

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 838

Short Title: Retail Workers' Bill of Rights. (Public)

Sponsors: Representatives Brockman and Harrison (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Rules, Calendar, and Operations of the House

May 5, 2021

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE RETAIL WORKERS' BILL OF RIGHTS TO ENSURE FAIR
3 SCHEDULING AND TREATMENT OF RETAIL EMPLOYEES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Chapter 95 of the General Statutes is amended by adding a new Article
6 to read:

7 "Article 2B.

8 "Retail Workers' Bill of Rights.

9 **"§ 95-25.30. Title.**

10 This Article shall be known and may be cited as the "Rights of Retail Workers' Act."

11 **"§ 95-25.31. Findings; purpose.**

12 (a) Findings. – The General Assembly finds that:

13 (1) Erratic and on-call scheduling practices have become pervasive in some retail
14 establishments, particularly in stores and restaurants and bars.

15 (2) Many employees working in retail establishments experience significant
16 fluctuations in their work hours from week to week and month to month.

17 (3) Many retail establishments use computer software that automatically
18 generates work schedules for their employees. The schedules generated by
19 such software are frequently erratic and unpredictable and provide employees
20 with minimal notice of their upcoming shifts. Many employees of retail
21 establishments are impacted by unpredictable scheduling practices such as
22 frequent and last-minute changes to their work schedules and use of "on-call"
23 scheduling.

24 (4) Unpredictable scheduling practices and last-minute work schedule changes
25 cause workers who are already struggling with low wages to live in a constant
26 state of insecurity about when they will work or how much they will earn on
27 any given day.

28 (5) Unpredictable work scheduling practices are detrimental to employees and
29 their families because such practices:

30 a. Lead to income instability, making it hard for employees to plan their
31 finances and obtain economic security.

32 b. Create work-family conflicts that make it difficult for employees to
33 plan their child care, caregiving duties, and transportation.

34 c. Prevent part-time employees from pursuing educational opportunities
35 or holding a second or third job that such workers may need to make



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1 ends meet. Women are more likely than men to work part-time and
2 experience unpredictability in their work schedules. Employers
3 sometimes treat part-time employees less favorably than full-time
4 employees.

5 (b) Purpose. – The purpose of this Article is to provide retail employees with more
6 predictable, stable work schedules that are essential to their ability to earn a living and ensure a
7 healthy and decent life for themselves and their families, and to ensure that part-time employees
8 in retail establishments are treated fairly and equally compared to their full-time counterparts.

9 **"§ 95-25.32. Definitions.**

10 The following definitions apply in this Article:

- 11 (1) Commissioner. – The North Carolina Commissioner of Labor.
12 (2) Department. – The North Carolina Department of Labor.
13 (3) Employer. – Any person that owns or operates a retail establishment with 20
14 or more employees in the State, including corporate officers or executives,
15 who directly or indirectly or through an agent or any other person, including
16 through the service of a temporary services or staffing agency or similar entity,
17 employs or exercises control over the wages, hours, or working conditions of
18 any individual. For the purpose of calculating the 20-employee threshold
19 referenced herein, employees performing work in other retail establishments
20 in the State that are owned or operated under the same trade name by the same
21 employer shall be counted. Notwithstanding the foregoing definition,
22 "employer" does not include a nonprofit corporation or governmental entity.
23 (4) Full-time. – Thirty-five or more hours of work in each workweek.
24 (5) On-call shift. – Any shift for which an employee must, less than 24 hours in
25 advance of the start of the shift, either contact the employer or wait to be
26 contacted by the employer to learn whether the employer requires the
27 employee to report to work for the shift.
28 (6) Part-time. – Fewer than 35 hours of work in each workweek.
29 (7) Retail establishment. – An establishment engaged in any retail business,
30 including, but not limited to, department stores, grocery stores, and
31 restaurants. The term also includes hotels and housekeeping and janitorial
32 services.

33 **"§ 95-25.33. Advance notice of work schedules and schedule changes.**

34 (a) Initial Estimate of Minimum Hours. – Prior to the start of employment:

- 35 (1) An employer shall provide a new employee with a good-faith estimate in
36 writing of the employee's expected minimum number of scheduled shifts per
37 month and the days and hours of those shifts. The estimate shall not include
38 on-call shifts. The estimate shall not constitute a contractual offer, and the
39 employer shall not be bound by the estimate.
40 (2) The employee may request that the employer modify the proposed work
41 schedule provided under subdivision (1) of this subsection. The employer
42 shall consider any such request, and in its sole discretion may accept or reject
43 the request, provided that the employer shall notify the employee of its
44 determination prior to the start of employment.

45 (b) Two-Week Notice of Work Schedules. – An employer shall provide its employees
46 with at least two weeks' notice of their work schedules by doing one of the following at least
47 every 14 days (on a "biweekly schedule"):

- 48 (1) Posting the work schedule in a conspicuous place at the workplace that is
49 readily accessible and visible to all employees.
50 (2) Transmitting the work schedule by electronic means, so long as all employees
51 are given access to the electronic schedule at the workplace. For new

1 employees, an employer shall provide the new employee on his or her first
2 day of employment with an initial work schedule that runs through the date
3 that the next biweekly schedule for existing employees is scheduled to be
4 posed or distributed; thereafter, the employer shall include the new employee
5 in an existing biweekly schedule with other employees. For all employees, the
6 work schedule shall include any on-call shifts, where applicable. If the
7 employer changes the work schedule after it is posted or transmitted, the
8 changes shall be subject to the notice and compensation requirements set forth
9 in subsection (c) of this section.

10 (c) Notice and Compensation for Schedule Changes. – An employer shall provide an
11 employee notice of any change to the employee's schedule that has been posted or transmitted
12 pursuant to subsection (b) of this section. The employer shall provide such notice by in-person
13 conversation, telephone call, or email, text message, or other electronic communication. This
14 notice requirement shall not apply to any schedule changes that the employee requests, such as
15 employee-requested sick leave, time off, shift trades, or additional shifts.

16 (d) Predictability Pay for Schedule Changes. – Subject to the exceptions in subsection (f)
17 of this section, an employer shall provide an employee with the following compensation per shift
18 for each previously scheduled shift that the employer moves to another date or time or cancels,
19 or each previously unscheduled shift that the employer requires the employee to come into work:

- 20 (1) With less than seven days' notice but 24 hours or more notice to the employee,
21 one hour of pay at the employee's regular hourly rate;
- 22 (2) With less than 24 hours' notice to the employee, two hours of pay at the
23 employee's regular hourly rate for each shift of four hours or less; and
- 24 (3) With less than 24 hours' notice to the employee, four hours of pay at the
25 employee's regular hourly rate for each shift of more than four hours.

26 Where the employee is required to come into work, the compensation mandated by this
27 subsection shall be in addition to the employee's regular pay for working that shift. This
28 subsection does not apply to on-call shifts.

29 (e) Pay for On-Call Shifts. – Subject to the exceptions in subsection (f) of this section, an
30 employer shall provide an employee with the following compensation for each on-call shift for
31 which the employee is required to be available but is not called in to work:

- 32 (1) Two hours of pay at the employee's regular hourly rate for each on-call shift
33 of four hours or less; and
- 34 (2) Four hours of pay at the employee's regular hourly rate for each on-call shift
35 of more than four hours.

36 This subsection shall not apply when the employee is in fact called in for the on-call shift or
37 the employer provides the employee with 24 hours' or more notice that the on-call shift has been
38 cancelled or moved to another date or time.

39 (f) Exceptions. – The requirements in subsections (e) and (f) of this section do not apply
40 under any of the following circumstances:

- 41 (1) Operations cannot begin or continue due to threats to employees or property,
42 or when civil authorities recommend that work not begin or continue.
- 43 (2) Operations cannot begin or continue because public utilities fail to supply
44 electricity, water, or gas, or there is a failure in the public utilities or sewer
45 systems.
- 46 (3) Operations cannot begin or continue due to an act of God or other cause not
47 within the employer's control, for example, an earthquake or a state of
48 emergency declared by the Governor.
- 49 (4) Another employee previously scheduled to work that shift is unable to work
50 due to illness, vacation, or employer-provided paid or unpaid time off where
51 the employer did not receive at least seven days' notice of the absence.

1 (5) Another employee previously scheduled to work that shift has not reported to
2 work on time or is fired or sent home or told to stay home as a disciplinary
3 action.

4 (6) The employer requires the employee to work overtime (i.e., mandatory
5 overtime).

6 (7) The employee trades shifts with another employee or requests from the
7 employer a change in shift, shifts, hours, or work schedule.

8 (g) Greater Notice Permitted. – Nothing in this section shall be construed to prohibit an
9 employer from providing greater advance notice of employees' work schedules or changes in
10 schedules than that required by this section.

11 **"§ 95-25.34. Equal treatment for part-time employees.**

12 (a) Hourly Wage. – Employers shall provide part-time employees with the same starting
13 hourly wage as that provided to starting full-time employees who hold jobs that require equal
14 skill, effort, and responsibility and that are performed under similar working conditions, provided
15 that hourly pay differentials between part-time and full-time employees are permissible if such
16 differentials are based on reasons other than the part-time status of the employee, such as a
17 seniority system, merit system, or system which measures earnings by quantity or quality of
18 production, performance, or responsibilities. This subsection does not affect the minimum hourly
19 requirements for receipts of benefits, including, but not limited to, health care benefits.

20 (b) Access to Time Off. – Employers shall provide part-time employees with the same
21 access to employer-provided paid and unpaid time off as that afforded to full-time employees for
22 the same job classification. A part-time employee's eligibility for employer-provided paid or
23 unpaid time off may be prorated based on the number of hours that the part-time employee works.

24 (c) Eligibility for Promotions. – Employers shall provide part-time employees with the
25 same eligibility for promotions as that afforded to full-time employees for the same job
26 classification, provided that an employer may condition eligibility for promotion on the
27 employee's availability for full-time employment and on reasons other than the part-time status
28 of the employee, such as nature and amount of work experience.

29 **"§ 95-25.35. Notice of employee rights.**

30 (a) Notices. – The Commissioner shall no later than the effective date of this Article,
31 publish and make available to employers, in English, Spanish, and all languages spoken by more
32 than five percent (5%) of the State's workforce, a notice suitable for posting by employers in the
33 workplace informing applicants and employees of their rights under this Article. The
34 Commissioner shall update this notice on December 1 of any year in which there is a change in
35 the languages spoken by more than five percent (5%) of the State's workforce.

36 (b) Posting. – Employers shall post the notice described in subsection (a) of this section
37 in a conspicuous place at every workplace, jobsite, or other location in the State under the
38 employer's control that is frequently visited by its employees who perform work at the employer's
39 retail establishment. The notice shall be posted in English, Spanish, and any language spoken by
40 at least five percent (5%) of the employees at the workplace, jobsite, or other location at which
41 it is posted.

42 **"§ 95-25.36. Records; retention requirements.**

43 (a) Records. – Employers shall retain work schedules and payroll records pertaining to
44 employees for three years and shall allow the Department of Labor access to such records, with
45 appropriate notice and during business hours, to monitor compliance with the requirements of
46 this Article.

47 (b) Access. – The Commissioner and the Commissioner's designees shall have access to
48 all places of labor subject to this Article during business hours to inspect books and records,
49 interview employees, and investigate such matters necessary or appropriate to determine whether
50 an employer has violated any provisions of this Article.

1 (c) Presumption. – Where an employer does not maintain or retain adequate records
2 documenting compliance with this Article or does not allow the Department reasonable access
3 to such records, it shall be presumed that the employer did not comply with this Article, absent
4 clear and convincing evidence otherwise.

5 **"§ 95-25.37. Exercise of rights protected; retaliation prohibited.**

6 (a) Rights Protected. – The rights of retail employees employed in this State include, but
7 are not limited to, the following:

8 (1) The right to request a modification to the initial proposed work schedule.

9 (2) The right to inform any person about an employer's alleged violation of this
10 Article.

11 (3) The right to file a complaint with the Department alleging a violation of this
12 Article.

13 (4) The right to cooperate with the Department or other persons in the
14 investigation or prosecution of any alleged violation of this Article.

15 (5) The right to oppose any policy, practice, or act that is unlawful under this
16 Article.

17 (6) The right to inform any person of his or her rights under this Article.

18 (b) Interference Unlawful. – It is unlawful for an employer or any other person to interfere
19 with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this
20 Article.

21 (c) No Adverse Action. – It is unlawful for an employer to discharge, threaten to
22 discharge, demote, suspend, or otherwise take adverse employment action against any employee
23 in retaliation for exercising rights protected under this Article.

24 **"§ 95-25.38. Investigation; enforcement.**

25 (a) Authority. – The Commissioner shall take appropriate steps to enforce and coordinate
26 enforcement of this Article, including the investigation of any possible violations of this Article.

27 (b) Determination of Violation and Penalties. –

28 (1) Where the Commissioner has reason to believe that a violation has occurred,
29 it may order any appropriate temporary or interim relief to mitigate the
30 violation or maintain the status quo pending completion of a full investigation.

31 (2) After investigating a possible violation of this Article, and providing the
32 employer the opportunity to respond to the allegations, if the Commissioner
33 determines that a violation has occurred, it may issue a determination of
34 violation. The determination of violation shall identify the violation and the
35 factual basis for the determination. The Commissioner shall serve the
36 determination of violation on the employer by U.S. mail, and the date of
37 service shall be the date of mailing. In the determination of violation, the
38 Commissioner may order any appropriate relief, including, but not limited to,
39 requiring the employer to offer payment of lost wages to the employee or
40 person whose rights under this Article were violated, and the payment of an
41 additional sum as an administrative penalty in the amount of fifty dollars
42 (\$50.00) to each employee or person whose rights under this Article were
43 violated for each day that the violation occurred or continued. To compensate
44 the State for the costs of investigating and remedying the violation, the
45 Commissioner may also order the violating employer to pay to the State an
46 amount that does not exceed its enforcement costs.

47 (c) Appeal Procedure. – An employer may appeal from a determination of violation in
48 accordance with the following procedures:

49 (1) Any appeal shall be filed in writing by the party filing the appeal within 15
50 days of the date of service of the determination of violation. The appellant
51 shall file the appeal with the North Carolina Office of Administrative Hearings

1 and serve a copy on the Commissioner. Failure by the appellant to file a
2 timely, written appeal shall constitute concession to the violation, and the
3 violation shall be deemed final upon expiration of the 15-day period.

4 (2) Following the filing of the appeal and service of a copy on the Commissioner,
5 the Department of Labor shall promptly afford the appellant with an
6 opportunity to meet and confer in good faith regarding possible resolution of
7 the determination of violation in advance of further proceedings under this
8 subsection, with the intention that such meeting occur within 30 days of the
9 date the appeal is filed if feasible.

10 (3) After the expiration of 30 days following the date the appeal is filed, any party
11 may request in writing, with concurrent notice to all other parties, that the
12 Chief Administrative Law Judge appoint a hearing officer to hear and decide
13 the appeal. If no party requests appointment of a hearing officer, the notice of
14 violation shall be deemed final on the sixtieth day after the date the appeal is
15 filed.

16 (4) Within 15 days of receiving a written request for appointment of a hearing
17 officer, the Chief Administrative Law Judge shall appoint an impartial hearing
18 officer who is not part of the agency and immediately notify the agency and
19 the appellant, and their respective counsel or authorized representative if any,
20 of the appointment. The appointed hearing officer shall be an administrative
21 law judge with not fewer than two years' experience in labor or employment
22 law or wage and hour matters, or an attorney with not fewer than five years'
23 experience in labor or employment law or wage hour matters.

24 (5) The hearing officer shall promptly set a date for a hearing. The hearing must
25 commence within 45 days of the date of the Chief Administrative Law Judge's
26 notice of appointment of the hearing officer and conclude within 75 days of
27 such notice. The hearing officer shall conduct a fair and impartial evidentiary
28 hearing in conformance with the time limitations set forth in this subdivision
29 and in any applicable rules and regulations so as to avoid undue delay in the
30 resolution of any appeal. The hearing officer shall have the discretion to
31 extend the times under this subdivision, and any time requirements under any
32 applicable rules and regulations, only upon a determination of a good cause.

33 (6) The appellant shall have the burden of proving by a preponderance of the
34 evidence that the basis for the determination of violation, or the amount of lost
35 wages, interest, or penalty payments at issue in the appeal, is incorrect.

36 (7) Within 30 days of the conclusion of the hearing, the hearing officer shall issue
37 a written decision affirming, modifying, or dismissing the determination of
38 violation. The decision of the hearing officer shall consist of findings and a
39 determination. The hearing officer's findings and determination shall be the
40 final administrative determination.

41 (8) The appellant may appeal a final administrative determination to the Wake
42 County Superior Court.

43 (9) Failure to appeal a determination of violation shall constitute a failure to
44 exhaust administrative remedies, which shall serve as a complete defense to
45 any petition or claim brought by the employer against the State regarding the
46 determination of violation.

47 **"§ 95-25.39. No limitation of other rights and remedies; severability.**

48 (a) No Limitation. – This Article does not in any way limit the rights and remedies that
49 the law otherwise provides to employees, including, but not limited to, the rights to be free from
50 wrongful termination and unlawful discrimination.

1 (b) Severability. – If any portion of this Article, or any application thereof to any person
2 or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent
3 jurisdiction, that decision shall not affect the validity of the remaining portions or applications of
4 the Article.

5 (c) No Conflict of Law. – Nothing in this Article shall be interpreted or applied so as to
6 create any right, requirement, power, or duty in conflict with any federal or State law."

7 **SECTION 2.** This act becomes effective January 1, 2022.