

2017 DRAFTING REQUEST**Bill**

For: **Gary Hebl (608) 266-7678** Drafter: **kpleviak**
 By: **Chris** Secondary Drafters:
 Date: **10/17/2017** May Contact:

Same as LRB:

Submit via email: **YES**
 Requester's email: **Rep.Hebl@legis.wisconsin.gov**
 Carbon copy (CC) to: **krista.pleviak@legis.wisconsin.gov**
 michael.duchek@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Predictable work schedules for low wage employees

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kpleviak 11/3/2017	aernstr 11/6/2017			
/P1	kpleviak 11/22/2017		mbarman 11/6/2017		State S&L
/P2	kpleviak 12/6/2017	aernstr 11/27/2017	dwalker 11/27/2017		State S&L
/1		aernstr 12/6/2017	dwalker 12/6/2017	mbarman 12/14/2017	State S&L

FE Sent For:

<END>

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Intro.

Pleviak, Krista

From: Ozalp, Jessica
Sent: Tuesday, October 17, 2017 9:00 AM
To: Pleviak, Krista
Subject: FW: Worker scheduling bill

Hi Krista,
I've talked with Chris and they're ready to start a draft. Could you let me know what specifics you'll need?
Thanks,
Jessica
6-2982

From: Stoa, Chris
Sent: Thursday, October 12, 2017 10:41 AM
To: Ozalp, Jessica <Jessica.Ozalp@legis.wisconsin.gov>
Subject: Worker scheduling bill

Hi Jessica,

Gary wants to introduce a bill (based on [this Congressional bill](#)) that protects workers' scheduling. Here is a summary of what the Congressional bill would do:

"The Schedules That Work Act protects workers who ask for schedule changes from retaliation and requires employers to consider their requests. For retail, food service, and cleaning occupations, it requires employers to provide schedules two weeks in advance. The legislation also provides a small amount of extra shift pay to these employees when their schedules are changed abruptly or they are assigned to particularly difficult shifts-including split shifts and call-in shifts."

Does Wisconsin have anything like this already, or has anything similar been introduced in the past? I've been looking through current session cosponsor email and I haven't found anything. Is this something that we could do in Wisconsin?

Chris Stoa
Office of Representative Gary Hebl
Phone: 608.266.7678
Fax: 608-282-3646



U.S. Senate Bill 1386 - 115th Congress (2017-2018)

Sponsor: Sen. Elizabeth Warren

Introduced: 06/20/2017



State of Wisconsin
2017 - 2018 LEGISLATURE

IN: 11/03/17

DUE: 11/06/17 (Mon.)

LRB-4583?

KRP:...

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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- 1 AN ACT ...; relating to: the rights of employees to request and receive work
- 2 schedule changes; predictable work schedules for retail, food service, and
- 3 cleaning employees; and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill provides that an employee who works for an employer that employs at least 15 employees (employer) has the right to request and receive changes to the employee's work schedule under certain circumstances. The bill also provides rights regarding work scheduling for employees in certain retail, food service, or cleaning occupations.

Employee right to request and receive work schedule changes

The bill provides that an employee may request changes to the employee's work schedule, and an employer must negotiate in good faith with the employee to accommodate the employee's request while also meeting the employer's needs. Unless an employer has a bona fide business reason for denying the request, the employer must approve an employee's request if it is related to any of the following:

- 1. A serious health condition of the employee.
- 2. Responsibilities of the employee as a caregiver for a child or other family member.
- 3. Enrollment of the employee in an educational or training program or program of study that leads to a recognized postsecondary credential.
- 4. Work scheduling conflicts of an employee who is part time with the employee's other employment.

If an employer denies an employee's request, the employer must inform the employee of the reasons for denial, including whether any of the reasons is a bona fide business reason. The term "bona fide business reason" is defined in the bill. ✓

Predictable work schedules for retail, food service, and cleaning employees

The bill provides that an employer that employs an employee in certain retail, food service, or cleaning occupations (service employee) must provide the service employee with a written copy of the service employee's work schedule on or before the service employee's first day of work. If an employer changes a service employee's work schedule, the employer must provide the new work schedule no later than 14 days in advance. However, an employer may change a service employee's work schedule at any time. ✓

If an employer changes a service employee's work schedule less than 24 hours in advance of when the change takes effect, the employer must pay the service employee an amount equal to the service employee's regular rate of pay for one hour of work, unless the employer requires the service employee to work additional time or an additional work shift because another service employee was scheduled to work that time or work shift and is unexpectedly unavailable to do so. ✓

If an employer uses the following scheduling practices, the employer must compensate a service employee subjected to those practices as follows:

1. If the service employee reports to work and the employer does not allow the service employee to work all time scheduled, the employer shall provide the service employee with the following compensation: a) if the service employee is scheduled to work four hours or less, an amount equal to the service employee's regular rate of pay for all time the service employee is scheduled to work but does not work; or b) if the service employee is scheduled to work more than four hours and works less than four hours, an amount equal to the service employee's regular rate of pay for the difference between four hours and the amount of time the service employee actually works. ✓

2. If the employer requires the service employee to contact the employer, or wait to be contacted by the employer, less than 24 hours before a work shift to determine whether the service employee must report to work, the employer must pay the service employee an amount equal to the service employee's regular rate of pay for one hour of work.

3. If the employer requires the service employee to work a split shift, the employer must pay the service employee an amount equal to the service employee's regular rate of pay for one hour of work. ✓

The bill provides that, during any period in which the employer's regular operations are suspended due to an event outside of the employer's control, the employer is not required to comply with the service employee work scheduling requirements created in the bill. ✓

Enforcement

The bill provides that an employer may not interfere with, restrain, or deny the exercise of the right of an employee created in the bill and may not discharge or discriminate against an employee for enforcing the employee's rights under the bill.

✓ An employee ^{whose} rights are violated may file a complaint with the Department of
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Workforce Development, and DWD must process the complaint in the same manner that employment discrimination complaints are processed under current law. That processing may include the ordering of back pay, reinstatement, compensation in lieu of reinstatement, and costs and attorney fees. ✓

✱ The bill also provides that DWD or an employee ^{e whose} who rights are violated may bring an action in circuit court against the employer without regard to exhaustion of any administrative remedy. In addition to any damages imposed on an employer in an administrative proceeding or circuit court action, an employer that willfully violates the protections created in the bill may be required to forfeit not more than \$1,000 for each violation. ✓

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill. ✓

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 ⤵ SECTION 1. 103.035 of the statutes is created to read:

2 **103.035 Work schedule flexibility and predictability. (1) DEFINITIONS.**

3 In this section:

4 (a) "Bona fide business reason" means a reason that justifies an employer's
5 action and that is based on the employer's determination that taking a different
6 action would have any of the following results:

7 1. Additional costs to the employer, including costs of lost employee
8 productivity, retaining or hiring employees, or transferring employees between work
9 locations.

10 2. A significant detrimental effect on the employer's ability to meet
11 organizational needs or customer demand.

12 3. A significant inability of the employer, despite the employer's best efforts,
13 to reorganize work among other employees.

14 4. A significant detrimental effect on the employer's business performance.

15 5. Insufficient work during the period an employee proposes to work.

1 6. Unfairness to other employees who request changes to work schedules if
2 granting all requests would have a significant detrimental effect on the employer's
3 ability to meet organizational needs.

****NOTE: Compare with Schedules That Work Act, S. 1386, 115th Cong. at p.6, line
13 to p.7, line 14 (2017) [hereinafter Schedules That Work Act].

4 (b) "Employee" means an employee who is employed by an employer.

****NOTE: "Employee" is defined under s. 103.001 (5), stats. Is this definition
consistent with your intent? Compare with Schedules That Work Act at p.11, line 7 to
p.12, line 4. Do you want to exclude anyone from the definition?

5 (c) "Employer" means an employer that employs at least 15 employees.

****NOTE: Is this definition consistent with your intent? Compare with Schedules
That Work Act at p.12, line 5 to p.13, line 5.

****NOTE: "Employer" is defined under s. 103.001 (6), stats., and includes the state
and political subdivisions. However, other provisions within ch. 103, stats., specifically
define employer to include the state and, sometimes, political subdivisions. See, e.g., ss.
103.01 (1) (b), 103.10 (1) (c), 103.15 (1) (a), and 103.88 (1) (e), stats. This may create an
ambiguity regarding whether the term "employer," as used in ch. 103, stats., includes the
state and political subdivisions. Please let me know if you want to clarify that ambiguity
for purposes of this bill.

****NOTE: The Schedules That Work Act specifies how to calculate the number of
employees employed by an employer. See p.10, lines 6 to 18. Let me know if you want
to specify a particular calculation method.

6 (d) "Part-time employee" means an employee who works on average fewer than
7 30 hours per week for a particular employer.

8 (e) "Service employee" means an employee who is employed in any of the
9 occupations classified under the following codes set forth in the Standard
10 Occupational Classification system, 2010 edition, published by the bureau of labor
11 statistics of the U.S. department of labor:

12 1. Major group code 35-0000 — Food preparation and serving related
13 occupations.

14 2. Broad occupation code 37-2010 — Building cleaning workers.

15 3. Detailed occupation code 41-1011 — First-line supervisors of retail sales
16 workers.

****NOTE: Compare with Schedules That Work Act at p.15, line 4. Is that consistent with your intent?

4. Minor group code 41-2000 — Retail sales workers.

****NOTE: Do you want to exclude “non-exempt” employees? Compare with Schedules That Work Act at p.14, line 20 to p.15, line 22.

****NOTE: The Schedules That Work Act requires the U.S. Secretary of Labor to designate other categories of employees that will be covered by sub. (3), as created in this draft. See p.34, line 13 to p.35, line 22. Do you want to require or allow the Department of Workforce Development to exercise similar authority?

(f) “Split shift” means a work shift that consists of work time that is not continuous. For purposes of determining whether a work shift is continuous, any of the following breaks in work time are not considered:

1. One or more breaks for meals that total ^{one} 1 hour or less.
2. A break that is requested by the employee.

(g) “Work schedule” means the days and times during each successive work period when an employee is required by an employer to perform duties of employment.

****NOTE: It appears that the Schedules That Work Act treats a “work schedule” as a set of days and times that repeats for each work period. Is this definition consistent with your intent?

(h) “Work shift” means the specific times during a day that an employer requires an employee to work.

****NOTE: As currently drafted, all time worked on a particular day constitutes a single “work shift.” If that time is not consecutive, the work shift is a “split shift.” Is that consistent with your intent? Compare with Schedules That Work Act at p.16, lines 8 to 16 and p.17, lines 22 to 24.

(2) EMPLOYEE RIGHT TO REQUEST AND RECEIVE WORK SCHEDULE CHANGES. (a)

Employee right to request work schedule changes. 1. An employee may request a change in the terms and conditions of employment related to any of the following work schedule issues:

- a. The number of hours the employee is required to work or be on call for work.

SECTION 1

1 b. The days or times when the employee is required to work or be on call for
2 work.

3 c. The location where the employee is required to work.

4 d. The amount of notification the employee receives regarding changes to the
5 employee's work schedule.

6 e. Minimizing fluctuations in the number of hours the employee is scheduled
7 to work on a daily, weekly, or monthly basis.

8 2. An employee who makes a request under subd. 1. shall specify in the request
9 whether it is related to any of the following:

10 a. A serious health condition, as defined under s. 103.10 (1) (g), of the employee.

11 b. The employee's responsibilities as a significant provider of ongoing care,
12 including responsibility for securing ongoing care, of the employee's child, family
13 member with a serious health condition, as defined under s. 103.10 (1) (g), or parent
14 who is 65 years of age or older.

 ****NOTE: Compare with the definition of "caregiver" in the Schedules That Work
Act. See p.8, lines 11 to 23. Do you want to define any of the following terms: child, family
member, or parent? See p.8, line 24 to p.9, line 5; p.13, lines 6 to 15; and p.14, lines 7 to
10.

15 c. The employee's responsibilities as a significant provider of education,
16 including responsibility for securing education, of the employee's child.

17 d. The employee's enrollment in an educational or training program or program
18 of study that leads to a recognized postsecondary credential.

 ****NOTE: Compare with the definition of "career-related educational or training
program" in the Schedules That Work Act. See p.7, line 15 to p.8, line 10.

19 e. If the employee is a part-time employee, conflicts with the employee's other
20 employment.

1 (b) *Evaluating requests for work schedule changes.* If an employer receives a
2 request from an employee under par. (a), the employer shall either grant the request
3 without modification or negotiate in good faith with the employee to find a
4 compromise that meets the employee's and the employer's work scheduling needs,
5 including by considering any alternative proposals offered by the employee. If the
6 employer denies the request and any alternative proposals offered, the employer
7 shall inform the employee of the reasons for denial, including whether any of the
8 reasons is a bona fide business reason.

9 (c) *Requests related to serious health conditions, caregiving, education, or other*
10 *part-time employment.* Notwithstanding par. (b), if an employer receives a request
11 from an employee under par. (a) that is related to any of the issues described under
12 par. (a) 2., the employer shall grant the request unless the employer has a bona fide
13 business reason for denying the request.

****NOTE: That a request is "related" to an issues described under par. (a) 2., as
created in this draft, is quite broad. Let me know if you want to clarify the intent of this
provision.

14 (d) *Verification of reasons for requested changes.* If an employer receives a
15 request from an employee under par. (a), the employer may require the employee to
16 provide additional information to clarify or explain the reasons for the employee's
17 requested work schedule change if the employer needs that information to properly
18 evaluate the request under par. (b) or (c).

****NOTE: Compare with Schedules That Work Act at p.19, lines 11 to 15. Is that
consistent with your intent?

19 (3) PREDICTABLE WORK SCHEDULES FOR RETAIL, FOOD SERVICE, AND CLEANING
20 EMPLOYEES. (a) *Advance notice of work schedules required.* 1. On or before the first
21 day of work of a new service employee, an employer shall provide the service
22 employee with a written copy of the service employee's work schedule.

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****NOTE: The Schedules That Work Act also requires an employer to inform a new service employee of the minimum number of hours the service employee will be assigned to work on a weekly or monthly basis, and, if the employer changes the work schedule or the minimum expected hours, the employer must give 14 days' notice. See p.21, line 24 to p.22, line 21. Because a service employee is informed of actual work hours and expected work hours at the same time and in the same way, this appears to be duplicative, and I have not included that requirement in this draft. Please let me know if you would like to discuss.

****NOTE: Do you want to clarify how a written document may be transmitted? For example, may an employer send a work schedule via e-mail, text message, or other electronic means?

1 2. If an employer changes a work schedule provided to a service employee under
2 subd. 1. or this subdivision, the employer shall provide the service employee with a
3 written copy of the new work schedule no later than 14 days before the new work
4 schedule begins.

5 3. An employer shall post a copy of a work schedule provided under this
6 paragraph in any of the following ways:

7 a. In one or more conspicuous places where notices to employees are
8 customarily posted.

9 b. On an Internet site accessible by all of the employer's employees.

****NOTE: Under certain circumstances, an employer may make changes to work schedules without providing notice under this paragraph. See, for example, pars. (b) 1. and (c), as created in this draft. Do you want an employer to update posted work schedules to reflect those changes?

10 (b) *Employer-initiated changes to work schedules.* 1. Notwithstanding par. (a)
11 2., an employer may change a work schedule provided to a service employee under
12 par. (a) 1. or 2. Except as provided under subd. 2., if the employer changes a service
13 employee's work schedule less than 24 hours in advance of when the change takes
14 effect, the employer shall provide the service employee compensation for the change
15 in an amount equal to the service employee's regular rate of pay for one hour of work
16 in addition to any other compensation earned by the service employee.

****NOTE: This provision appears to directly contradict the requirement under par. (a) 2., as created in this draft, that an employer must provide 14 days' notice of work schedule changes. Compare with Schedules That Work Act at p.23, lines 3 to 15. It is not

clear what benefit a service employee receives from getting the service employee's work schedule 14 days in advance if an employer may freely change the work schedule without penalty until 24 hours before a work shift. Please let me know if you would like to discuss.

****NOTE: The Schedules That Work Act does not specify what type of notice is required for an employer-initiated change that is made after the 14-day notice. For example, must the notice be in writing?

1 2. An employer is not required to pay compensation to a service employee under
2 subd. 1. if the employer requires the service employee to work additional time or an
3 additional work shift because another service employee was scheduled to work that
4 time or work shift and is unexpectedly unavailable to do so.

5 (c) *Employee-initiated changes to work schedules.* An employer may allow a
6 service employee to agree to work in place of another service employee if the service
7 employees mutually agree to the change. The employer is not required to provide
8 compensation under par. (b) 1. to a service employee with respect to a work shift trade
9 under this paragraph.

10 (d) *Compensation for reporting time, on-call time, and split shifts.* 1. If a
11 service employee reports to work and the service employee's employer does not allow
12 the service employee to work all time that the service employee is scheduled to work,
13 the employer shall provide the service employee with the following compensation:

****NOTE: Arguably, if an employer does not allow a service employee to work all
hours the service employee is scheduled to work, ~~that~~ could constitute a work schedule
change with less than 24 hours' notice under par. (b) 1., as created in this draft. As
currently drafted, it is not clear whether a service employee who receives compensation
under this paragraph also is entitled to compensation under par. (b) 1., as created in this
draft.

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14 a. If the service employee is scheduled to work 4 hours or less, an amount equal
15 to the service employee's regular rate of pay for all time the service employee is
16 scheduled to work but does not work in addition to any other compensation earned
17 by the service employee for time the service employee actually works.

1 b. If the service employee is scheduled to work more than 4 hours and works
2 less than 4 hours, an amount equal to the service employee's regular rate of pay for
3 the difference between 4 hours and the amount of time the service employee actually
4 works in addition to any other compensation earned by the service employee for time
5 the service employee actually works.

6 2. If an employer requires a service employee to contact the employer, or wait
7 to be contacted by the employer, less than 24 hours before a work shift to determine
8 whether the employer will require the service employee to report to work for that
9 work shift, the employer shall provide the service employee compensation in an
10 amount equal to the service employee's regular rate of pay for one hour of work in
11 addition to any other compensation earned by the service employee for time the
12 service employee actually works.

 ****NOTE: Is the one hour of pay intended to be a bonus to compensate for the service
employee's inconvenience or a guarantee that the service employee will be paid for at least
one hour of work? As currently drafted, the provision is a bonus hour of pay. Please let
me know if that is not consistent with your intent.

13 3. If an employer requires a service employee to work a split shift, the employer
14 shall provide the service employee compensation in an amount equal to the service
15 employee's regular rate of pay for one hour of work in addition to any other
16 compensation earned by the service employee for time the service employee actually
17 works.

 ****NOTE: Are all of the items of compensation under this paragraph intended to
be cumulative? As currently drafted, it appears that, given the right set of circumstances,
a service employee could be entitled to compensation simultaneously under subds. 1., 2.,
and 3., as created in this draft. Is that consistent with your intent?

18 (e) *Manner of payment of additional compensation.* An employer that is
19 required to provide compensation to a service employee under par. (b) 1. or (d) shall
20 pay that compensation on the service employee's regular pay check or other wage

1 payment. The employer shall identify on the pay check, pay envelope, or paper
2 accompanying the wage payment the amount of and reason for all additional
3 compensation paid.

4 (f) *Exception.* An employer is not required to comply with this subsection
5 during a period in which the employer's regular operations are suspended due to an
6 event outside of the employer's control.

7 (4) PROHIBITED ACTS. (a) No employer may interfere with, restrain, or deny the
8 exercise of the right of an employee to request and receive a change in the terms and
9 conditions of employment as provided under sub. (2). No employer may interfere
10 with, restrain, or deny the exercise of the right of a service employee to receive
11 advance notice of work schedules as provided under sub. (3) (a), receive
12 compensation as provided under sub. (3) (b) 1. and (d), or request approval to trade
13 work shifts as provided under sub. (3) (c).

14 (b) No employer may discharge or discriminate against an employee in
15 promotion, in compensation, or in the terms, conditions, or privileges of employment
16 for exercising a right of an employee described under par. (a), opposing a practice
17 prohibited under this section, filing or indicating an intent to file a complaint or
18 otherwise attempting to enforce a right under this section, or testifying, assisting,
19 or participating in any manner in any investigation, action, or proceeding to enforce
20 a right under this section.

21 (5) ENFORCEMENT. (a) *Administrative proceeding.* An employee whose rights
22 are interfered with, restrained, or denied in violation of sub. (4) (a) or who is
23 discharged or discriminated against in violation of sub. (4) (b) may file a complaint
24 with the department, and the department shall process the complaint in the same
25 manner that employment discrimination complaints are processed under s. 111.39.

1 If the department finds that a violation has occurred, the department may order the
2 employer to take action to remedy the violation, including any action authorized
3 under s. 111.39.

4 (b) *Civil action.* The department or an employee whose rights are interfered
5 with, restrained, or denied in violation of sub. (4) (a) or who is discharged or
6 discriminated against in violation of sub. (4) (b) may bring an action in circuit court
7 against an employer on the basis of the violation without regard to exhaustion of any
8 administrative remedy.

****NOTE: Do you want to specify what damages are available? See, for example,
Schedules That Work Act at p.27, line 25 to p.29, line 21. Do you want to authorize class
action lawsuits under the bill? See p.29, lines 8 to 16.

9 (6) PENALTIES. In addition to any damages imposed under sub. (5), an employer
10 that willfully violates this section may be required to forfeit not more than \$1,000 for
11 each violation. Each day of continued violation constitutes a separate offense.

****NOTE: This provision is a placeholder. Compare with Schedules That Work Act
at p.31, lines 5 to 15. Let me know if you would like to specify different penalties that
apply to various violations of the requirements created in this bill.

12 (7) NOTICE POSTED. An employer shall post, in one or more conspicuous places
13 where notices to employees are customarily posted, a notice in a form approved by
14 the department setting forth employees' rights under this section. An employer that
15 violates this subsection shall forfeit not more than \$100 for each violation.

16 SECTION 2. 111.322 (2m) (a) of the statutes is amended to read:

17 111.322 (2m) (a) The individual files a complaint or attempts to enforce any
18 right under s. 103.02, 103.035, 103.10, 103.11, 103.13, 103.28, 103.32, 103.34,
19 103.455, 104.12, 109.03, 109.07, 109.075, 146.997, or 995.55, or ss. 101.58 to 101.599
20 or 103.64 to 103.82.

LRB-4583

Telephone conference with Chris on November 8, 2017 – Prepare a P2 with the following changes:

- Page 4, note 1: OK.
- Page 4, note 2: OK.
- Page 4, note 3: OK.
- Page 4, note 4: revise to include the state and political subdivisions.
- Page 4, note 5: no.
- Page 5, note 1: OK.
- Page 5, note 2: revise to limit to nonexempt employees (i.e., exclude managers, administrators, etc.)
- Page 5, note 3: yes, allow DWD to designate other covered employees
- Page 5, note 4: OK.
- Page 5, note 5: OK.
- Page 6, note 1: yes, define all of the family relationship terms in the federal bill. OK to use cross-references to s. 103.10, stats., if appropriate.
- Page 6, note 2: OK.
- Page 7, note 1: use the phrase "directly related."
- Page 7, note 2: OK.
- Page 8, note 1: leave the note for now.
- Page 8, note 2: clarify that "written" does not include electronic transmission.
- Page 8, note 3: yes, the employer must update posted work schedules.
- Page 8, note 4: leave the note for now.
- Page 9, note 1: leave the note for now.
- Page 9, note 2: leave the note for now.
- Page 10, note 1: keep as is.
- Page 10, note 2: the items are not cumulative. If an employee is entitled to receive more than one, the employee will receive only one, whichever is greatest.
- Page 12, note 1: yes, use the damages specified in the federal bill.
- Page 12, note 2: keep as is.
- Page 13, note 1: delay 6 months and add initial app. to account for 14-day notice period

(KRP)

LRB-4583

11/16/2017 Additional instructions from Chris for P2:

- Page 8, note 1: OK, keep as is.
- Page 8, note 4: Employer must provide the compensation for any change after 14-day advance notice unless the employee consents to the change or for a change under par. (b) 2.
- Page 9, note 1: OK, keep as is.
- Page 9, note 2: Employee may receive compensation under both par. (b) 1. and par. (d)

-KRP



State of Wisconsin
2017 - 2018 LEGISLATURE

IN: 11/22/17

DUE: 11/27/17 (Mon.)

P2
LRB-4583/P1
KRP:ahc

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

sa ✓
regen ✓

1 AN ACT *to amend* 111.322 (2m) (a) and 111.322 (2m) (b); and *to create* 103.035
2 of the statutes; **relating to:** the rights of employees to request and receive work
3 schedule changes; predictable work schedules for retail, food service, and
4 cleaning employees; and providing a penalty.

INSERT
1-4

Analysis by the Legislative Reference Bureau

, including the state and political subdivisions,

This bill provides that an employee who works for an employer that employs at least 15 employees (employer) has the right to request and receive changes to the employee's work schedule under certain circumstances. The bill also provides rights regarding work scheduling for employees in certain retail, food service, or cleaning occupations.

Employee right to request and receive work schedule changes

The bill provides that an employee may request changes to the employee's work schedule, and an employer must negotiate in good faith with the employee to accommodate the employee's request while also meeting the employer's needs. Unless an employer has a bona fide business reason for denying the request, the employer must approve an employee's request if it is related to any of the following:

1. A serious health condition of the employee.
2. Responsibilities of the employee as a caregiver for a child or other family member.
3. Enrollment of the employee in an educational or training program or program of study that leads to a recognized postsecondary credential.

or other occupations designated by the Department of Workforce Development

directly

4. Work scheduling conflicts of an employee who is part time with the employee's other employment.

If an employer denies an employee's request, the employer must inform the employee of the reasons for denial, including whether any of the reasons is a bona fide business reason. The term "bona fide business reason" is defined in the bill.

Predictable work schedules for retail, food service, and cleaning employees

The bill provides that an employer that employs an employee in certain retail, food service, or cleaning occupations (service employee) must provide the service employee with a written copy of the service employee's work schedule on or before the service employee's first day of work. If an employer changes a service employee's work schedule, the employer must provide the new work schedule no later than 14 days in advance. However, an employer may change a service employee's work schedule at any time.

With certain exceptions,

with less than 14-days advance notice

If an employer changes a service employee's work schedule less than 24 hours in advance of when the change takes effect, the employer must pay the service employee an amount equal to the service employee's regular rate of pay for one hour of work, unless the employer requires the service employee to work additional time or an additional work shift because another service employee was scheduled to work that time or work shift and is unexpectedly unavailable to do so.

If an employer uses the following scheduling practices, the employer must compensate a service employee subjected to those practices as follows:

1. If the service employee reports to work and the employer does not allow the service employee to work all time scheduled, the employer shall provide the service employee with the following compensation: a) if the service employee is scheduled to work four hours or less, an amount equal to the service employee's regular rate of pay for all time the service employee is scheduled to work but does not work; or b) if the service employee is scheduled to work more than four hours and works less than four hours, an amount equal to the service employee's regular rate of pay for the difference between four hours and the amount of time the service employee actually works.

2. If the employer requires the service employee to contact the employer, or wait to be contacted by the employer, less than 24 hours before a work shift to determine whether the service employee must report to work, the employer must pay the service employee an amount equal to the service employee's regular rate of pay for one hour of work.

3. If the employer requires the service employee to work a split shift, the employer must pay the service employee an amount equal to the service employee's regular rate of pay for one hour of work.

The bill provides that, during any period in which the employer's regular operations are suspended due to an event outside of the employer's control, the employer is not required to comply with the service employee work scheduling requirements created in the bill.

Enforcement

The bill provides that an employer may not interfere with, restrain, or deny the exercise of the right of an employee created in the bill and may not discharge or

1) the service employee consents to the change or 2)

INSERT A-1

INSERT A-2

DWD

discriminate against an employee for enforcing the employee's rights under the bill. An employee whose rights are violated may file a complaint with the Department of Workforce Development, and DWD must process the complaint in the same manner that employment discrimination complaints are processed under current law. That processing may include the ordering of back pay, reinstatement, compensation in lieu of reinstatement, and costs and attorney fees.

The bill also provides that DWD or an employee whose rights are violated may bring an action in circuit court against the employer without regard to exhaustion of any administrative remedy. In addition to any damages imposed on an employer in an administrative proceeding or circuit court action, an employer that willfully violates the protections created in the bill may be required to forfeit not more than \$1,000 for each violation.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 103.035 of the statutes is created to read:

2 **103.035 Work schedule flexibility and predictability.** (1) DEFINITIONS.

3 In this section:

4 (a) "Bona fide business reason" means a reason that justifies an employer's
5 action and that is based on the employer's determination that taking a different
6 action would have any of the following results:

7 1. Additional costs to the employer, including costs of lost employee
8 productivity, retaining or hiring employees, or transferring employees between work
9 locations.

10 2. A significant detrimental effect on the employer's ability to meet
11 organizational needs or customer demand.

12 3. A significant inability of the employer, despite the employer's best efforts,
13 to reorganize work among other employees.

14 4. A significant detrimental effect on the employer's business performance.

INSERT
A-3

1 5. Insufficient work during the period an employee proposes to work.

2 6. Unfairness to other employees who request changes to work schedules if
3 granting all requests would have a significant detrimental effect on the employer's
4 ability to meet organizational needs.

****NOTE: Compare with Schedules That Work Act, S. 1386, 115th Cong. at p. 6, line 13 to p. 7, line 14 (2017) [hereinafter Schedules That Work Act].

5 (b) "Employee" means an employee who is employed by an employer.

****NOTE: "Employee" is defined under s. 103.001 (5), stats. Is this definition consistent with your intent? Compare with Schedules That Work Act at p. 11, line 7 to p. 12, line 4. Do you want to exclude anyone from the definition?

6 (c) "Employer" means an employer that employs at least 15 employees.

****NOTE: Is this definition consistent with your intent? Compare with Schedules That Work Act at p. 12, line 5 to p. 13, line 5.

****NOTE: "Employer" is defined under s. 103.001 (6), stats., and includes the state and political subdivisions. However, other provisions within ch. 103, stats., specifically define employer to include the state and, sometimes, political subdivisions. See, e.g., ss. 103.01 (1) (b), 103.10 (1) (c), 103.15 (1) (a), and 103.88 (1) (e), stats. This may create an ambiguity regarding whether the term "employer," as used in ch. 103, stats., includes the state and political subdivisions. Please let me know if you want to clarify that ambiguity for purposes of this bill.

****NOTE: The Schedules That Work Act specifies how to calculate the number of employees employed by an employer. See p. 10, lines 6 to 18. Let me know if you want to specify a particular calculation method.

7 (d) "Part-time employee" means an employee who works on average fewer than
8 30 hours per week for a particular employer. *a nonexempt*

9 (e) "Service employee" means *an* employee who is employed in any of the
10 occupations classified under the following codes set forth in the Standard
11 Occupational Classification system, 2010 edition, published by the bureau of labor
12 statistics of the U.S. department of labor:

13 1. Major group code 35-0000 — Food preparation and serving related
14 occupations.

15 2. Broad occupation code 37-2010 — Building cleaning workers.

INSERT 4-5

INSERT 4-6

INSERT 4-7

in an occupation designated by the department under sub. (3)(g) or

1 3. Detailed occupation code 41-1011 — First-line supervisors of retail sales
2 workers.

****NOTE: Compare with Schedules That Work Act at p. 15, line 4. Is that consistent with your intent? ✓

3 4. Minor group code 41-2000 — Retail sales workers.

****NOTE: Do you want to exclude “nonexempt” employees? Compare with Schedules That Work Act at p. 14, line 20 to p. 15, line 22.

****NOTE: The Schedules That Work Act requires the U.S. Secretary of Labor to designate other categories of employees that will be covered by sub. (3), as created in this draft. See p. 34, line 13 to p. 35, line 22. Do you want to require or allow the Department of Workforce Development to exercise similar authority? ✓

INSERT 5-4

4 (n) “Split shift” means a work shift that consists of work time that is not
5 continuous. For purposes of determining whether a work shift is continuous, any of
6 the following breaks in work time are not considered:

7 1. One or more breaks for meals that total one hour or less.

8 2. A break that is requested by the employee.

9 (o) (g) “Work schedule” means the days and times during each successive work
10 period when an employee is required by an employer to perform duties of
11 employment.

****NOTE: It appears that the Schedules That Work Act treats a “work schedule” as a set of days and times that repeats for each work period. Is this definition consistent with your intent? ✓

12 (p) (h) “Work shift” means the specific times during a day that an employer
13 requires an employee to work.

****NOTE: As currently drafted, all time worked on a particular day constitutes a single “work shift.” If that time is not consecutive, the work shift is a “split shift.” Is that consistent with your intent? Compare with Schedules That Work Act at p. 16, lines 8 to 16 and p. 17, lines 22 to 24. ✓

INSERT 5-14

14 (2) EMPLOYEE RIGHT TO REQUEST AND RECEIVE WORK SCHEDULE CHANGES. (a)
15 *Employee right to request work schedule changes.* 1. An employee may request a
16 change in the terms and conditions of employment related to any of the following
17 work schedule issues:

1 a. The number of hours the employee is required to work or be on call for work.

2 b. The days or times when the employee is required to work or be on call for
3 work.

4 c. The location where the employee is required to work.

5 d. The amount of notification the employee receives regarding changes to the
6 employee's work schedule.

7 e. Minimizing fluctuations in the number of hours the employee is scheduled
8 to work on a daily, weekly, or monthly basis.

9 2. An employee who makes a request under subd. 1. shall specify in the request
10 whether it is related to any of the following:

11 a. A serious health condition, as defined under s. 103.10 (1) (g), of the employee.

12 b. The employee's responsibilities as a significant provider of ongoing care,
13 including responsibility for securing ongoing care, of the employee's child, family
14 member with a serious health condition, as defined under s. 103.10 (1) (g), or parent
15 who is 65 years of age or older.

****NOTE: Compare with the definition of "caregiver" in the Schedules That Work Act. See p. 8, lines 11 to 23. Do you want to define any of the following terms: child, family member, or parent? See p. 8, line 24 to p. 9, line 5; p. 13, lines 6 to 15; and p. 14, lines 7 to 10.

16 c. The employee's responsibilities as a significant provider of education,
17 including responsibility for securing education, of the employee's child.

18 d. The employee's enrollment in an educational or training program or program
19 of study that leads to a recognized postsecondary credential.

****NOTE: Compare with the definition of "career-related educational or training program" in the Schedules That Work Act. See p. 7, line 15 to p. 8, line 10.

20 e. If the employee is a part-time employee, conflicts with the employee's other
21 employment.

1 (b) *Evaluating requests for work schedule changes.* If an employer receives a
2 request from an employee under par. (a), the employer shall either grant the request
3 without modification or negotiate in good faith with the employee to find a
4 compromise that meets the employee's and the employer's work scheduling needs,
5 including by considering any alternative proposals offered by the employee. If the
6 employer denies the request and any alternative proposals offered, the employer
7 shall inform the employee of the reasons for denial, including whether any of the
8 reasons is a bona fide business reason.

9 (c) *Requests related to serious health conditions, caregiving, education, or other*
10 *part-time employment.* Notwithstanding par. (b), if an employer receives a request
11 from an employee under par. (a) that is directly related to any of the issues described under
12 par. (a) 2., the employer shall grant the request unless the employer has a bona fide
13 business reason for denying the request.

****NOTE: That a request is "related" to an issues described under par. (a) 2., as
created in this draft, is quite broad. Let me know if you want to clarify the intent of this
provision.

14 (d) *Verification of reasons for requested changes.* If an employer receives a
15 request from an employee under par. (a), the employer may require the employee to
16 provide additional information to clarify or explain the reasons for the employee's
17 requested work schedule change if the employer needs that information to properly
18 evaluate the request under par. (b) or (c).

****NOTE: Compare with Schedules That Work Act at p. 19, lines 11 to 15. Is that
consistent with your intent?

19 (3) PREDICTABLE WORK SCHEDULES FOR RETAIL, FOOD SERVICE, AND CLEANING
20 EMPLOYEES. (a) *Advance notice of work schedules required.* 1. On or before the first
21 day of work of a new service employee, an employer shall provide the service
22 employee with a written copy of the service employee's work schedule.

****NOTE: The Schedules That Work Act also requires an employer to inform a new service employee of the minimum number of hours the service employee will be assigned to work on a weekly or monthly basis, and, if the employer changes the work schedule or the minimum expected hours, the employer must give 14 days' notice. See p. 21, line 24 to p. 22, line 21. Because a service employee is informed of actual work hours and expected work hours at the same time and in the same way, this appears to be duplicative, and I have not included that requirement in this draft. Please let me know if you would like to discuss.

****NOTE: Do you want to clarify how a written document may be transmitted? For example, may an employer send a work schedule via e-mail, text message, or other electronic means?

Except as provided in pars. (b) and (c).

1 2. If an employer changes a work schedule provided to a service employee under
2 subd. 1. or this subdivision, the employer shall provide the service employee with a
3 written copy of the new work schedule no later than 14 days before the new work
4 schedule begins.

5 3. An employer shall post a copy of a work schedule provided under this
6 paragraph in any of the following ways:

7 a. In one or more conspicuous places where notices to employees are
8 customarily posted.

without advance notice (I)

9 b. On an Internet site accessible by all of the employer's employees.

****NOTE: Under certain circumstances, an employer may make changes to work schedules without providing notice under this paragraph. See, for example, pars. (b) 1. and (c), as created in this draft. Do you want an employer to update posted work schedules to reflect those changes?

INSERT 8-10

10 (b) **Employer-initiated changes to work schedules.** 1. Notwithstanding par. (a)

11 2., ^{without the advance notice required under par. (a) 2.,} an employer may change a work schedule provided to a service employee under
12 par. (a) 1. or 2., ^{as provided in this paragraph.} Except as provided under subd. 2., if the employer changes a service

13 employee's work schedule less than 24 hours in advance of when the change takes
14 effect, the employer shall provide the service employee compensation for the change
15 in an amount equal to the service employee's regular rate of pay for one hour of work
16 in addition to any other compensation earned by the service employee.

****NOTE: This provision appears to directly contradict the requirement under par. (a) 2., as created in this draft, that an employer must provide 14 days' notice of work schedule changes. Compare with Schedules That Work Act at p. 23, lines 3 to 15. It is

provided to a service employee under par. (a) 1. or 2. less than 14 days before the new work schedule begins

not clear what benefit a service employee receives from getting the service employee's work schedule 14 days in advance if an employer may freely change the work schedule without penalty until 24 hours before a work shift. Please let me know if you would like to discuss.

****NOTE: The Schedules That Work Act does not specify what type of notice is required for an employer-initiated change that is made after the 14-day notice. For example, must the notice be in writing?

INSERT 9-2

1 2. An employer is not required to pay compensation to a service employee under
 2 subd. 1. ^eif the employer requires the service employee to work additional time or an
 3 additional work shift because another service employee was scheduled to work that
 4 time or work shift and is unexpectedly unavailable to do so.

5 (c) *Employee-initiated changes to work schedules.* An employer may allow a
 6 service employee to agree to work in place of another service employee if the service
 7 employees mutually agree to the change. The employer is not required to provide
 8 compensation under par. (b) 1. to a service employee with respect to a work shift trade
 9 under this paragraph.

Except as provided in subd. 4₃

10 (d) *Compensation for reporting time, on-call time, and split shifts.* 1. If a
 11 service employee reports to work and the service employee's employer does not allow
 12 the service employee to work all time that the service employee is scheduled to work,
 13 the employer shall provide the service employee with the following compensation:

****NOTE: Arguably, if an employer does not allow a service employee to work all hours the service employee is scheduled to work, that could constitute a work schedule change with less than 24 hours' notice under par. (b) 1., as created in this draft. As currently drafted, it is not clear whether a service employee who receives compensation under this paragraph also is entitled to compensation under par. (b) 1., as created in this draft.

14 a. If the service employee is scheduled to work 4 hours or less, an amount equal
 15 to the service employee's regular rate of pay for all time the service employee is
 16 scheduled to work but does not work in addition to any other compensation earned
 17 by the service employee for time the service employee actually works.

1 b. If the service employee is scheduled to work more than 4 hours and works
2 less than 4 hours, an amount equal to the service employee's regular rate of pay for
3 the difference between 4 hours and the amount of time the service employee actually
4 works in addition to any other compensation earned by the service employee for time
5 the service employee actually works.

6 2. If an employer requires a service employee to contact the employer, or wait
7 to be contacted by the employer, less than 24 hours before a work shift to determine
8 whether the employer will require the service employee to report to work for that
9 work shift, the employer shall provide the service employee compensation in an
10 amount equal to the service employee's regular rate of pay for one hour of work in
11 addition to any other compensation earned by the service employee for time the
12 service employee actually works.

****NOTE: Is the one hour of pay intended to be a bonus to compensate for the service employee's inconvenience or a guarantee that the service employee will be paid for at least one hour of work? As currently drafted, the provision is a bonus hour of pay. Please let me know if that is not consistent with your intent.

Except as provided in subd. 4.,

13 3. If an employer requires a service employee to work a split shift, the employer
14 shall provide the service employee compensation in an amount equal to the service
15 employee's regular rate of pay for one hour of work in addition to any other
16 compensation earned by the service employee for time the service employee actually
17 works.

****NOTE: Are all of the items of compensation under this paragraph intended to be cumulative? As currently drafted, it appears that, given the right set of circumstances, a service employee could be entitled to compensation simultaneously under subds. 1., 2., and 3., as created in this draft. Is that consistent with your intent?

INSERT 10-18 -

18 (e) *Manner of payment of additional compensation.* An employer that is
19 required to provide compensation to a service employee under par. (b) 1. or (d) shall
20 pay that compensation on the service employee's regular pay check or other wage

1 payment. The employer shall identify on the pay check, pay envelope, or paper
2 accompanying the wage payment the amount of and reason for all additional
3 compensation paid.

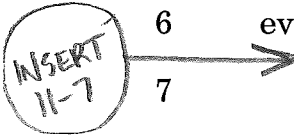
4 (f) *Exception.* An employer is not required to comply with this subsection
5 during a period in which the employer's regular operations are suspended due to an
6 event outside of the employer's control.

7 **(4) PROHIBITED ACTS.** (a) No employer may interfere with, restrain, or deny the
8 exercise of the right of an employee to request and receive a change in the terms and
9 conditions of employment as provided under sub. (2). No employer may interfere
10 with, restrain, or deny the exercise of the right of a service employee to receive
11 advance notice of work schedules as provided under sub. (3) (a), receive
12 compensation as provided under sub. (3) (b) 1. and (d), or request approval to trade
13 work shifts as provided under sub. (3) (c).

14 (b) No employer may discharge or discriminate against an employee in
15 promotion, in compensation, or in the terms, conditions, or privileges of employment
16 for exercising a right of an employee described under par. (a), opposing a practice
17 prohibited under this section, filing or indicating an intent to file a complaint or
18 otherwise attempting to enforce a right under this section, or testifying, assisting,
19 or participating in any manner in any investigation, action, or proceeding to enforce
20 a right under this section.

21 **(5) ENFORCEMENT.** (a) *Administrative proceeding.* An employee whose rights
22 are interfered with, restrained, or denied in violation of sub. (4) (a) or who is
23 discharged or discriminated against in violation of sub. (4) (b) may file a complaint
24 with the department, and the department shall process the complaint in the same
25 manner that employment discrimination complaints are processed under s. 111.39.

INSERT
11-7



1 If the department finds that a violation has occurred, the department may order the
2 employer to take action to remedy the violation, including any action authorized
3 under s. 111.39.

1.

4 (b) *Civil action.* The department or an employee whose rights are interfered
5 with, restrained, or denied in violation of sub. (4) (a) or who is discharged or
6 discriminated against in violation of sub. (4) (b) may bring an action in circuit court
7 against an employer on the basis of the violation without regard to exhaustion of any
8 administrative remedy.

INSERT
12-9

****NOTE: Do you want to specify what damages are available? See, for example, Schedules That Work Act at p. 27, line 25 to p. 29, line 21. Do you want to authorize class action lawsuits under the bill? See p. 29, lines 8 to 16.

9 (6) PENALTIES. In addition to any damages imposed under sub. (5), an employer
10 that willfully violates this section may be required to forfeit not more than \$1,000 for
11 each violation. Each day of continued violation constitutes a separate offense.

****NOTE: This provision is a placeholder. Compare with Schedules That Work Act at p. 31, lines 5 to 15. Let me know if you would like to specify different penalties that apply to various violations of the requirements created in this bill.

12 (7) NOTICE POSTED. An employer shall post, in one or more conspicuous places
13 where notices to employees are customarily posted, a notice in a form approved by
14 the department setting forth employees' rights under this section. An employer that
15 violates this subsection shall forfeit not more than \$100 for each violation.

16 SECTION 2. 111.322 (2m) (a) of the statutes is amended to read:

17 111.322 (2m) (a) The individual files a complaint or attempts to enforce any
18 right under s. 103.02, 103.035, 103.10, 103.11, 103.13, 103.28, 103.32, 103.34,
19 103.455, 104.12, 109.03, 109.07, 109.075, 146.997, or 995.55, or ss. 101.58 to 101.599
20 or 103.64 to 103.82.

21 SECTION 3. 111.322 (2m) (b) of the statutes is amended to read:

1 111.322 (2m) (b) The individual testifies or assists in any action or proceeding
2 held under or to enforce any right under s. 103.02, 103.035, 103.10, 103.11, 103.13,
3 103.28, 103.32, 103.34, 103.455, 104.12, 109.03, 109.07, 109.075, 146.997, or 995.55,
4 or ss. 101.58 to 101.599 or 103.64 to 103.82.

INSERT
13-5

5 **SECTION 4. Initial applicability.**

6 (1) This act first applies to an employee who is covered by a collective
7 bargaining agreement that contains provisions inconsistent with section 103.035 of
8 the statutes on the day on which the collective bargaining agreement expires or is
9 extended, modified, or renewed, whichever occurs first.

INSERT
13-10

10 ***NOTE: Do you want to provide a delayed effective date for this bill? e

(END)

2017-2018 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4583/P2ins
KRP:...

INSERT 1-4

1 *no P* granting rule-making authority; *no P*
(END INSERT 1-4)

✓ INSERT A-1

If a service employee is entitled to more than one type of compensation related to employer scheduling practices with respect to a particular work shift, the employer must pay only one type of compensation, whichever is greatest.

(END INSERT A-1)

✓ INSERT A-2

to apply the protections afforded under the bill to

The bill authorizes DWD to promulgate rules *that designate* additional occupations *for coverage under the bill* if DWD determines that at least *ten* percent of the individuals employed in an occupation either typically receive notice of changes to their work schedules less than 14 days before the change takes effect or regularly experience fluctuations in the number of hours the individuals are scheduled to work on a daily, weekly, or monthly basis.

(END INSERT A-2)

INSERT A-3 ✓

no P If the circuit court finds that a violation has occurred, the employer is liable to the employee for compensatory damages, reasonable attorney fees and costs, and, under certain circumstances, liquidated damages equal to 100 percent of the amount of compensatory damages awarded to the employee.

(END INSERT A-3) *P*

INSERT 4-5 ✓

2 (b) "Child" means an individual who is all of the following:

3 1. A biological, adopted, or foster child; a stepchild; a legal ward; or a child of
4 a person standing in the place of a parent with respect to that child.

5 2. An individual to whom any of the following applies:

6 *any* 1. The individual is less than 18 years of age.

1

b.c.
2

2. The individual is 18 years of age or older and is incapable of self-care because of a mental or physical disability.

↓

3

****NOTE: This definition is adapted from the Schedules That Work Act. See p. 8, line 24 to p. 9, line 5. Let me know if you would prefer to use the definition in the state family and medical leave law (FMLA) at s. 103.10 (1) (a), stats.

3

(c) "Domestic partner" has the meaning given in s. 40.02 (21c) or 770.01 (1).

****NOTE: This definition mirrors the definition in the state FMLA. See s. 103.10 (1) (ar), stats. Let me know if you would prefer to use the definition in the Schedules That Work Act. See p. 10, line 23 to p. 11, line 3.

(END INSERT 4-5)

INSERT 4-6

4

no P

"Employer" includes the state, its political subdivisions, and any office, department, independent agency, authority, institution, association, society, or other body in state or local government created or authorized to be created by the constitution or any law, including the legislature and the courts.

(END INSERT 4-6)

INSERT 4-7

8

(f) "Family member" means any of the following:

9

1. A spouse or domestic partner of an employee.

10

2. A parent, child, sibling, brother-in-law, sister-in-law, grandparent, or grandchild of an employee or of an employee's spouse or domestic partner.

12

3. Any other individual who is related by blood, marriage, or adoption to an employee or to an employee's spouse or domestic partner and whose close association with the employee, spouse, or domestic partner makes the individual the equivalent of a family member of the employee, spouse, or domestic partner.

15

****NOTE: This definition mirrors the definition in the state FMLA. See s. 103.10 (1m) (b) 4., stats. Let me know if you would prefer to use the definition in the Schedules That Work Act. See p. 13, lines 6 to 15.

1 (g) "Grandchild" means the child of a child.

2 (h) "Grandparent" means the parent of a parent.

3 (i) "Nonexempt employee" means an employee who is not employed in a bona
4 fide executive, administrative, or professional capacity, as described in 29 USC 213
5 (a) (1).

6 (j) "Parent" means a biological parent, foster parent, adoptive parent,
7 stepparent, or legal guardian of an employee or of an employee's spouse or domestic
8 partner.

****NOTE: This definition mirrors the definition in the state FMLA. See s. 103.10
(1) (f), stats. Let me know if you would prefer to use the definition in the Schedules That
Work Act. See p. 14, lines 7 to 10.

(END INSERT 4-7)

✓INSERT 5-4

9 (m) "Sibling" means a brother, sister, half brother, half sister, stepbrother,
10 stepsister, foster brother, or foster sister, whether by blood, marriage, or adoption.

(END INSERT 5-4)

✓INSERT 5-14

11 (q) "Written" does not include a communication that is transmitted or received
12 by electronic means.

(END INSERT 5-14)

✓INSERT 8-10

13 4. If an employer changes a work schedule after it is posted under subd. 3., the
14 employer shall revise the posted work schedule to reflect those changes.

(END INSERT 8-10)

✓INSERT 9-2

1 no ff for a change to the service employee's work schedule if any of the following applies
2 to the change:

- 3 a. The service employee consents to the change.
- 4 b. The no ff

(END INSERT 9-2)

INSERT 10-18

5 4. If a service employee is entitled to more than one type of compensation under
6 subds. 1. to 3. with respect to a particular work shift, the employer shall pay the
7 service employee the compensation required under subd. 1., 2., or 3., whichever is
8 greatest.

(END INSERT 10-18)

INSERT 11-7

to apply the protections afforded under pars. (a) to (f) to

9 (g) *Designating additional covered occupations.* The department may
 10 promulgate rules that designate additional occupations covered under this
 11 subsection The department may designate an occupation under this paragraph if
 12 the department determines that at least 10 percent of the individuals employed in
 13 the occupation either typically receive notice of changes to their work schedules less
 14 than 14 days before the change takes effect or regularly experience fluctuations in
 15 the number of hours the individuals are scheduled to work on a daily, weekly, or
 16 monthly basis.

****NOTE: Do you want to put any other limits on DWD's authority to designate additional occupations for coverage under this paragraph? ✓

(END INSERT 11-7)

INSERT 12-9

2. In an action under subd. 1., if the circuit court finds that a violation of sub. (4) (a) or (b) has occurred with respect to an employee, the circuit court shall order the defendant to pay to the employee all of the following:

a. Compensatory damages in an amount that the circuit court or jury finds appropriate.

b. Unless the employer proves that the employer acted in good faith and had a reasonable basis for believing that the act or omission that constituted the violation was not a violation of this section, an additional amount as liquidated damages equal to 100 percent of the amount of compensatory damages determined under subd. 2.

a.
c. Notwithstanding s. 814.04 (1), reasonable attorney fees and costs incurred in the action.

3. Damages awarded under subd. 2. are in addition to any back pay or other amounts awarded under s. 111.39 or 111.395.

(END INSERT 12-9)

INSERT 13-5

SECTION 1. Nonstatutory provisions.

(1) PREDICTABLE WORK SCHEDULES FOR RETAIL, FOOD SERVICE, AND CLEANING EMPLOYEES; TRANSITIONAL PROVISIONS. No later than the effective date of this subsection, an employer, as defined in section 103.035 (1) (e) of the statutes, shall provide each service employee with a written copy of the service employee's work schedule. That work schedule is considered a work schedule provided to a service employee under section 103.035 (3) (a) 2. of the statutes for all purposes under section 103.035 of the statutes, including that the employer shall post a copy of the work

as defined in section 103.035 (1)(L) of the statutes,

, as defined in section 103.035 (1)(o) of the statutes.

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1 schedule as provided in section 103.035 (3) (a) 3. of the statutes and, if the employer
2 changes that work schedule, section 103.035 (3) (a) 2. of the statutes applies to that
3 change.

(END INSERT 13-5)

INSERT 13-10

4 ✓ **SECTION 2. Effective date.**

5 (1) This act takes effect on the first day of the 6th month beginning after
6 publication.

(END INSERT 13-10)

Pleviak, Krista

From: Stoa, Chris
Sent: Wednesday, December 06, 2017 2:30 PM
To: Pleviak, Krista
Subject: LRB4583/P2

Hi Krista,

LRB4583/P2 looks good as is. Could we get a /1 please? Thanks!

Chris Stoa
Office of Representative Gary Hebl
Phone: 608.266.7678
Fax: 608-282-3646



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-4583/P2
KRP:ahc

TODAY

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT *to amend* 111.322 (2m) (a) and 111.322 (2m) (b); and *to create* 103.035
2 of the statutes; **relating to:** the rights of employees to request and receive work
3 schedule changes; predictable work schedules for retail, food service, and
4 cleaning employees; granting rule-making authority; and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill provides that an employee who works for an employer, including the state and political subdivisions, that employs at least 15 employees (employer) has the right to request and receive changes to the employee's work schedule under certain circumstances. The bill also provides rights regarding work scheduling for employees in certain retail, food service, or cleaning occupations or other occupations designated by the Department of Workforce Development.

Employee right to request and receive work schedule changes

The bill provides that an employee may request changes to the employee's work schedule, and an employer must negotiate in good faith with the employee to accommodate the employee's request while also meeting the employer's needs. Unless an employer has a bona fide business reason for denying the request, the employer must approve an employee's request if it is directly related to any of the following:

1. A serious health condition of the employee.
2. Responsibilities of the employee as a caregiver for a child or other family member.

3. Enrollment of the employee in an educational or training program or program of study that leads to a recognized postsecondary credential.

4. Work scheduling conflicts of an employee who is part time with the employee's other employment.

If an employer denies an employee's request, the employer must inform the employee of the reasons for denial, including whether any of the reasons is a bona fide business reason. The term "bona fide business reason" is defined in the bill.

Predictable work schedules for retail, food service, and cleaning employees

The bill provides that an employer that employs an employee in certain retail, food service, or cleaning occupations (service employee) must provide the service employee with a written copy of the service employee's work schedule on or before the service employee's first day of work. With certain exceptions, if an employer changes a service employee's work schedule, the employer must provide the new work schedule no later than 14 days in advance.

If an employer changes a service employee's work schedule with less than 14-days' advance notice, the employer must pay the service employee an amount equal to the service employee's regular rate of pay for one hour of work, unless 1) the service employee consents to the change or 2) the employer requires the service employee to work additional time or an additional work shift because another service employee was scheduled to work that time or work shift and is unexpectedly unavailable to do so.

If an employer uses the following scheduling practices, the employer must compensate a service employee subjected to those practices as follows:

1. If the service employee reports to work and the employer does not allow the service employee to work all time scheduled, the employer shall provide the service employee with the following compensation: a) if the service employee is scheduled to work four hours or less, an amount equal to the service employee's regular rate of pay for all time the service employee is scheduled to work but does not work; or b) if the service employee is scheduled to work more than four hours and works less than four hours, an amount equal to the service employee's regular rate of pay for the difference between four hours and the amount of time the service employee actually works.

2. If the employer requires the service employee to contact the employer, or wait to be contacted by the employer, less than 24 hours before a work shift to determine whether the service employee must report to work, the employer must pay the service employee an amount equal to the service employee's regular rate of pay for one hour of work.

3. If the employer requires the service employee to work a split shift, the employer must pay the service employee an amount equal to the service employee's regular rate of pay for one hour of work.

If a service employee is entitled to more than one type of compensation related to employer scheduling practices with respect to a particular work shift, the employer must pay only one type of compensation, whichever is greatest.

The bill provides that, during any period in which the employer's regular operations are suspended due to an event outside of the employer's control, the

employer is not required to comply with the service employee work scheduling requirements created in the bill.

The bill authorizes DWD to promulgate rules to apply the protections afforded under the bill to additional occupations if DWD determines that at least 10 percent of the individuals employed in an occupation either typically receive notice of changes to their work schedules less than 14 days before the change takes effect or regularly experience fluctuations in the number of hours the individuals are scheduled to work on a daily, weekly, or monthly basis.

Enforcement

The bill provides that an employer may not interfere with, restrain, or deny the exercise of the right of an employee created in the bill and may not discharge or discriminate against an employee for enforcing the employee's rights under the bill. An employee whose rights are violated may file a complaint with DWD, and DWD must process the complaint in the same manner that employment discrimination complaints are processed under current law. That processing may include the ordering of back pay, reinstatement, compensation in lieu of reinstatement, and costs and attorney fees.

The bill also provides that DWD or an employee whose rights are violated may bring an action in circuit court against the employer without regard to exhaustion of any administrative remedy. If the circuit court finds that a violation has occurred, the employer is liable to the employee for compensatory damages, reasonable attorney fees and costs, and, under certain circumstances, liquidated damages equal to 100 percent of the amount of compensatory damages awarded to the employee. In addition to any damages imposed on an employer in an administrative proceeding or circuit court action, an employer that willfully violates the protections created in the bill may be required to forfeit not more than \$1,000 for each violation.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 103.035 of the statutes is created to read:

2 **103.035 Work schedule flexibility and predictability. (1) DEFINITIONS.**

3 In this section:

4 (a) "Bona fide business reason" means a reason that justifies an employer's
5 action and that is based on the employer's determination that taking a different
6 action would have any of the following results:

1 1. Additional costs to the employer, including costs of lost employee
2 productivity, retaining or hiring employees, or transferring employees between work
3 locations.

4 2. A significant detrimental effect on the employer's ability to meet
5 organizational needs or customer demand.

6 3. A significant inability of the employer, despite the employer's best efforts,
7 to reorganize work among other employees.

8 4. A significant detrimental effect on the employer's business performance.

9 5. Insufficient work during the period an employee proposes to work.

10 6. Unfairness to other employees who request changes to work schedules if
11 granting all requests would have a significant detrimental effect on the employer's
12 ability to meet organizational needs.

13 (b) "Child" means an individual who is all of the following:

14 1. A biological, adopted, or foster child; a stepchild; a legal ward; or a child of
15 a person standing in the place of a parent with respect to that child.

16 2. An individual to whom any of the following applies:

17 a. The individual is less than 18 years of age.

18 b. The individual is 18 years of age or older and is incapable of self-care because
19 of a mental or physical disability.

****NOTE: This definition is adapted from the Schedules That Work Act. See p. 8,
line 24 to p. 9, line 5. Let me know if you would prefer to use the definition in the state
family and medical leave law (FMLA) at s. 103.10 (1) (a), stats.

20 (c) "Domestic partner" has the meaning given in s. 40.02 (21c) or 770.01 (1).

****NOTE: This definition mirrors the definition in the state FMLA. See s. 103.10
(1) (ar), stats. Let me know if you would prefer to use the definition in the Schedules That
Work Act. See p. 10, line 23 to p. 11, line 3.

21 (d) "Employee" means an employee who is employed by an employer.

1 (e) "Employer" means an employer that employs at least 15 employees.
2 "Employer" includes the state, its political subdivisions, and any office, department,
3 independent agency, authority, institution, association, society, or other body in state
4 or local government created or authorized to be created by the constitution or any
5 law, including the legislature and the courts.

6 (f) "Family member" means any of the following:

7 1. A spouse or domestic partner of an employee.

8 2. A parent, child, sibling, brother-in-law, sister-in-law, grandparent, or
9 grandchild of an employee or of an employee's spouse or domestic partner.

10 3. Any other individual who is related by blood, marriage, or adoption to an
11 employee or to an employee's spouse or domestic partner and whose close association
12 with the employee, spouse, or domestic partner makes the individual the equivalent
13 of a family member of the employee, spouse, or domestic partner.

****NOTE: This definition mirrors the definition in the state FMLA. See s. 103.10
(1m) (b) 4., stats. Let me know if you would prefer to use the definition in the Schedules
That Work Act. See p. 13, lines 6 to 15.

14 (g) "Grandchild" means the child of a child.

15 (h) "Grandparent" means the parent of a parent.

16 (i) "Nonexempt employee" means an employee who is not employed in a bona
17 fide executive, administrative, or professional capacity, as described in 29 USC 213

18 (a) (1).

19 (j) "Parent" means a biological parent, foster parent, adoptive parent,
20 stepparent, or legal guardian of an employee or of an employee's spouse or domestic
21 partner.

****NOTE: This definition mirrors the definition in the state FMLA. See s. 103.10
(1) (f), stats. Let me know if you would prefer to use the definition in the Schedules That
Work Act. See p. 14, lines 7 to 10.

1 (k) "Part-time employee" means an employee who works on average fewer than
2 30 hours per week for a particular employer.

3 (L) "Service employee" means a nonexempt employee who is employed in an
4 occupation designated by the department under sub. (3) (g) or in any of the
5 occupations classified under the following codes set forth in the Standard
6 Occupational Classification system, 2010 edition, published by the bureau of labor
7 statistics of the U.S. department of labor:

- 8 1. Major group code 35-0000 — Food preparation and serving related
9 occupations.
- 10 2. Broad occupation code 37-2010 — Building cleaning workers.
- 11 3. Detailed occupation code 41-1011 — First-line supervisors of retail sales
12 workers.
- 13 4. Minor group code 41-2000 — Retail sales workers.

14 (m) "Sibling" means a brother, sister, half brother, half sister, stepbrother,
15 stepsister, foster brother, or foster sister, whether by blood, marriage, or adoption.

16 (n) "Split shift" means a work shift that consists of work time that is not
17 continuous. For purposes of determining whether a work shift is continuous, any of
18 the following breaks in work time are not considered:

- 19 1. One or more breaks for meals that total one hour or less.
- 20 2. A break that is requested by the employee.

21 (o) "Work schedule" means the days and times during each successive work
22 period when an employee is required by an employer to perform duties of
23 employment.

24 (p) "Work shift" means the specific times during a day that an employer
25 requires an employee to work.

1 (q) "Written" does not include a communication that is transmitted or received
2 by electronic means.

3 (2) EMPLOYEE RIGHT TO REQUEST AND RECEIVE WORK SCHEDULE CHANGES. (a)
4 *Employee right to request work schedule changes.* 1. An employee may request a
5 change in the terms and conditions of employment related to any of the following
6 work schedule issues:

7 a. The number of hours the employee is required to work or be on call for work.

8 b. The days or times when the employee is required to work or be on call for
9 work.

10 c. The location where the employee is required to work.

11 d. The amount of notification the employee receives regarding changes to the
12 employee's work schedule.

13 e. Minimizing fluctuations in the number of hours the employee is scheduled
14 to work on a daily, weekly, or monthly basis.

15 2. An employee who makes a request under subd. 1. shall specify in the request
16 whether it is related to any of the following:

17 a. A serious health condition, as defined under s. 103.10 (1) (g), of the employee.

18 b. The employee's responsibilities as a significant provider of ongoing care,
19 including responsibility for securing ongoing care, of the employee's child, family
20 member with a serious health condition, as defined under s. 103.10 (1) (g), or parent
21 who is 65 years of age or older.

22 c. The employee's responsibilities as a significant provider of education,
23 including responsibility for securing education, of the employee's child.

24 d. The employee's enrollment in an educational or training program or program
25 of study that leads to a recognized postsecondary credential.

1 e. If the employee is a part-time employee, conflicts with the employee's other
2 employment.

3 (b) *Evaluating requests for work schedule changes.* If an employer receives a
4 request from an employee under par. (a), the employer shall either grant the request
5 without modification or negotiate in good faith with the employee to find a
6 compromise that meets the employee's and the employer's work scheduling needs,
7 including by considering any alternative proposals offered by the employee. If the
8 employer denies the request and any alternative proposals offered, the employer
9 shall inform the employee of the reasons for denial, including whether any of the
10 reasons is a bona fide business reason.

11 (c) *Requests related to serious health conditions, caregiving, education, or other*
12 *part-time employment.* Notwithstanding par. (b), if an employer receives a request
13 from an employee under par. (a) that is directly related to any of the issues described
14 under par. (a) 2., the employer shall grant the request unless the employer has a bona
15 fide business reason for denying the request.

16 (d) *Verification of reasons for requested changes.* If an employer receives a
17 request from an employee under par. (a), the employer may require the employee to
18 provide additional information to clarify or explain the reasons for the employee's
19 requested work schedule change if the employer needs that information to properly
20 evaluate the request under par. (b) or (c).

21 **(3) PREDICTABLE WORK SCHEDULES FOR RETAIL, FOOD SERVICE, AND CLEANING**
22 **EMPLOYEES.** (a) *Advance notice of work schedules required.* 1. On or before the first
23 day of work of a new service employee, an employer shall provide the service
24 employee with a written copy of the service employee's work schedule.

1 2. Except as provided in pars. (b) and (c), if an employer changes a work
2 schedule provided to a service employee under subd. 1. or this subdivision, the
3 employer shall provide the service employee with a written copy of the new work
4 schedule no later than 14 days before the new work schedule begins.

5 3. An employer shall post a copy of a work schedule provided under this
6 paragraph in any of the following ways:

7 a. In one or more conspicuous places where notices to employees are
8 customarily posted.

9 b. On an Internet site accessible by all of the employer's employees.

10 4. If an employer changes a work schedule after it is posted under subd. 3., the
11 employer shall revise the posted work schedule to reflect those changes.

12 (b) *Employer-initiated changes to work schedules without advance notice.* 1.
13 An employer may change, without the advance notice required under par. (a) 2., a
14 work schedule provided to a service employee under par. (a) 1. or 2. as provided in
15 this paragraph. Except as provided under subd. 2., if the employer changes a work
16 schedule provided to a service employee under par. (a) 1. or 2. less than 14 days before
17 the new work schedule begins, the employer shall provide the service employee
18 compensation for the change in an amount equal to the service employee's regular
19 rate of pay for one hour of work in addition to any other compensation earned by the
20 service employee.

21 2. An employer is not required to pay compensation to a service employee under
22 subd. 1. for a change to the service employee's work schedule if any of the following
23 applies to the change:

24 a. The service employee consents to the change.

1 b. The employer requires the service employee to work additional time or an
2 additional work shift because another service employee was scheduled to work that
3 time or work shift and is unexpectedly unavailable to do so.

4 (c) *Employee-initiated changes to work schedules.* An employer may allow a
5 service employee to agree to work in place of another service employee if the service
6 employees mutually agree to the change. The employer is not required to provide
7 compensation under par. (b) 1. to a service employee with respect to a work shift trade
8 under this paragraph.

9 (d) *Compensation for reporting time, on-call time, and split shifts.* 1. Except
10 as provided in subd. 4., if a service employee reports to work and the service
11 employee's employer does not allow the service employee to work all time that the
12 service employee is scheduled to work, the employer shall provide the service
13 employee with the following compensation:

14 a. If the service employee is scheduled to work 4 hours or less, an amount equal
15 to the service employee's regular rate of pay for all time the service employee is
16 scheduled to work but does not work in addition to any other compensation earned
17 by the service employee for time the service employee actually works.

18 b. If the service employee is scheduled to work more than 4 hours and works
19 less than 4 hours, an amount equal to the service employee's regular rate of pay for
20 the difference between 4 hours and the amount of time the service employee actually
21 works in addition to any other compensation earned by the service employee for time
22 the service employee actually works.

23 2. Except as provided in subd. 4., if an employer requires a service employee
24 to contact the employer, or wait to be contacted by the employer, less than 24 hours
25 before a work shift to determine whether the employer will require the service

1 employee to report to work for that work shift, the employer shall provide the service
2 employee compensation in an amount equal to the service employee's regular rate of
3 pay for one hour of work in addition to any other compensation earned by the service
4 employee for time the service employee actually works.

5 3. Except as provided in subd. 4, if an employer requires a service employee to
6 work a split shift, the employer shall provide the service employee compensation in
7 an amount equal to the service employee's regular rate of pay for one hour of work
8 in addition to any other compensation earned by the service employee for time the
9 service employee actually works.

10 4. If a service employee is entitled to more than one type of compensation under
11 subds. 1. to 3. with respect to a particular work shift, the employer shall pay the
12 service employee the compensation required under subd. 1., 2., or 3., whichever is
13 greatest.

14 (e) *Manner of payment of additional compensation.* An employer that is
15 required to provide compensation to a service employee under par. (b) 1. or (d) shall
16 pay that compensation on the service employee's regular pay check or other wage
17 payment. The employer shall identify on the pay check, pay envelope, or paper
18 accompanying the wage payment the amount of and reason for all additional
19 compensation paid.

20 (f) *Exception.* An employer is not required to comply with this subsection
21 during a period in which the employer's regular operations are suspended due to an
22 event outside of the employer's control.

23 (g) *Designating additional covered occupations.* The department may
24 promulgate rules to apply the protections afforded under pars. (a) to (f) to additional
25 occupations. The department may designate an occupation under this paragraph if

1 the department determines that at least 10 percent of the individuals employed in
2 the occupation either typically receive notice of changes to their work schedules less
3 than 14 days before the change takes effect or regularly experience fluctuations in
4 the number of hours the individuals are scheduled to work on a daily, weekly, or
5 monthly basis.

****NOTE: Do you want to put any other limits on DWD's authority to designate
additional occupations for coverage under this paragraph?

6 (4) PROHIBITED ACTS. (a) No employer may interfere with, restrain, or deny the
7 exercise of the right of an employee to request and receive a change in the terms and
8 conditions of employment as provided under sub. (2). No employer may interfere
9 with, restrain, or deny the exercise of the right of a service employee to receive
10 advance notice of work schedules as provided under sub. (3) (a), receive
11 compensation as provided under sub. (3) (b) 1. and (d), or request approval to trade
12 work shifts as provided under sub. (3) (c).

13 (b) No employer may discharge or discriminate against an employee in
14 promotion, in compensation, or in the terms, conditions, or privileges of employment
15 for exercising a right of an employee described under par. (a), opposing a practice
16 prohibited under this section, filing or indicating an intent to file a complaint or
17 otherwise attempting to enforce a right under this section, or testifying, assisting,
18 or participating in any manner in any investigation, action, or proceeding to enforce
19 a right under this section.

20 (5) ENFORCEMENT. (a) *Administrative proceeding.* An employee whose rights
21 are interfered with, restrained, or denied in violation of sub. (4) (a) or who is
22 discharged or discriminated against in violation of sub. (4) (b) may file a complaint
23 with the department, and the department shall process the complaint in the same

1 manner that employment discrimination complaints are processed under s. 111.39.
2 If the department finds that a violation has occurred, the department may order the
3 employer to take action to remedy the violation, including any action authorized
4 under s. 111.39.

5 (b) *Civil action.* 1. The department or an employee whose rights are interfered
6 with, restrained, or denied in violation of sub. (4) (a) or who is discharged or
7 discriminated against in violation of sub. (4) (b) may bring an action in circuit court
8 against an employer on the basis of the violation without regard to exhaustion of any
9 administrative remedy.

10 2. In an action under subd. 1., if the circuit court finds that a violation of sub.
11 (4) (a) or (b) has occurred with respect to an employee, the circuit court shall order
12 the defendant to pay to the employee all of the following:

13 a. Compensatory damages in an amount that the circuit court or jury finds
14 appropriate.

15 b. Unless the employer proves that the employer acted in good faith and had
16 a reasonable basis for believing that the act or omission that constituted the violation
17 was not a violation of this section, an additional amount as liquidated damages equal
18 to 100 percent of the amount of compensatory damages determined under subd. 2.

19 a.

20 c. Notwithstanding s. 814.04 (1), reasonable attorney fees and costs incurred
21 in the action.

22 3. Damages awarded under subd. 2. are in addition to any back pay or other
23 amounts awarded under s. 111.39 or 111.395.

1 **(6) PENALTIES.** In addition to any damages imposed under sub. (5), an employer
2 that willfully violates this section may be required to forfeit not more than \$1,000 for
3 each violation. Each day of continued violation constitutes a separate offense.

4 **(7) NOTICE POSTED.** An employer shall post, in one or more conspicuous places
5 where notices to employees are customarily posted, a notice in a form approved by
6 the department setting forth employees' rights under this section. An employer that
7 violates this subsection shall forfeit not more than \$100 for each violation.

8 **SECTION 2.** 111.322 (2m) (a) of the statutes is amended to read:

9 **111.322 (2m) (a)** The individual files a complaint or attempts to enforce any
10 right under s. 103.02, 103.035, 103.10, 103.11, 103.13, 103.28, 103.32, 103.34,
11 103.455, 104.12, 109.03, 109.07, 109.075, 146.997, or 995.55, or ss. 101.58 to 101.599
12 or 103.64 to 103.82.

13 **SECTION 3.** 111.322 (2m) (b) of the statutes is amended to read:

14 **111.322 (2m) (b)** The individual testifies or assists in any action or proceeding
15 held under or to enforce any right under s. 103.02, 103.035, 103.10, 103.11, 103.13,
16 103.28, 103.32, 103.34, 103.455, 104.12, 109.03, 109.07, 109.075, 146.997, or 995.55,
17 or ss. 101.58 to 101.599 or 103.64 to 103.82.

18 **SECTION 4. Nonstatutory provisions.**

19 **(1) PREDICTABLE WORK SCHEDULES FOR RETAIL, FOOD SERVICE, AND CLEANING**
20 **EMPLOYEES; TRANSITIONAL PROVISIONS.** No later than the effective date of this
21 subsection, an employer, as defined in section 103.035 (1) (e) of the statutes, shall
22 provide each service employee, as defined in section 103.035 (1) (L) of the statutes,
23 with a written copy of the service employee's work schedule, as defined in section
24 103.035 (1) (o) of the statutes. That work schedule is considered a work schedule
25 provided to a service employee under section 103.035 (3) (a) 2. of the statutes for all

1 purposes under section 103.035 of the statutes, including that the employer shall
2 post a copy of the work schedule as provided in section 103.035 (3) (a) 3. of the
3 statutes and, if the employer changes that work schedule, section 103.035 (3) (a) 2.
4 of the statutes applies to that change.

5 **SECTION 5. Initial applicability.**

6 (1) This act first applies to an employee who is covered by a collective
7 bargaining agreement that contains provisions inconsistent with section 103.035 of
8 the statutes on the day on which the collective bargaining agreement expires or is
9 extended, modified, or renewed, whichever occurs first.

10 **SECTION 6. Effective date.**

11 (1) This act takes effect on the first day of the 6th month beginning after
12 publication.

13

(END)

Walker, Dan

From: Stoa, Chris
Sent: Wednesday, December 13, 2017 2:19 PM
To: LRB.Legal
Subject: Draft Review: LRB -4583/1

Please Jacket LRB -4583/1 for the ASSEMBLY.