

# Oregon Requires Predictive Scheduling for Certain Service Industry Workers

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Similar to San Francisco, Seattle, New York City, and Emeryville, California, the State of Oregon has enacted a predictive scheduling law, S.B. 828, effective July 1, 2018, which regulates employer scheduling practices in the food service, hospitality, and retail industries. Similar legislation is also currently pending in Chicago. This **article** takes a look at the new law.

## The New Law

S.B. 828 covers all nonexempt employees in the food service, hospitality, and retail industries, including hotels, motels, casinos, and retail trade companies operating in Oregon that have at least 500 employees worldwide, as well as chains or franchises to the extent that an individual or entity shares ownership in more than one establishment and has the requisite 500 employees worldwide. Separate companies that form an integrated business are considered a single employer for the purposes of this law where one entity controls the operation of the other entity.

Consultants, leased workers, and certain salaried employees exempt from the Oregon minimum wage law under Or. Rev. Stat. § 653.020(3) are not covered by this law. A salaried employee is exempt from the Oregon minimum wage law under Or. Rev. Stat. § 653.020(3) if the employee is engaged in administrative, executive, or professional work and (1) performs predominantly intellectual, managerial, or creative tasks and (2) exercises discretion and independent judgment, including, for example, most store managers.

## ***Good-Faith Estimate of Work Schedule***

At the time of hire, employers must provide a written, good-faith estimate of the employee's work schedule, which must include

- the median number of hours the employee can expect to work in an average one-month period,

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- a description of the “voluntary standby list” (discussed below), and
  - whether an employee who is not on the voluntary standby list can expect to work on-call shifts. If so, the estimate must include an objective standard for when the employee may be expected to be available to work an on-call shift.

### ***Voluntary Standby List***

Employers are permitted to have a “voluntary standby list” of employees they can ask to work additional hours because of unanticipated customer needs or unexpected employee absences. Inclusion in this list and election to take the additional hours offered must remain completely voluntary, and must be in writing and at the discretion of the employee.

Any voluntary standby list must notify employees

- that the list is voluntary and instruct how employees can be removed from the list without consequence or retaliation;
- how employees on the list will be notified of available work and how employees may accept additional hours;
- that employees can accept or reject the additional hours without any repercussion, i.e., no retaliation; and
- that an employee is not eligible for additional compensation otherwise provided for under this law (discussed below) for changes to the employee’s schedule when s/he accepts additional hours offered.

Notification regarding the voluntary standby list can be made orally, in person, or by phone, or in writing by letter, email, text message, or other means of reasonable communication.

### ***Advance Notice of Work Schedule and Ability to Refuse Schedule Change***

Employers must give covered employees a written work schedule at least seven calendar days before the first day of the schedule. The written work schedule must include all work shifts, including on-call shifts, for the work period. The advance notice period increases to 14 days on July 1, 2020.

If an employer changes the work schedule, it must notify affected employees in a timely manner. Employers cannot require employees to work any shift that was not included in the employees’ written work schedules. Employers do not need to provide advance notification of employee-initiated schedule changes.

Employers must post the written work schedules in a conspicuous and accessible location in English and in the language(s) the employers typically use to communicate with their employees.

### ***Right to Schedule Input***

At any time, an employee may identify limitations or changes in the employee’s ability to work and

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may request not to be scheduled for certain work shifts or at certain locations. The employer, however, need not grant the request under this law.

### ***Compensation for Changes to Work Schedule***

Employers must pay additional compensation for changes to employees' work shifts where proper advance notice was not provided.

If a change to an employee's shift does not result in a loss of pay, the employee is entitled to one hour of pay in addition to wages earned if

- the employer adds more than 30 minutes of work to the employee's work shift,
- the employer changes the date or start or end time of the shift but no hours are lost, or
- the employee is scheduled for an additional shift or on-call shift.

If a change to an employee's shift results in a loss of hours for the employee, the employee is entitled to receive half the employee's regular rate for each lost hour if

- the employer subtracted the hours from the employee's shift,
- the employer changed the date or start or end time of the shift resulting in lost hours,
- the employer cancels the employee's shift, or
- the employee is not required to work when scheduled for an on-call shift.

Employers do not owe compensation for

- changes of 30 minutes or less to the start or end time of a work shift,
- employees voluntarily swapping shifts,
- employee-initiated changes to the schedule if documented in writing,
- subtracted hours from a shift for documented disciplinary reasons,
- employee-accepted standby hours, or
- schedule changes and/or reduced hours due to events that are threats to employees, utility failure, natural disaster, or cancellation of a ticketed event.

### ***Ten-Hour Rest Period Between Shifts***

All employees are entitled to a 10-hour rest period between shifts, unless the employee agrees to work. If an employee is required to work within the 10-hour rest period, the employee is entitled to 1½

times the employee's regular rate of pay for every hour of such work, unless the employee is engaged in roadside assistance services.

### ***No Discrimination or Retaliation***

Employers are prohibited from discriminating or retaliating against any employee who exercises his or her rights under this law.

### **Violations and Litigation Risks**

As of January 1, 2019, employees may also pursue private, civil causes of action for discrimination and/or retaliation claims under this law. For all other violations of this law, employees may file complaints with the Oregon Bureau of Labor and Industries (BOLI).

### **Practical Implications**

Retail, food service, and hospitality employers doing business in Oregon have less than one year to comply with S.B. 828 before it goes into effect on July 1, 2018. In the meantime, retailers should develop policies and procedures to both manage and document their compliance with the law's scheduling and notice requirements. Retailers should also train managers on how to properly schedule employees for work.

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