

Government of the District of Columbia
Office of the Chief Financial Officer

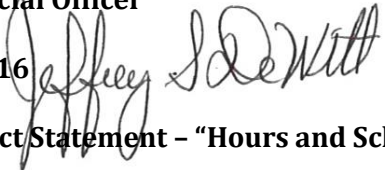


Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer

DATE: June 23, 2016 

SUBJECT: Fiscal Impact Statement - "Hours and Scheduling Stability Act of 2016"

REFERENCE: Bill 21-512, Draft Committee Print provided to the Office of Revenue Analysis on June 20, 2016

Conclusion

Funds are not sufficient in the fiscal year 2017 through fiscal year 2020 budget and financial plan to implement the bill. The bill will cost \$513,345 in fiscal year 2017 and \$2,097,588 in the four-year budget and financial plan.

Background

The bill requires certain retail and food service employers to comply with new rules regarding scheduling the shifts of their employees. These rules, which we discuss below, will apply only to retail and food service employers that are part of chain or a franchising corporation of at least 40 establishments nationwide.

Applicable employers must provide individual work schedules in writing to employees at least 14 days in advance, and post a schedule of the shifts of all employees at the worksite. The employee must consent to the schedule and any changes to the schedule in writing or electronically,¹ and may decline to work any hours not included in a work schedule.

If an employer changes an employee's schedule fewer than 14 days before the start of the first shift for which the employee is scheduled, the employer must notify the employee of any change and pay the employee a penalty - called "predictability pay" - equal to one hour's wage for each shift that is changed or canceled. If the change is made less than 24 hours before a shift of four or more hours begins, the employer must pay the employee four hours of wages. If the change is made less than 24 hours before a shift begins, and the shift is scheduled for less than four hours, the employer must

¹ Part-time employees may also offer an affirmative response to work additional hours in person.

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pay the employee two hours of wages. The penalty applies regardless of the actual hours worked. If an employee is scheduled as "on-call" and not called into work, he or she will be compensated two hours of wages for a shift scheduled for four hours or less and compensated four hours for a shift scheduled for four hours or more. An employer cannot be penalized if the changes to a schedule is made at the request of the employee, if the employer requires mandatory overtime, or if an employee trades shifts. Additionally, penalties do not apply if the establishment closes due to an emergency.²

The bill requires that part time employees performing similar duties under similar working conditions to be paid the same wage as full time employees. Wage differentials not based on part-time status are allowed. At least five days before hiring a new employee or a contractor, the covered employer must first offer additional hours (being paid at same rate, not overtime rate) to current part-time employees.³

Employers must maintain for three years records of hours worked by all employees, initial and revised schedules, wages, predictability pay, and minimum pay provided to employees. The employer must make these records available for inspection by the Department of Employment Services upon request.

DOES will be required to provide summaries of the bill to covered employers.

Employees affected by violations of this act are entitled to civil or administrative action. An administrative law judge will hear the allegations of violations, and if the judge finds the employer in violation, the employer will be responsible for paying any lost wages, plus interest, and damages of double the lost pay, any damages suffered, and reasonable attorney fees and cost of enforcement.

Financial Plan Impact

Funds are not sufficient in the fiscal year 2017 through fiscal year 2020 budget and financial plan to implement the bill.

The Department of Employment Services will require five FTEs to implement the investigative, enforcement and education requirements of the bill. It is expected that approximately 100 claims will be adjudicated annually.⁴ An estimated 9,000 employees work for large retailers (over 50 employees) and 15,000 employees work in large restaurants in the District. DOES will have to investigate claims from this base, even if some complaints are filed by employees that might be working for an employer not covered by the bill. DOES will not be able to determine this until it investigates the complaint.

The Office of Administrative Hearings will require additional hours from administrative law judges, attorneys and legal assistants to adjudicate these estimated 100 cases. This workload will not fall on any one individual but the total hours come to approximately 1 FTE.

² The bill lists several allowable exceptions, including closure due to threats to employees or property, electricity or water failure, force majeure such as severe weather, and failure of local transit systems.

³ The bill does not specify how additional hours are calculated. It also does not provide any threshold.

⁴ Claims involving minimum wage are tracking at approximately 200 cases annually in the Department of Employment Services, and wage investigations are tracking at 120 cases annually.

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Fiscal Impact of Bill 21-512, Hours and Scheduling Stability Act of 2016					
FY 2017 – FY 2020					
	FY 2017	FY 2018	FY 2019	FY 2020	FY 2017-FY 2020
DOES Personnel^(a)	\$412,549	\$422,214	\$432,188	\$453,534	\$1,720,485
DOES Public Education	\$25,000	\$25,000	\$5,000	\$5,000	\$60,000
OAH Personnel^(b)	\$75,796	\$78,070	\$80,412	\$82,825	\$317,104
TOTAL	\$513,345	\$525,284	\$517,601	\$541,358	\$2,097,588

(a) Assumes 4 Compliance Specialists/Auditors at Grade 11, step 1, and one Manager at MSS 13.

(b) Assumes one Attorney at Grade 11, step 1.