SENATE, No. 378

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
Senator LORETTA WEINBERG
District 37 (Bergen)

SYNOPSIS

"New Jersey Schedules That Work Act."

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning fair workweek employment standards, amending various parts of the statutory law and supplementing Title 34 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. (New section) As used in sections 1 through 13 of P.L. , c. (C.) (pending before the Legislature as this bill):

"At the time of hire" means after offer and acceptance of employment and before or upon the commencement of employment. For an employee jointly employed by a covered employer and a labor contractor, as defined in section 9 of P.L.2019, c.212 (C.34:11-58.2), the time of hire shall be the first day of the employee's placement with the covered employer, provided that the employee has not performed work for the covered employer during the previous thirty days.

"Bona fide business reason" means

(1) An employer action required to comply with a law, statute, ordinance, code, governmental executive order, or rule;

(2) A significant and identifiable burden of additional costs to the employer;

(3) A significant insufficiency of work during the periods the employee proposes to work; and

(4) A significant and identifiable detrimental effect on the employer's ability to meet organizational demands, including:

(a) A significant inability of the employer, despite best efforts, to reorganize work among existing employees;

(b) A significant detrimental effect on business performance;

(c) A significant inability to meet customer needs or demands; or

(d) A significant insufficiency of work during the periods the employee proposes to work.

"Chain" means a set of establishments that do business under the same trade name or brand or that are characterized by standardized options for decor, marketing, packaging, products, and services, regardless of the type of ownership of each individual establishment.

"Covered employer" means an employer that employs workers at one or more covered establishments and employs 250 or more employees worldwide regardless of where those employees perform work, including but not limited to chain establishments or franchises associated with a chain of establishments, or network of franchises, that employ 250 or more employees in aggregate. In determining the number of employees, all employees performing

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined <u>thus</u> is new matter.

work for compensation on a full-time, part-time, or temporary basis shall be counted, including workers placed at the covered employer through a labor contractor, provided that where the number of employees who work for an employer for compensation fluctuates, business size may be determined for the current calendar year based upon the average number of employees who worked for compensation per week during the preceding calendar year, and provided further that in determining the number of employees performing work for an employer that is a chain business, the total number of employees in that group of establishments shall be counted.

"Covered establishment" means a mercantile establishment, hospitality establishment, restaurant establishment, warehouse establishment, or workplace as defined in this section.

"Department" means the New Jersey Department of Labor and Workforce Development.

"Employee" means any person employed or permitted to work at or for a covered employer at a covered establishment, who is required under State or federal law to be paid at an overtime rate for hours in excess of a maximum number per workweek; including but not limited to full-time employees, part-time employees, and seasonal and temporary workers, in accordance with section 2 of P.L.1966, c.113 (C.34:11-56a1). An alleged employer bears the burden of proof that the individual is an independent contractor rather than an employee.

"Employer" means any individual, partnership, association, corporation or business trust or any person or group of persons, or a successor thereof, that employs another person, and includes any such entity or person acting directly or indirectly in the interest of the employer in relation to the employee, in accordance with section 2 of P.L.1966, c.113 (C.34:11-56a1). More than one entity may be the employer if employment by one employer is not completely disassociated from employment by the other employer. Any employee placed with a covered employer by a labor contractor is presumptively jointly employed by the covered employer and the labor contractor.

"Franchise," "franchisee," and "franchisor" have the same meanings as in section 3 of P.L.1971, c.356 (C.56:10-3).

"Full-service restaurant" means a restaurant primarily engaged in providing food services to patrons who order and are served while seated and pay after eating.

"Hospitality establishment" means an establishment kept, used, maintained, advertised as, or held out to be a place where sleeping accommodations are supplied for pay to transient or permanent guests, in which 15 or more rooms are available for rental furnished or unfurnished; except this definition shall not include summer camps and country clubs that are not part of a hotel or motel establishment.

"Interactive process" means a timely, good faith process that includes a discussion between the employer and the employee for the purpose of arriving at a mutually beneficial arrangement of a work schedule that meets the needs of the employee and the employer. The discussion may include the proposal of alternatives by the employer and the employee.

"On-call" means any time that an employer requires an employee to be available to work, and to contact the employer or the employer's designee or wait to be contacted by the employer or its designee, to determine whether the employee shall report to work at that time.

"Predictability pay" means a payment calculated on an hourly basis at the employee's regular rate of pay as that term is defined in subsection (e) of section 2 of P.L.1966, c.113 (C.34:11-56a1), and paid to an employee as compensation for changes made by the employer to an employee's work schedule, in addition to any wages earned for work performed by that employee.

"Mercantile establishment" means a place of business selling or offering for sale any type of merchandise, wares, goods, articles, or commodities, or distributing such merchandise, wares, goods, articles, or commodities.

"Restaurant establishment" means any eating or drinking place which prepares and offers food or beverages for human consumption either in any of its premises or by such services as catering, banquets, box lunch or curb service, provided that full-service restaurants shall have 30 or more locations worldwide, including but not limited to chain establishments or franchises where the franchisor and franchisees own or operate 30 or more such establishments in the aggregate worldwide.

"Shift" means the consecutive hours an employer requires an employee to work or to be on-call to work, provided that breaks totaling two hours or less shall not be considered an interruption of consecutive hours,

"Successor" means any person to whom an employer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys in bulk and not in the ordinary course of the employer's business, a major part of the property, whether real or personal, tangible or intangible, of the employer's business. For purposes of this definition, "person" means an individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, corporation, business trust, partnership, limited liability partnership, company, joint stock, company, limited liability company, association, joint venture, or any other legal or commercial entity. A rebuttable presumption that an employer has established a successor entity shall arise if the two share at least two of the following capacities or characteristics:

(1) perform similar work within the same geographical area;

(2) occupy the same premises;

(3) have the same telephone or fax number;

(4) have the same email address or Internet website;

(5) employ substantially the same work force, administrative employees, or both;

(6) utilize the same tools, facilities, or equipment;

(7) employ or engage the services of any person or persons involved in the direction or control of the other; or

(8) list substantially the same work experience.

"Warehouse establishment" means any business that engages primarily in the storage of goods, wares, or commodities for hire or compensation, and, in connection with this operation, may include the loading, packing, sorting, stacking, wrapping, distribution, or delivery of those goods.

"Work schedule" means all of an employee's regular and on-call shifts, including specific start and end times for each shift, during a consecutive seven-day period.

"Work schedule change" means any employer-initiated modification to the employee's work schedule, including: the addition or reduction of hours; cancellation of a work shift or portion of a work shift; a change in the date, time, or location of a work shift; or scheduling the employee for an on-call work shift for which the employee does not need to report to work.

"Written" or "writing" means a printed or printable communication in physical or electronic format including a communication transmitted through email, text message, or a computer system, or is otherwise sent and maintained electronically.

2. (New section) a. Upon hiring an employee, a covered employer shall obtain a written statement of the employee's desired number of weekly work hours and the days and times the employee is available to work. The employer shall notify the employee that this written statement may be modified in writing by the employee at any time during employment.

b. At the time of hire, an employer shall provide each employee with a written estimate of the employee's work schedule. The employer shall revise the estimate when there is a significant change to the employee's work schedule due to changes in the employee's availability or to the employer's business needs. The estimate is not a contractual offer binding the employer, but an estimate made without a basis in good faith is a violation of this section. The estimate shall contain:

(1) The average number of work hours the employee can expect to work each week;

(2) The minimum and maximum numbers of work hours the employee can expect to work each week;

(3) The minimum length of shifts that the employee can expect to work; and

(4) A number of days, the amount of time, and the number of shifts that the employee can expect to work, and days of the week and times or shifts on which the employee will not be scheduled to work.

c. An employer does not violate the requirements of this section when an employee's average weekly work hours significantly exceed the number provided in the good faith estimate if the employer is making every effort to schedule the employee for the employee's desired number of weekly work hours.

d. At the time of hire and during employment, the employee has the right to make work schedule requests. The requests protected under this section include but are not limited to:

(1) Requests not to be scheduled for work shifts during certain days or times or at certain locations;

(2) Requests for certain hours, days, or locations of work;

(3) Requests for more or fewer work hours; and

(4) Requests to be scheduled consistently for a specified or minimum number of weekly work hours.

The employer shall engage in an interactive process to discuss such employee requests, but may grant or deny the request for any bona fide business reason that is not unlawful.

e. The employer shall not retaliate against an employee, or take any other adverse action as defined in section 1 of P.L.1965, c.173 (C.34:11-4.1) for making requests subject to subsection a. or d. of this section, nor make opportunities for promotion, full-time employment, or training contingent upon an employee's waiver of the right to make work schedule requests.

3. (New section) a. Not later than the time of commencement of employment, a covered employer shall provide the employee with a written work schedule that runs through the last date of the currently posted schedule. Thereafter, an employer shall provide written notice of work hours pursuant to subsection b. of this section no later than 14 days prior to the first day of any new schedule. Nothing in this section shall be construed to prohibit an employer from providing greater advance notice of employee's work schedules or changes in schedules than that required by this section.

b. Written notice of the work schedule shall be provided by posting the work schedule in a conspicuous place at the workplace that is readily accessible and visible to all employees and by transmitting the posted work schedule to each employee. Such transmission may be done electronically if electronic means are regularly used to communicate scheduling information to employees. The posted work schedule shall identify all employees currently employed at that worksite, whether or not they are scheduled to work any hours in the current schedule.

c. A covered employer shall provide written notice of any work schedule change as promptly as possible and prior to the change taking effect. The covered employer shall revise the written work schedule to reflect any work schedule changes within 24 hours of making the change.

d. An employee may decline to work any hours not included in the posted work schedule. If the employee voluntarily consents to work such hours, such consent shall be recorded in writing.

4. (New section) a. For each work schedule change that occurs after the advance notice required by subsection b. of section 3 of P.L. , c. (C.) (pending before the Legislature as this bill) a covered employer shall pay an employee predictability pay at the following rates:

(1) One hour of predictability pay for each instance when the covered employer adds hours of work or changes the date, time, or location of a work shift without loss of hours.

(2) One-half times the employee's regular rate of hourly pay for any scheduled hours the employee does not work when the covered employer cancels or subtracts hours from a regular or on-call shift, provided that the employee shall be paid not less than four hours in combined wages and predictability pay on any day for which an on-call or regular shift was scheduled.

b. A covered employer is not required to pay predictability pay under this section or to obtain written consent pursuant to subsection d. of section 3 of P.L. , c. (C.) (pending before the Legislature as this bill) when:

(1) An employee requests a shift change in writing, including but not limited to the use of sick leave, vacation leave, or other leave policies offered by the employer;

(2) A schedule change is the result of a mutually agreed upon shift trade or coverage arrangement between employees, subject to any existing employer policy regarding required conditions for employees to exchange shifts.

5. (New section) a. An employee may decline, without penalty, any work hours that are scheduled or otherwise occur:

(1) less than 12 hours after the end of the employee's shift on the previous day; or

(2) during the 12 hours following the end of a shift that spanned two days.

An employee may consent to work such shifts; however, consent shall be provided in writing, either for each such shift or for multiple shifts, and may be revoked by the employee in writing at any time during employment.

b. The employer shall compensate the employee for each instance that the employee works a shift described in this section at

one and one-half times the employee's scheduled rate of pay for the hours worked that are less than twelve hours apart.

6. (New section) a. Before hiring new employees from an external applicant pool or contractors, including hiring through the use of a labor contractor, an employer shall make every effort to schedule existing employees for the desired number of weekly work hours identified in the written statements provided pursuant to subsection a. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill), provided that the employer may hire a new employee if existing employees lack, and cannot obtain with reasonable training, the qualifications necessary to perform the work. This section shall not be construed to require any employer to schedule employees to work hours required to be paid at an overtime rate under State or federal law.

b. When an employer fails to offer existing employees opportunities to work their desired number of weekly work hours before hiring a new employee, existing employees shall be compensated at the employee's regular hourly rate for hours worked by a newly hired employee that occurred within the existing employee's written availability.

7. (New section) a. With respect to employees who are employed in positions that require substantially equal skill, effort, responsibility, and duties, and that are performed under similar working conditions, an employer shall not discriminate against any employee on the basis of hours worked. Discrimination includes, but is not limited to, providing similarly situated employees with different:

(1) hourly wages,

(2) eligibility to accrue employer-provided paid and unpaid time off and other benefits, or

(3) promotion opportunities or other conditions of employment, regardless of the number of hours that an employee is scheduled to work or expected duration of employment.

b. This section shall not be construed to prohibit differences in hourly wages or other conditions of employment for reasons other than the number of hours the employee is scheduled to work or expected duration of employment, including on the basis of date of hire, a merit system, or a system which measures earnings by quantity per hour or quality of production.

8. (New section) Each covered employer shall post and keep posted, on the premises of the employer in conspicuous places where notices to employees and applicants for employment are customarily posted, a notice, to be prepared or approved by the department, setting forth the rights and privileges provided under P.L. , c. (C.) (pending before the Legislature as this bill),

stating that retaliation against employees for exercising these rights is prohibited, and providing such other information as the department may require. If the employer has an employee handbook, the notice shall also be included in the employee handbook.

9. (New section) a. Covered employers shall keep records necessary to demonstrate compliance with P.L. , c. (C.) (pending before the Legislature as this bill), including but not limited to good faith estimates of work schedules, employees' desired work hours, written work schedules and any modifications thereto, and written consent for work shifts as required by P.L. , c. (C.) (pending before the Legislature as this bill). Employers shall retain such records for a period of six years, and shall allow the department access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of P.L. , c. (C.) (pending before the Legislature as this bill). With respect to any issue regarding a covered employer's compliance with P.L. , c. (C.) (pending before the Legislature as this bill), if the employer has not maintained or retained adequate records documenting compliance, or does not allow the department reasonable access to the records within 30 days of the department's request, it shall be presumed that the employer has violated P.L. , c. (C.) (pending before the Legislature as this bill), absent clear and convincing evidence otherwise. The penalties provided by the "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.) for violations of the requirement of that act regarding the maintaining and disclosure of records shall apply to violations of the requirements of this section.

b. Upon request by any employee, and in accordance with the rules of the department, a covered employer shall provide such employee with work schedules in writing for any previous week worked for the past two years, including the originally posted and modified versions of work schedules.

c. Employers shall record employee consent and employee requests pursuant to subsection a. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill), subsection d. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill), subsection d. of section 3 of P.L. , c. (C.) (pending before the Legislature as this bill), and subsection a. of section 5 of P.L. , c. (C.) (pending before the Legislature as this bill) and may use as the record any printed or printable communication in physical or electronic format, including a communication that is transmitted through email, text message, or a computer system, or is otherwise sent and maintained electronically.

d. Any compensation provided to an employee pursuant to sections 4 or 5 of P.L. ,c. (C.) (pending before the Legislature as this bill) shall be included in the employee's regular paycheck. The employer shall, in the corresponding written wage statement or pay stub, identify separately the total number of hours of additional pay included in the paycheck pursuant to this subsection for the pay period involved and whether the additional pay was due to the requirements of paragraph (1) of subsection a of section 4 of P.L. , c. (C.) (pending before the Legislature as this bill), paragraph (2) of subsection a. of section 4 of P.L. , c. (C.) (pending before the Legislature as this bill), or subsection b. of section 5 of P.L. , c. (C.) (pending before the Legislature as this bill).

10. (New section) a. Except as provided in subsection b. of this section, employers shall pay all employees minimum retention pay not less than an amount 18 times the minimum wage in effect pursuant to subsection a of section 5 of P.L.1966, c.113 (C.34:11-56a4) during any 14-day period. Wages paid for hours worked or paid leave, including paid benefit time during the 14 day pay period, may be used to meet the employer’s obligation under this section.

b. An employee who, with the employer’s consent, does not work or takes unpaid leave during a particular week may waive the requirement of subsection a. of this section, provided that the employee designates in writing the specific week or weeks for which retention pay is waived.

11. (New section) a. For violations of P.L. , c. (C.) (pending before the Legislature as this bill), the department may grant, in addition, or as an alternative, to any other remedies provided by law, the following relief to employees or former employees:

(1) All compensatory damages and other relief required to make the employee or former employee whole;

(2) An order directing compliance with the notice and posting of rights and recordkeeping requirements set forth in sections 8 and 9 of P.L. , c. (C.) (pending before the Legislature as this bill); and

(3) For each violation of the following sections, an order directing compliance with the appropriate section, and a penalty, as specified:

(a) Section 2 of P.L. , c. (C.) (pending before the Legislature as this bill): $200;

(b) Section 3 of P.L. , c. (C.) (pending before the Legislature as this bill): $200;

(c) Section 4 of P.L. , c. (C.) (pending before the Legislature as this bill): payment of schedule change premiums

withheld in violation of section 4 of P.L. , c. (C.) (pending before the Legislature as this bill) and $300;

(d) Section 5 of P.L. , c. (C.) (pending before the Legislature as this bill): payment as required under section 5 of P.L. , c. (C.) (pending before the Legislature as this bill), and $500;

(e) Section 6 of P.L. , c. (C.) (pending before the Legislature as this bill): the greater of $500 or such employee's actual damages;

(f) Section 7 of P.L. , c. (C.) (pending before the Legislature as this bill): the greater of $500 or such employee's actual damages; and

(g) Section 10 of P.L. , c. (C.) (pending before the Legislature as this bill): payment of retention pay withheld in violation of section 9 of P.L. , c. (C.) (pending before the Legislature as this bill) and $300.

The relief authorized by this section shall be imposed on a per employee and per instance basis for each violation.

b. The department, the State Attorney General, any person aggrieved by a violation of P.L. , c. (C.) (pending before the Legislature as this bill), or any entity a member of which is aggrieved by a violation this act may bring a civil action in a court of competent jurisdiction against an employer violating P.L. , c. (C.) (pending before the Legislature as this bill).

c. For violations of P.L. , c. (C.) (pending before the Legislature as this bill), the penalties specified in subsection a. of this section may be recovered through a civil action brought on behalf of the department by any employee allegedly harmed by a violation of P.L. , c. (C.) (pending before the Legislature as this bill), whether or not that person has received full or partial relief from the harm, or by a representative nonprofit or labor organization designated by said employee pursuant to regulations established by the department, pursuant to the following procedures:

(1) The employee or representative organization shall give written notice to the department of the specific provisions of P.L. , c. (C.) (pending before the Legislature as this bill) alleged to have been violated, including the facts and theories to support the alleged violation, and shall submit a fee of $75 which may be waived subject to rules issued by the department.

(2) If the department intends to investigate the alleged violation, it shall notify the employee or representative organization of its decision within 65 calendar days of the postmark date of the notice. Within 60 calendar days of that decision, the department may investigate the alleged violation and take any enforcement action authorized by law. If the department, during the course of its investigation, determines that additional time is necessary to complete the investigation, it may extend the time by not more than

60 additional calendar days and shall notify the employee or representative organization of the extension. If the department determines that no enforcement action will be taken, it shall notify the employee or representative organization of that decision within five business days.

(3) The employee or representative organization may commence a civil action under this subsection if the department determines that no enforcement action will be taken, or if no enforcement action is taken by the department within the time limits prescribed by paragraph (2) of subsection c. of section 11 of this act, P.L. , c. (C.) (pending before the Legislature as this bill); or if the department fails to provide timely notifications.

(4) No action may be brought under this section alleging the violation of any section of P.L. , c. (C.) (pending before the Legislature as this bill) for which the department, on the same facts and theories, initiates an enforcement action, or for minimal violations of section 9 of this act, P.L. , c. (C.) (pending before the Legislature as this bill). The department may intervene in an action brought under P.L. , c. (C.) (pending before the Legislature as this bill) and proceed with any and all claims in the action as of right within thirty days after the filing of the action, or for good cause, as determined by the court, after the expiration of the thirty-day period after the filing of the action.

(5) Civil penalties recovered pursuant to this subsection shall be distributed as follows: 70 percent to the department for enforcement of this act, with 25 percent of that amount reserved for grants to community organizations for outreach and education about employee rights under P.L. , c. (C.) (pending before the Legislature as this bill), pursuant to regulations adopted by the department; and 30 percent to the employees or representative organization to be distributed to the employees affected by the violation, including a service award that reflects the burdens and risks assumed by the employee or representative organization in prosecuting the action.

(6) No employer or his or her agent or any other person shall retaliate in any manner, or threaten to retaliate, against an employee because the employee has, or is believed to have, participated in or cooperated with an action under this section. Any person so retaliated against may bring an action under P.L.1965, c.173 (C.34:11-4.1). Protections of this section shall apply to any person who mistakenly but in good faith alleges violations of P.L. , c. (C.) (pending before the Legislature as this bill).

(7) An action under this section may allege multiple violations that have affected different employees aggrieved by the same defendant and may seek injunctive and declaratory relief that the department would be entitled to seek. No action brought pursuant to P.L. , c. (C.) (pending before the Legislature as this bill) shall be required to meet the requirements of Rule 4:32-1 of the

New Jersey Rules of Civil Procedure. Any person that prevails in an action under this section, whether or not the department has intervened in that action, shall be entitled to an award of reasonable attorney's fees and costs. The right to bring an action under this section shall not be impaired by any private contract.

d. The department, for the purpose of supporting the enforcement of P.L.1965, c.173 (C.34:11-4.1 et seq.), may contract with community-based, labor, educational, and legal services organizations to disseminate information to workers concerning the protections afforded by P.L. , c. (C.) (pending before the Legislature as this bill) and communicate with the department regarding alleged violations of P.L. , c. (C.) (pending before the Legislature as this bill).

12 New section) The provisions of P.L. , c. (C.) (pending before the Legislature as this bill) do not apply to any employee covered by a valid collective bargaining agreement, including an agreement that is open for negotiation, if:

a. Those provisions are expressly waived in that collective bargaining agreement; and

b. The agreement addresses employee scheduling.

13. (New section) The commissioner shall adopt rules and regulations pursuant to the "Administrative Procedure Act," 1968, c.40 (C.52:14B-1 et seq.) to effectuate the purposes of P.L. , c. (C.) (pending before the Legislature as this bill).

14. Section 1 of P.L.2009, c.194 (C.34:1A-1.11) is amended to read as follows:

1. As used in this act:

"Agency" means any agency, department, board or commission of this State, or of any political subdivision of this State, that issues a license for purposes of operating a business in this State.

"Commissioner" means the Commissioner of Labor and Workforce Development.

"License" means any agency permit, certificate, approval, registration, charter or similar form of authorization that is required by law and that is issued by any agency for the purposes of operating a business in this State, and includes, but is not limited to:

(1) A certificate of incorporation pursuant to the "New Jersey Business Corporation Act," N.J.S.14A:1-1 et seq.;

(2) A certificate of authority pursuant to N.J.S.14A:13-1 et seq.;

(3) A statement of qualification or a statement of foreign qualification pursuant to the "Uniform Partnership Act (1996)," P.L.2000, c.161 (C.42:1A-1 et al.);

(4) A certificate of limited partnership or a certificate of authority pursuant to the "Uniform Limited Partnership Law (1976)," P.L.1983, c.489 (C.42:2A-1 et seq.);

(5) A certificate of formation or certified registration pursuant to the "New Jersey Limited Liability Company Act," P.L.1993, c.210 (C.42:2B-1 et seq.); and

(6) Any license, certificate, permit or registration pursuant to R.S.48:16-1 et seq., R.S.48:16-13 et seq.; the "New Jersey Alcoholic Beverage Control Act," R.S.33:1-1 et seq.; section 4 of P.L.2001, c.260 (C.34:8-70); P.L.1971, c.192 (C.34:8A-7 et seq.); section 12 of P.L.1975, c.217 (C.52:27D-130); section 14 of P.L.1981, c.1 (C.56:8-1.1); or "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.).

"State wage, benefit and tax laws" means:

(1) P.L.1965, c.173 (C.34:11-4.1 et seq.);

(2) The "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.);

(3) The "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.);

(4) The workers' compensation law, R.S.34:15-1 et seq.;

(5) The "unemployment compensation law," R.S.43:21-1 et seq.;

(6) The "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.);

(7) P.L.2008, c.17 (C.43:21-39.1 et al.); **[**and**]**

(8) The "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.; and

(9) P.L. , c. (C.) (pending before the Legislature as this bill).

(cf: P.L.2009, c.194, s.1)

15. Section 1 of P.L.1965, c.173 (C.34:11–4.1) is amended to read as follows:

1. a. “Employer” means any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, employing any person in this State. For the purposes of this act the officers of a corporation and any agents having the management of such corporation shall be deemed to be the employers of the employees of the corporation.

b. “Employee” means any person suffered or permitted to work by an employer, except that independent contractors and subcontractors shall not be considered employees.

c. “Wages” means the direct monetary compensation for labor or services rendered by an employee, where the amount is determined on a time, task, piece, or commission basis excluding any form of supplementary incentives and bonuses which are calculated independently of regular wages and paid in addition thereto.

d. “Commissioner” means the Commissioner of Labor and Workforce Development.

e. “Adverse action” includes threatening, intimidating, disciplining, discharging, demoting, suspending, or harassing an employee; assigning an employee to a lesser position in terms of job classification, job security, or other condition of employment; reducing the hours or pay of an employee or denying the employee additional hours; informing another employer that an employee has engaged in activities protected by P.L. , c. (C.) (pending before the Legislature as this bill), and discriminating against the employee, including actions or threats related to perceived immigration status or work authorization.

(cf: P.L.1991, c.205, s.1)

16. Section 10 of P.L.1965, c.173 (C.34:11–4.10) is amended to read as follows:

10. a. Any employer who knowingly and willfully fails to pay the full amount of wages to an employee agreed to or required by, or in the manner required by, the provisions of article 1 of chapter 11 of Title 34 of the Revised Statutes and all acts supplementing that article (R.S.34:11–2 et al.), or who knowingly violates any other provision of P.L.1965, c.173 (C.34:11–4.1 et seq.), or who knowingly violates any provision of P.L. , c. (C.) (pending before the Legislature as this bill), or who takes a retaliatory or adverse action, as defined in P.L. 1965, c. 173 (C.34:11-4.1), against an employee by discharging or in any other manner discriminating against the employee because the employee has made a complaint to that employee's employer, to the commissioner, or to that employee's authorized representative, that the employer has not paid the employee the full amount of wages agreed upon or required by, and in the manner required by, the provisions of article 1 of chapter 11 of Title 34 of the Revised Statutes and all acts supplementing that article (R.S.34:11–2 et al.), or has violated any provision of P.L. , c. (C.) (pending before the Legislature as this bill), or because the employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to that article or those acts, or because that employee has testified or is about to testify in any proceeding under or relating to that article or those acts, or because the employee has informed any employee of the employer about rights under State laws regarding wages and hours worked shall be guilty of a disorderly persons offense and, upon conviction for a first violation, shall be punished by a fine of not less than $500 nor more than $1,000 or by imprisonment for not less than 10 nor more than 90 days or by both the fine and imprisonment and, upon conviction for a second or subsequent violation, be punished by a fine of not less than $1,000 nor more than $2,000 or by imprisonment for not less than 10 nor more than 100 days or by both the fine and imprisonment. Each week, in any day during of which any violation of this act article 1 of chapter 11 of Title 34 of the Revised Statutes

and all acts supplementing that article (R.S.34:11–2 et al.) continues shall constitute a separate and distinct offense. In the case of a discharge or other discriminatory action against the employee which is in violation of this subsection, the employer shall also be required to offer reinstatement in employment to the discharged employee and to correct the discriminatory action, and also to pay to the employee, in full, all wages lost as a result of that discharge or discriminatory action, plus liquidated damages equal to not more than 200 percent of the wages due, under penalty of contempt proceedings. Taking an adverse action, as defined in section 1 of P.L.1965, c.173 (C.34:11-4.1), against an employee within ninety days of the employee filing a complaint with the commissioner or a claim or action being brought by or on behalf of the employee in a court of competent jurisdiction for a violation of article 1 of chapter 11 of Title 34 of the Revised Statutes, all acts supplementing that article (R.S.34:11–2 et al.), and any provision of P.L. , c. (C.) (pending before the Legislature as this bill), shall be considered presumptive evidence that the employer's action was knowingly taken in retaliation against the employee. In the case of seasonal employment that ended before the close of the 90 calendar day period, the presumption also applies if the employer fails to rehire a former employee at the next opportunity for work in the same position. An employee complaint or other communication need not make explicit reference to any section or provision of any State law regarding wages and hours worked to trigger the protections of this section. The protections of this section shall apply to any person who alleges violations of this act mistakenly but in good faith.

b. As an alternative to or in addition to any other sanctions provided by law for violations of P.L.1965, c.173 (C.34:11-4.1 et seq.), when the Commissioner of Labor and Workforce Development finds that an employer has violated that act, or taken any retaliatory action against the employee in violation of subsection a. of this section, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of $250 for a first violation and up to a maximum of $500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). When determining the amount of the penalty imposed because of a violation, the commissioner shall consider factors which include the history of previous violations by the employer, the seriousness of the violation, the good faith of the employer and the size of the employer's business. No administrative penalty shall be levied pursuant to this section unless the Commissioner of Labor and Workforce Development provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or his designee within 15

days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Any sum collected as a fine or penalty pursuant to this section shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor and Workforce Development.

c. If any employer fails to pay the full amount of wages to an employee agreed to or required by, or in the manner required by, the provisions of article 1 of chapter 11 of Title 34 of the Revised Statutes and all acts supplementing that article (R.S.34:11–2 et al.), or knowingly violates any provision of P.L. , c. (C.) (pending before the Legislature as this bill), the employee may recover in a civil action the full amount of any wages due, or any wages lost because of any retaliatory action taken in violation of subsection a. of this section, plus an amount of liquidated damages equal to not more than 200 percent of the wages lost or of the wages due, together with costs and reasonable attorney's fees as are allowed by the court, except that if there is an agreement of the employee to accept payment of the unpaid wages supervised by the commissioner pursuant to section 9 of P.L.1965, c. 173 (C.34:11–4.9) or R.S.34:11– 58, the liquidated damages shall be equal to not more than 200 percent of wages that were due prior to the supervised payment. The payment of liquidated damages shall not be required for a first violation by an employer if the employer shows to the satisfaction of the court that the act or omission constituting the violation was an inadvertent error made in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation, and the employer acknowledges that the employer violated the law and pays the amount owed within 30 days of notice of the violation. In a case of retaliation against an employee in violation of the provisions of subsection a. of this section, the employer shall also be required to offer reinstatement in employment to the discharged employee and take other actions as needed to correct the retaliatory action. For purposes of this subsection, an employer taking an adverse action, as defined in section 1 of P.L.1965, c.173 (C.34:11-4.1), against an employee within ninety days of the employee filing a complaint with the commissioner, or a claim or action being brought by or on behalf of the employee in a court of competent jurisdiction, for a violation of provisions of article 1 of chapter 11 of Title 34 of the

Revised Statutes and all acts supplementing that article (R.S.34:11–2 et al.) shall raise a presumption that the employer's action was taken in retaliation against the employee, which presumption may be rebutted only by clear and convincing evidence that the action was taken for other, permissible, reasons. In the case of seasonal employment that ended before the close of the 90 calendar day period, the presumption also applies if the employer fails to rehire a former employee at the next opportunity for work in the same position. The protections of this section shall apply to any person who mistakenly but in good faith alleges violations of P.L. , c. (C.) (pending before the Legislature as this bill). Any agreement by the employee to work for, or accept, wages paid which are less than the amount agreed to or required by law, or paid in a manner other than that required by article 1 of chapter 11 of Title 34 of the Revised Statutes and all acts supplementing that article (R.S.34:11–2 et al.), shall be no defense to the action. The employee shall be entitled to maintain the action for and on behalf of other similarly situated employees, or designate an agent or representative to maintain the action for and on behalf of all similarly situated employees. The employee may bring the action for all appropriate relief, including reinstatement, the payment of damages and the recovery of lost wages or unpaid wages pursuant to this section in the Superior Court. Upon the request of any employee not paid the full wages agreed upon or required by law and in the manner required by the provisions of article 1 of chapter 11 of Title 34 of the Revised Statutes, all acts supplementing that article (R.S.34:11–2 et al.), and P.L. , c. (C.) (pending before the Legislature as this bill). the commissioner may take an assignment of the wage claim in trust for the assigning employee and may bring any legal action necessary to collect the claim, and the employer shall be required to pay to the employee the unpaid wages and liquidated damages equal to not more than 200 percent of the amount of the unpaid wages and pay to the commissioner the costs and reasonable attorney's fees as determined by the court. The payment of liquidated damages shall not be required for a first violation by an employer if the employer shows to the satisfaction of the court that the act or omission constituting the violation was an inadvertent error made in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation, and the employer acknowledges that the employer violated the law and pays the amount owed within 30 days of notice of the violation.

(cf: P.L.2019, c.212, s.2)

17. Section 9 of P.L.2019, c.212 (C.34:11-58.2) is amended to read as follows:

9. a. A client employer and a labor contractor providing workers to the client employer shall be subject to joint and several liability and shall share civil legal responsibility for any violations of the provisions of State wage and hour laws or violations of the provisions of section 10 of P.L.1999, c.90 (C.2C:40A-2) regarding compliance with State wage and hour laws, including provisions regarding retaliatory actions against employees for exercising their rights under any of those laws, or under P.L. , c. (C.) (pending before the Legislature as this bill, and both may be subject to any remedy provided for violations of those laws. A client employer shall not shift to the labor contractor any legal duties or liabilities under the provisions of the "Worker Health and Safety Act," P.L.1965, c.154 (C.34:6A-1 et seq.) or "The Worker and Community Right to Know Act," P.L.1983, c.315 (C.34:5A-1 et seq.) with respect to workers supplied by the labor contractor. A waiver of the provisions of this section is contrary to public policy, and is void and unenforceable.

b. This section shall not be interpreted as:

(1) imposing individual liability on a homeowner for labor or services received at the home or the owner of a home-based business for labor or services received at the home; or

(2) restricting or limiting the rights of a client employer to recover from a labor contractor any expense to the client employer, or the rights of a labor contractor to recover from a client employer any expense to the labor contractor, resulting from any violation by the labor contractor or client employer of the provisions of State wage and hour laws or of section 10 of P.L.1999, c.90 (C.2C:40A-2), or restricting or limiting the provisions in contracts between client employers and labor contractors regarding the recovery of expenses pursuant to this paragraph.

c. As used in this section:

"Client employer" means a business entity, regardless of its form, that obtains or is provided workers, directly from a labor contractor or indirectly from a subcontractor, to perform labor or services within its usual course of business.

"Labor contractor" means any individual or entity that supplies, either with or without a contract, directly or indirectly, a client employer with workers to perform labor or services within the client employer's usual course of business, except that "labor contractor" does not include a bona fide labor organization or apprenticeship program, or a hiring hall operated pursuant to a collective bargaining agreement.

"Usual course of business" means the regular and customary work of a business, performed within or upon the premises or worksite of the client employer, or any other place of business of the client employer for which services or labor are performed.

(cf: P.L.2019, c.212, s.9)

18. R.S. 34:11-57 is amended to read as follows:

34:11-57. As used in this article:

"Commissioner" means the Commissioner of Labor and Workforce Development or any person or persons in the department designated in writing by him for the purposes of this article.

"Community-based organization" means a public, or nonprofit private, organization funded with public or private funds, or both, that provides services to day laborers, migrant laborers, temporary laborers, low wage workers, or any other type of employee.

"Department" means the Department of Labor and Workforce Development.

"Employee" means any natural person who works for another for hire.

"Employer" means any person, partnership, firm or corporation employing another for hire.

"Legal services organization" means a public, or nonprofit private, organization funded with public or private funds, or both, that provides counseling or advice related to wage protection laws, preparation of legal documents, or representation of any person before a court or administrative agency.

"State wage and hour laws" means article 1 of chapter 11 of Title 34 of the Revised Statutes and all acts supplementing that article (R.S.34:11-2 et al.), P.L.1966, c.113 and all acts supplementing that act (C.34:11-56a et al.), P.L.2005, c.379 (C.34:11-56.58 et seq.), **[**and**]** P.L. , c. (C.) (pending before the Legislature as this bill), and article 3 of chapter 11 of Title 34 of the Revised Statutes (R.S.34:11-57 et seq.), but "State wage and hour laws" do not include the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), or "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.).

"Wages" means any moneys due an employee from the employer whether payable by the hour, day, week, semimonthly, monthly or yearly and shall include commissions, bonus, piecework compensation and any other benefits, including paid time off, arising out of an employment contract.

(cf: P.L.2019, c.212, s.6)

19. R.S.43:21-5 is amended to read as follows:

R.S.43:21-5. An individual shall be disqualified for benefits:

(a) For the week in which the individual has left work voluntarily without good cause attributable to such work, and for each week thereafter until the individual becomes reemployed and works eight weeks in employment, which may include employment for the federal government, and has earned in employment at least ten times the individual's weekly benefit rate, as determined in each case. This subsection shall apply to any individual seeking unemployment benefits on the basis of employment in the production and harvesting of agricultural crops, including any

individual who was employed in the production and harvesting of agricultural crops on a contract basis and who has refused an offer of continuing work with that employer following the completion of the minimum period of work required to fulfill the contract. This subsection shall not apply to an individual who voluntarily leaves work with one employer to accept from another employer employment which commences not more than seven days after the individual leaves employment with the first employer, if the employment with the second employer has weekly hours or pay not less than the hours or pay of the employment of the first employer, except that if the individual gives notice to the first employer that the individual will leave employment on a specified date and the first employer terminates the individual before that date, the seven-day period will commence from the specified date.

(b) For the week in which the individual has been suspended or discharged for misconduct connected with the work, and for the five weeks which immediately follow that week, as determined in each case.

"Misconduct" means conduct which is improper, intentional, connected with the individual's work, within the individual's control, not a good faith error of judgment or discretion, and is either a deliberate refusal, without good cause, to comply with the employer's lawful and reasonable rules made known to the employee or a deliberate disregard of standards of behavior the employer has a reasonable right to expect, including reasonable safety standards and reasonable standards for a workplace free of drug and substance abuse.

In the event the discharge should be rescinded by the employer voluntarily or as a result of mediation or arbitration, this subsection (b) shall not apply, provided, however, an individual who is restored to employment with back pay shall return any benefits received under this chapter for any week of unemployment for which the individual is subsequently compensated by the employer.

If the discharge was for gross misconduct connected with the work because of the commission of an act punishable as a crime of the first, second, third or fourth degree under the "New Jersey Code of Criminal Justice," N.J.S.2C:1-1 et seq., the individual shall be disqualified in accordance with the disqualification prescribed in subsection (a) of this section and no benefit rights shall accrue to any individual based upon wages from that employer for services rendered prior to the day upon which the individual was discharged.

The director shall insure that any appeal of a determination holding the individual disqualified for gross misconduct in connection with the work shall be expeditiously processed by the appeal tribunal.

To sustain disqualification from benefits because of misconduct under this subsection (b), the burden of proof is upon the employer, who shall, prior to a determination by the department of

misconduct, provide written documentation demonstrating that the employee's actions constitute misconduct or gross misconduct.

Nothing within this subsection (b) shall be construed to interfere with the exercise of rights protected under the "National Labor Relations Act," (29 U.S.C. s.151 et seq.) or the "New Jersey Employer-Employee Relations Act," P.L.1941, c.100 (C.34:13A-1 et seq.).

(c) If it is found that the individual has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the director or to accept suitable work when it is offered, or to return to the individual's customary self-employment (if any) when so directed by the director. The disqualification shall continue for the week in which the failure occurred and for the three weeks which immediately follow that week, as determined:

(1) In determining whether or not any work is suitable for an individual, consideration shall be given to the degree of risk involved to health, safety, and morals, the individual's physical fitness and prior training, experience and prior earnings, the individual's length of unemployment and prospects for securing local work in the individual's customary occupation, and the distance of the available work from the individual's residence. In the case of work in the production and harvesting of agricultural crops, the work shall be deemed to be suitable without regard to the distance of the available work from the individual's residence if all costs of transportation are provided to the individual and the terms and conditions of hire are as favorable or more favorable to the individual as the terms and conditions of the individual's base year employment.

(2) Notwithstanding any other provisions of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions: the position offered is vacant due directly to a strike, lockout, or other labor dispute; the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or, the individual, as a condition of being employed, would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) If it is found that this unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment or other premises at which the individual is or was last employed, except as otherwise provided by this subsection (d).

(1) No disqualification under this subsection (d) shall apply if it is shown that:

(a) The individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

(b) The individual does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute; provided that if in any case in which (a) or (b) above applies, separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each department shall, for the purpose of this subsection, be deemed to be a separate factory, establishment, or other premises.

(2) For any claim for a period of unemployment commencing on or after December 1, 2004, no disqualification under this subsection (d) shall apply if it is shown that the individual has been prevented from working by the employer, even though the individual's recognized or certified majority representative has directed the employees in the individual's collective bargaining unit to work under the preexisting terms and conditions of employment, and the employees had not engaged in a strike immediately before being prevented from working.

(3) For any claim for a period of unemployment commencing on or after July 1, 2018, no disqualification under this subsection (d) shall apply if the labor dispute is caused by the failure or refusal of the employer to comply with an agreement or contract between the employer and the claimant, including a collective bargaining agreement with a union representing the claimant, or a State or federal law pertaining to hours, wages, or other conditions of work.

(4) For any claim for a period of unemployment commencing on or after July 1, 2018, if the unemployment is caused by a labor dispute, including a strike or other concerted activities of employees at the claimant's workplace, whether or not authorized or sanctioned by a union representing the claimant, but not including a dispute subject to the provisions of paragraph (2) or (3) of this subsection (d), the claimant shall not be provided benefits for a period of the first 30 days following the commencement of the unemployment caused by the labor dispute, except that the period without benefits shall not apply if the employer hires a permanent replacement worker for the claimant's position. A replacement worker shall be presumed to be permanent unless the employer certifies in writing that the claimant will be permitted to return to his or her prior position upon conclusion of the dispute. If the employer does not permit the return, the claimant shall be entitled to recover any benefits lost as a result of the 30-day waiting period before receiving benefits, and the department may impose a penalty upon the employer of up to $750 per employee per week of benefits lost. The penalty collected shall be paid into the unemployment

compensation auxiliary fund established pursuant to subsection (g) of R.S.43:21-14.

(e) For any week with respect to which the individual is receiving or has received remuneration in lieu of notice.

(f) For any week with respect to which or a part of which the individual has received or is seeking unemployment benefits under an unemployment compensation law of any other state or of the United States; provided that if the appropriate agency of the other state or of the United States finally determines that the individual is not entitled to unemployment benefits, this disqualification shall not apply.

(g) (1) For a period of one year from the date of the discovery by the division of the illegal receipt or attempted receipt of benefits contrary to the provisions of this chapter, as the result of any false or fraudulent representation; provided that any disqualification may be appealed in the same manner as any other disqualification imposed hereunder; and provided further that a conviction in the courts of this State arising out of the illegal receipt or attempted receipt of these benefits in any proceeding instituted against the individual under the provisions of this chapter or any other law of this State shall be conclusive upon the appeals tribunal and the board of review.

(2) A disqualification under this subsection shall not preclude the prosecution of any civil, criminal or administrative action or proceeding to enforce other provisions of this chapter for the assessment and collection of penalties or the refund of any amounts collected as benefits under the provisions of R.S.43:21-16, or to enforce any other law, where an individual obtains or attempts to obtain by theft or robbery or false statements or representations any money from any fund created or established under this chapter or any negotiable or nonnegotiable instrument for the payment of money from these funds, or to recover money erroneously or illegally obtained by an individual from any fund created or established under this chapter.

(h) (1) Notwithstanding any other provisions of this chapter (R.S.43:21-1 et seq.), no otherwise eligible individual shall be denied benefits for any week because the individual is in training approved under section 236(a)(1) of the "Trade Act of 1974," Pub.L.93-618 (19 U.S.C. s.2296 (a)(1)) nor shall the individual be denied benefits by reason of leaving work to enter this training, provided the work left is not suitable employment, or because of the application to any week in training of provisions in this chapter (R.S.43:21-1 et seq.), or any applicable federal unemployment compensation law, relating to availability for work, active search for work, or refusal to accept work.

(2) For purposes of this subsection (h), the term "suitable" employment means, with respect to an individual, work of a substantially equal or higher skill level than the individual's past

adversely affected employment, as defined for purposes of the "Trade Act of 1974," Pub.L.93-618 (19 U.S.C. s.2101 et seq.) and wages for this work at not less than 80% of the individual's average weekly wage, as determined for the purposes of the "Trade Act of 1974."

(i) For benefit years commencing after June 30, 1984, for any week in which the individual is a student in full attendance at, or on vacation from, an educational institution, as defined in subsection (y) of R.S.43:21-19; except that this subsection shall not apply to any individual attending a training program approved by the division to enhance the individual's employment opportunities, as defined under subsection (c) of R.S.43:21-4; nor shall this subsection apply to any individual who, during the individual's base year, earned sufficient wages, as defined under subsection (e) of R.S.43:21-4, while attending an educational institution during periods other than established and customary vacation periods or holiday recesses at the educational institution, to establish a claim for benefits. For purposes of this subsection, an individual shall be treated as a full-time student for any period:

(1) During which the individual is enrolled as a full-time student at an educational institution, or

(2) Which is between academic years or terms, if the individual was enrolled as a full-time student at an educational institution for the immediately preceding academic year or term.

(j) Notwithstanding any other provisions of this chapter (R.S.43:21-1 et seq.), no otherwise eligible individual shall be denied benefits because the individual left work or was discharged due to circumstances resulting from the individual being a victim of domestic violence as defined in section 3 of P.L.1991, c.261 (C.2C:25-19). No employer's account shall be charged for the payment of benefits to an individual who left work due to circumstances resulting from the individual being a victim of domestic violence.

For the purposes of this subsection (j), the individual shall be treated as being a victim of domestic violence if the individual provides one or more of the following:

(1) A restraining order or other documentation of equitable relief issued by a court of competent jurisdiction;

(2) A police record documenting the domestic violence;

(3) Documentation that the perpetrator of the domestic violence has been convicted of one or more of the offenses enumerated in section 3 of P.L.1991, c.261 (C.2C:25-19);

(4) Medical documentation of the domestic violence;

(5) Certification from a certified Domestic Violence Specialist or the director of a designated domestic violence agency that the individual is a victim of domestic violence; or

(6) Other documentation or certification of the domestic violence provided by a social worker, member of the clergy, shelter

worker or other professional who has assisted the individual in dealing with the domestic violence.

For the purposes of this subsection (j):

"Certified Domestic Violence Specialist" means a person who has fulfilled the requirements of certification as a Domestic Violence Specialist established by the New Jersey Association of Domestic Violence Professionals; and "designated domestic violence agency" means a county-wide organization with a primary purpose to provide services to victims of domestic violence, and which provides services that conform to the core domestic violence services profile as defined by the Division of Youth and Family Services in the Department of Children and Families and is under contract with the division for the express purpose of providing such services.

(k) Notwithstanding any other provisions of this chapter (R.S.43:21-1 et seq.), no otherwise eligible individual shall be denied benefits for any week in which the individual left work voluntarily and without good cause attributable to the work, if the individual left work to accompany his or her spouse who is an active member of the United States Armed Forces, as defined in N.J.S.38A:1-1(g), to a new place of residence outside the State, due to the armed forces member's transfer to a new assignment in a different geographical location outside the State, and the individual moves to the new place of residence not more than nine months after the spouse is transferred, and upon arrival at the new place of residence the individual was in all respects available for suitable work. No employer's account shall be charged for the payment of benefits to an individual who left work under the circumstances contained in this subsection (k), except that this shall not be construed as relieving the State of New Jersey and any other governmental entity or instrumentality or nonprofit organization electing or required to make payments in lieu of contributions from its responsibility to make all benefit payments otherwise required by law and from being charged for those benefits as otherwise required by law.

(l) Notwithstanding any other provisions of this chapter (R.S.43:21-1 et seq.), no disqualification shall be imposed if the individual establishes to the satisfaction of the commissioner that the reason for the individual's separation was due to the employer's failure to comply with any section of P.L. , c. (C.)(pending before the Legislature as this bill), or due to a significant change to the employee's work schedule due to changes in the employer's business needs.

(cf: P.L.2018, c.112, s.1)

20. This act shall take effect on the 120th day following enactment.

STATEMENT

This bill enacts the "New Jersey Schedules That Work Act." The bill provides that employees may request a change to their work schedules without fear of retaliation, and requires that employers consider these requests. The bill also requires employers to provide more predictable and stable schedules for employees in certain low wage occupations. For purposes of the bill, "employer" is defined as any employer that employs 250 or more employees.

The bill provides that upon hire, an employee provides an employer with a written request of the employee's preferred schedule, and an employer provides a good-faith estimate of the employee's projected schedule. An employee may make requests for a change to the schedule, and an employer is required to work in good faith to accommodate these requests if possible.

The bill requires an employer to provide notice of an employee's schedule 14 days prior to the start of the work period; this schedule shall be posted in the place of business, and sent electronically to an employee if it is feasible to do so. Any changes to this schedule shall be posted 24 hours prior to their implementation, and an employee is allowed to decline to work any shifts that are not posted in such a manner. The bill provides for employees to receive predictability pay for any work schedule change that occurs after the abovementioned advanced notice has been provided.

Under the provisions of the bill, an employee may decline any shifts scheduled less than 12 hours after the end of their previous shift, or during the 12 hours following the conclusion of a two-day shift. Any shifts scheduled and agreed to by the employee shall be compensated at one-and-a-half times the employee's normal rate.

The bill requires an employer to increase the shifts of existing employees, within the limits of the law, before hiring new employees capable of performing the same tasks.

The bill provides for an employer to keep records detailing its compliance with these requirements, and for these records to be accessible to the employees concerned.

The bill makes it an unlawful employment practice for any employer to interfere with, restrain, or deny the exercise or the attempt to exercise, any right of an employee as set forth in the bill. Under the bill, it is unlawful for any employer to discharge, threaten to discharge, demote, suspend, reduce work hours of, or take any other adverse employment action against any employee in retaliation for exercising the rights of an employee under the bill or opposing any practice made unlawful by the bill. The bill provides that, in respect to employees that require substantially similar skills, duties, and responsibility, an employer shall not discriminate against any employee on the basis of their hours worked.

The Commissioner of Labor and Workforce Development may file a complaint on behalf of an employee, and may also assess a

civil penalty to be paid by an employer who violates the provisions of the bill. The bill also provides that an employee may institute a civil action in the Superior Court for relief. However, the right of an employee to institute a civil action shall terminate upon the filing of a complaint by the commissioner.

The bill requires an employer to pay an employee 18 times the minimum wage in retention pay for every two-week work period; with an employee's normal pay or paid time-off counting toward compliance with this requirement.

The bill requires every employer subject to the provisions of the bill to post and keep conspicuously posted, in the establishment and location where notices or postings to employees and applicants for employment are customarily posted, a notice setting forth the pertinent provisions of the bill.

The bill does not apply to collective bargaining agreements if the agreement waives specific provisions that are covered within the bill, so long as the agreement addresses the topic of employee scheduling.

The bill amends P.L.1965, c.173 (C.34:11-4.10) to add certain penalties for labor violations.

The bill amends P.L.2019, c.212 (C.34:11-58.2) to include this bill under prohibited retaliations against employees.

The bill amends R.S.34:11-57 and P.L.2009, c.194 (C.34:1A-1.11) to include itself under the definition of "State wage and hour laws," thus allowing for penalties imposed under other state wage and hour laws to apply to violations of this bill.

Finally, the bill amends R.S.43:21-5 to prevent absences caused by employer violations of its provisions from affecting employee eligibility for unemployment compensation.