

Preparing for Predictive Scheduling: How to Get Your Business Ready for July 1

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Purpose of Predictive Scheduling Law

- Predictable work shifts
- Advance notice
- Flexibility for employees



The Basics

Good faith estimate of work schedule for new employees

Advance notice of work schedule for existing covered employees

Right to rest between work shifts

Recordkeeping requirements

Penalty enforcement by BOLI

Who is Covered? (Employers)

- Employers with at least 500 employees
- Industry-specific
 - North American Industry Classification System (NAICS)
 - Retail Establishments (NAICS Code 44-45)
 - Food Service Establishments (NAICS Code 722)
 - Hospitality Establishments (NAICS Codes 721110 and 721120)
- Unclear what it means to be “classified” under NAICS
 - Hospital example in BOLI’s final rules
 - Consider hybrid businesses



Who is Covered? (Employees)



Covered:

- Employees providing services relating to the covered industry
- Example: would apply to waiter, housekeeper, and cashier
- Example: would not apply to HR Manager



Not covered:

- Exempt employees (administrative, executive, or professional)
- Worker supplied by a licensed worker leasing company
- Employees of a non-covered business contracted with your company to provide services on your company's behalf

Who is Covered? (Unions)

- Oregon's predictive scheduling law applies unless the employee is covered by a collective bargaining agreement that is in force at the employee's work site and that provides the employee a remedy equal to or better than the remedy provided by Oregon's predictive scheduling law

Good Faith Estimate of Work Schedule

Who?

- Provided to new employees

What?

- Median hours in an average one-month period (not a range)
- Explain the voluntary standby list, if any
- Explain when an employee may work on-call shifts, if any

When?

- At the “time of hire”
- After an offer of employment and acceptance of the offer
- Before commencement of employment

How?

- In language typically used to communicate with the employee
- What does your onboarding process look like?

Advance Notice of Work Schedule

- Provide employees with advance notice of their actual schedule
 - 7 days' notice – July 1, 2018
 - 14 days' notice – July 1, 2020
 - Exceptions for new employees and employees returning from leave
- Post the schedule in a conspicuous and accessible location
- Language of notice and schedule
 - In English
 - In the language the employer typically uses to communicate with employees
- Advance notice not required for employee-requested changes



Penalty Wages

One hour of penalty pay for:

- Adding more than 30 minutes to a shift
- Changing the date, start or end time of the shift with no loss of hours
- Scheduling an employee for an additional shift

Half-time for each scheduled hour when:

- Subtracting hours
- Changing the date, start or end time of the employee's shift, resulting in a loss of work hours
- Cancelling the employee's shift
- Employer does not ask the employee to perform work when the employee is scheduled for an on-call shift

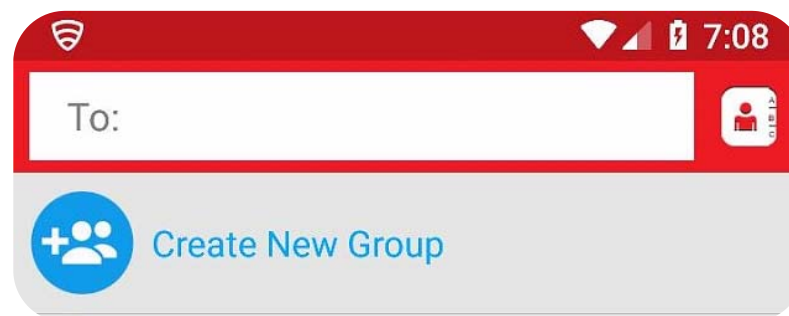
Exceptions to Advance Notice – ORS 653.455(3)

- a) Changes of less than 30 minutes
- b) Employee shift swaps (tip: get it in writing)
- c) Employee-requested changes to their written work schedule documented in writing
- d) Written employee requests to add shifts offered by the employer (i.e. on-call shifts)
- e) Subtracting hours for discipline for just cause (employer must document in writing)
- f) Threats to employees or property or due to the recommendation of a public official
- g) Failure of public utilities
- h) A natural disaster (including snowstorms and other weather events)
- i) Cancellation or reschedule of a ticketed event outside of the employer's control
- j) Employees on voluntary standby list working hours assigned through the voluntary standby list procedure
- k) Unanticipated customer needs or unexpected employee absence (next slide)



Exception (k) to Advance Notice Requirement

- Unanticipated customer needs or unexpected employee absence
- The employee must consent in writing to work additional hours
- If employer uses a voluntary standby list, employer must have contacted all of the employees listed; and
- Individual vs. group communication



Other Notice and Recordkeeping Requirements



BOLI Poster

BUREAU OF LABOR AND INDUSTRIES

OREGON
EMPLOYEE WORK SCHEDULES LAW
 (Applicable in Retail, Hospitality and Food Services Establishments Effective July 1, 2018)

WHO IS COVERED
 Employees of retail, hospitality or food services establishments that employ 500 or more employees statewide are covered. Salaried employees who are exempt from minimum wage and workers supplied by worker leasing companies and businesses that provide services to or on behalf of an employer are not covered.

GOOD FAITH ESTIMATES OF WORK SCHEDULES
 Covered employers are required to provide written good faith estimates of employee work schedules at the time of hire that state the median number of hours the employee can expect to work in an average month and explain use of the "voluntary standby list" and whether an employee who is not on a standby list may expect to work on-call shifts, and if so, when an employee may be expected to work on-call shifts if not on the standby list.

ADVANCE NOTICE OF WORK SCHEDULES
 Covered employers are required to provide employees with written work schedules at least seven calendar days (14 calendar days effective July 1, 2020) before the first day of work that runs through the last day of the posted work schedule in effect at the time of delivery. Work schedules are required to be posted in a conspicuous and accessible location.

CHANGES IN WORK SCHEDULES
 If the employer requests changes to the written work schedule, the employer must provide timely notice of the change. Employees may decline any work shifts not included in the covered employer's written work schedule. If the employer changes a written schedule without at least seven days' advance notice (14 calendar days effective July 1, 2020), the employer is required to pay the employee an additional hour of pay in addition to regular wages earned when the employer adds more than 30 minutes to the work shift; changes the date or starting and stopping times with no loss of hours; or if the employer schedules the employee for an additional work shift or on-call shift. Employees may request in writing to work additional shifts or on-call work shifts any time after the advance notice of written work schedule.

COMPENSATION FOR WORK SCHEDULE CHANGES
 Employees are required to provide compensation to employees for certain employer-requested schedule changes that occur without seven days' advance notice. (See BOLI website for more information.)

VOLUNTARY STANDBY LISTS
 Employers may maintain voluntary standby lists of employees willing to work additional hours due to unanticipated customer needs or unexpected absences if employees on the list request or agree in writing and the employer provides required written information to each employee. Such employees are not entitled to be compensated for these work schedule changes.

RIGHT TO REST BETWEEN SHIFTS
 Unless the employee requests or consents to work such hours, employers may not schedule or require an employee to work during the first ten hours following the end of a previous calendar day's work or on-call shift or the first ten hours following the end of a work or on-call shift that spanned two calendar days. If an employee works during the rest periods specified above, the employer must compensate the employee for each hour or portion of an hour that the employee works at the rate of one and one-half times the employee's regular rate of pay.

RIGHT TO INPUT INTO WORK SCHEDULE
 Employees may identify limitations or changes in work schedule availability and request not to be scheduled for work shifts during certain times or at certain locations. Employers may not retaliate against employees for making such requests; however, employers are under no obligation to grant employees' requests unless otherwise required to do so under other applicable laws.

OTHER PROVISIONS
 See BOLI website for additional information regarding notice and posting requirements, retaliation prohibitions and enforcement and penalty provisions. For additional information, contact the Bureau of Labor and Industries:
 www.oregon.gov/boli • Email: whdcscenec@boli.state.or.us
 Portland: 971-673-0261 Eugene: 541-686-7923
 Salem: 503-378-3232 TTY: 711
 Technical Assistance for Employers Program: 971-673-0824

This is a summary of the provisions of the Oregon Employee Work Schedules law. It is not a complete text of the law.
 THIS INFORMATION MUST BE POSTED IN A CONSPICUOUS LOCATION

1/2018



Keep records for
three years

- Written work schedules provided to employees and posted written work schedules;
- Employee's written request to change work schedules;
- Good faith estimate of the employee's work schedule provided to a new employee;
- Voluntary standby list notifications (if the employer uses a standby list);
- If the employer is not able to post BOLI's poster, communications to the employee pursuant to ORS 653.460(2);
- Documents demonstrating the employer's just cause to subtract hours for disciplinary reasons

BOLI Enforcement

- BOLI enforcement begins January 1, 2019
- Penalties for violations of up to \$1,000
- Failing to display the poster carries a \$500 penalty
- Coercing an employee to join the voluntary standby list carries a penalty of up to \$2,000



Frequently Asked Questions

- When do we give the good faith estimate of hours?
- Should we have a voluntary standby list?
- Are penalties calculated on a “per-change” or on a “per-shift” basis?



Comparisons to Seattle Secure Scheduling Ordinance

- Many similarities
 - Employers are adapting their policies
- Two key differences:
 - Oregon law allows for the voluntary standby list
 - Oregon law is more accommodating
 - Unanticipated customer need
 - Unexpected employee absence



Lessons Learned from Seattle and Elsewhere

- The “regular rate of pay” can be tricky
- Employers have to figure out documentation and recordkeeping
 - Electronic systems vs. manual systems
- Creating forms and templates
 - Good faith estimate of hours
 - Voluntary standby list
 - Employee written request forms



Questions



Thank You!



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Leah Lively represents employers in claims of harassment, discrimination, retaliation, wrongful discharge, and wage and hour violations. Leah has tried more than 40 jury trials in multiple states and jurisdictions during her career. In addition to her focus on defending single-plaintiff employment claims, Leah has significant experience defending wage and hour claims, including class actions. She has served as lead defense counsel in a putative wage/hour misclassification class action in Oregon and co-managed the defense of a 40,000 putative class-member case for a national restaurant chain in California.



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Brent Hamilton is a litigator who focuses his practice on employment matters, including claims for sexual harassment, wrongful termination, discrimination, and retaliation. He has experience representing clients in a wide variety of business litigation and complex litigation, including claims related to non-compete agreements, breaches of contract, partnership disputes, business torts, property damage, and personal injury.