

# HOUSE BILL No. 5175

December 17, 2015, Introduced by Reps. Wittenberg, Pagan, Greig, Durhal, Hoadley, Sarah Roberts, Plawecki, Moss, Yanez, Chang, Chirkun, Cochran, Byrd, Robinson, Hovey-Wright, Zemke, Darany, Guerra, Talabi and Garrett and referred to the Committee on Commerce and Trade.

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

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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

3           Sec. 2. As used in this act:

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

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

1 another facility.

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

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

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

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

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

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

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

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

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

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

27 (ii) Ongoing care, including responsibility for securing the

1 ongoing care, of an individual with a serious health condition who  
2 is in a family relationship with the individual who is age 65 or  
3 older.

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

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

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

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

1 number may be determined for a calendar year based on the average  
2 number of those employees who performed work for compensation  
3 during the preceding calendar year.

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

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

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

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

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

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

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

26 (ii) Food preparation and serving related occupations,  
27 including supervisors of food preparation and serving workers,

1 cooks and food preparation workers, food and beverage serving  
2 workers, and other food preparation and serving related workers.

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

6 (n) "Retail, food service, or cleaning employee" does not  
7 include any individual employed in a bona fide executive,  
8 administrative, or professional capacity, as defined for purposes  
9 of section 13(a)(1) of the fair labor standards act of 1938, 29 USC  
10 213(a)(1).

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

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

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

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

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

1 (t) "Work schedule change" means any modification to an  
2 employee's work schedule, such as an addition or reduction of  
3 hours, cancellation of a shift, or a change in the date or time of  
4 a work shift, by an employer.

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

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

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

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

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

15 (d) The amount of notification the employee receives of work  
16 schedule assignments.

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

19 (2) If an employee applies to his or her employer to request a  
20 change in the terms and conditions of employment as set forth in  
21 subsection (1), the employer shall engage in a timely, good-faith  
22 interactive process with the employee that includes a discussion of  
23 potential work schedule changes that would meet the employee's  
24 needs. The interactive process shall result in either granting or  
25 denying the request. If the request is denied, the employer shall  
26 consider alternatives to the proposed change that might meet the  
27 employee's needs and shall grant or deny a request for an

1 alternative change. The employer shall provide the employee with a  
2 written statement of the reason for denial of a request.

3 (3) If information provided by the employee making a request  
4 for a change requires clarification, the employer shall explain  
5 what further information is needed and give the employee reasonable  
6 time to produce the information.

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

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

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

1 be paid for the employee's scheduled hours for that day even if  
2 given less than the scheduled hours of work.

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

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

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

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

26 (3) An employer may make work schedule changes, including  
27 offering additional hours of work to a retail, food service, or



1 cleaning employee beyond those previously scheduled, but the  
2 employer shall provide 1 extra hour of pay at the employee's  
3 regular rate for each work shift that is changed with less than 24  
4 hours' notice. The requirement for the extra hour of pay does not  
5 apply if the need to schedule the employee is due to the unforeseen  
6 unavailability of an employee previously scheduled to work that  
7 work shift or as provided in subsection (6).

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

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

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

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

27 Sec. 8. (1) An employer shall not interfere with, restrain, or

1 deny the exercise of or the attempt to exercise any right of any  
2 employee as set forth in this act.

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

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

15 (a) Filed any charge or instituted or caused to be instituted  
16 any proceeding under or related to this act.

17 (b) Given, or is about to give, any information in connection  
18 with any inquiry or proceeding relating to any right provided under  
19 this act.

20 (c) Testified, or is about to testify, in any inquiry or  
21 proceeding relating to any right provided under this act.

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

25 (2) An action for damages or equitable relief under subsection  
26 (1) may be brought against an employer in a court of competent  
27 jurisdiction by 1 or more employees on their own behalf or on

1 behalf of themselves and other similarly situated employees.

2 (3) In an action under this section, the court shall, in  
3 addition to damages and equitable relief, award reasonable attorney  
4 fees, reasonable expert witness fees, and other costs of the action  
5 to a prevailing plaintiff.

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

13 Sec. 11. (1) Except as provided in subsection (2), an action  
14 shall not be brought under this act more than 2 years after the  
15 date of the last alleged violation.

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

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

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

1           Sec. 13. This act provides minimum requirements and does not  
2 preempt, limit, or otherwise affect the applicability of any other  
3 law, regulation, requirement, policy, or standard that provides for  
4 greater rights for employees than are required in this act.

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

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