-time status of the employee, such as a
20 seniority system, merit system, or system which measures earnings by quantity or quality of
21 production, performance, or responsibilities. This subsection does not affect the minimum hourly
22 requirements for receipts of benefits, including, but not limited to, health care benefits.

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

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

32 **"§ 95-25.35. Notice of employee rights.**

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

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

45 **"§ 95-25.36. Records; retention requirements.**

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

50 (b) Access. – The Commissioner of Labor or that officer's designee shall have access to all
51 places of labor subject to this Article during business hours to inspect books and records,

1 interview employees, and investigate such matters necessary or appropriate to determine whether
2 an employer has violated any provisions of this Article.

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

7 **"§ 95-25.37. Exercise of rights protected; retaliation prohibited.**

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

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

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

14 (2) The right to inform any person about an employer's alleged violation of this
15 Article.

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

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

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

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

23 **"§ 95-25.38. Investigation; enforcement.**

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

27 (b) Determination of Violation and Penalties. –

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

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

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

49 (1) Any appeal shall be filed in writing by the party filing the appeal within 15 days
50 of the date of service of the determination of violation. The appellant shall file
51 the appeal with the North Carolina Office of Administrative Hearings and serve

1 a copy to the Commissioner. Failure by the appellant to file a timely, written
2 appeal shall constitute concession to the violation, and the violation shall be
3 deemed final upon expiration of the 15-day period.

4 (2) Following the filing of the appeal and service of a copy to the Commissioner,
5 the Department of Labor shall promptly afford the appellant an opportunity to
6 meet and confer in good faith regarding possible resolution of the determination
7 of violation in advance of further proceedings under this subsection, with the
8 intention that such meeting occur within 30 days of the date the appeal is filed,
9 if feasible.

10 (3) After the expiration of 30 days following the date the appeal is filed, any party
11 may request in writing, with concurrent notice to all other parties, that the Chief
12 Administrative Law Judge appoint a hearing officer to hear and decide the
13 appeal. If no party requests appointment of a hearing officer, the notice of
14 violation shall be deemed final on the sixtieth day after the date the appeal is
15 filed.

16 (4) Within 15 days of receiving a written request for appointment of a hearing
17 officer, the Chief Administrative Law Judge shall appoint an impartial hearing
18 officer who is not part of the Agency and immediately notify the Agency and
19 appellant, and their respective counsel or authorized representative, if any, of
20 the appointment. The appointed hearing officer shall be an Administrative Law
21 Judge with not fewer than two years' experience in labor or employment law or
22 wage and hour matters or an attorney with not fewer than five years' experience
23 in labor or employment law or wage and hour matters.

24 (5) The hearing officer shall promptly set a date for a hearing. The hearing must
25 commence within 45 days of the date of the Chief Administrative Law Judge's
26 notice of appointment of the hearing officer and conclude within 75 days of
27 such notice. The hearing officer shall conduct a fair and impartial evidentiary
28 hearing in conformance with the time limitations set forth in this subdivision
29 and in any applicable rules and regulations, so as to avoid undue delay in the
30 resolution of any appeal. The hearing officer shall have the discretion to extend
31 the times under this subdivision, and any time requirements under any
32 applicable rules and regulations, only upon a determination of a good cause.

33 (6) The appellant shall have the burden of proving by a preponderance of the
34 evidence that the basis for the determination of violation, or the amount of lost
35 wages, interest, or penalty payments at issue in the appeal, is incorrect.

36 (7) Within 30 days of the conclusion of the hearing, the hearing officer shall issue a
37 written decision affirming, modifying, or dismissing the determination of
38 violation. The decision of the hearing officer shall consist of findings and a
39 determination. The hearing officer's findings and determination shall be the
40 final administrative determination.

41 (8) The appellant may appeal a final administrative determination to the Wake
42 County Superior Court.

43 (9) Failure to appeal a determination of violation shall constitute a failure to
44 exhaust administrative remedies, which shall serve as a complete defense to any
45 petition or claim brought by the employer against the State regarding the
46 determination of violation.

47 **"§ 95-25.39. No limitation of other rights and remedies; severability.**

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

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

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

6 **SECTION 2.** This act becomes effective January 1, 2018.