

# ASSEMBLY, No. 1117

## STATE OF NEW JERSEY 217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

**Sponsored by:**

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**District 34 (Essex and Passaic)**

**Assemblywoman PAMELA R. LAMPITT**

**District 6 (Burlington and Camden)**

**Assemblyman JAMEL C. HOLLEY**

**District 20 (Union)**

**SYNOPSIS**

Establishes the “New Jersey Schedules That Work Act.”

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



**(Sponsorship Updated As Of: 4/5/2016)**

1 AN ACT concerning employee work schedule changes and  
2 supplementing Title 34 of the Revised Statutes.

3

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

6

7 1. This act shall be known and may be cited as the “New Jersey  
8 Schedules That Work Act.”

9

10 2. As used in this act:

11 “Bona fide business reason” means the following: identifiable  
12 burden of significant additional costs to an employer, including the  
13 cost of productivity loss, retraining or hiring employees, or  
14 transferring employees from one facility to another facility; a  
15 significant detrimental effect on the employer’s ability to meet  
16 organizational needs or customer demand; a significant detrimental  
17 effect on business performance; insufficiency of work during the  
18 periods an employee proposes to work; or the need to balance  
19 competing scheduling requests when it is not possible to grant all  
20 such requests without a significant detrimental effect on the  
21 employer’s ability to meet organizational needs.

22 “Career related educational or training program” means an  
23 educational or training program or program of study offered by a  
24 public, private, or nonprofit career and technical education school,  
25 institution of higher education, or other entity that provides  
26 academic education, career and technical education, or training,  
27 including remedial education or English as a second language, that  
28 is a program that leads to a recognized postsecondary credential and  
29 provides career awareness information.

30 “Caregiver” means an individual with the status of being a  
31 significant provider of ongoing care or education, including  
32 responsibility for securing or providing the ongoing care or  
33 education of a child, or responsibility for securing or providing the  
34 ongoing care of a person with a serious health condition who is in a  
35 family relationship with the individual or a parent of the individual  
36 who is 65 years of age or older.

37 “Child” means a biological, adopted, or foster child, stepchild or  
38 legal ward of a covered individual, child of a domestic partner of  
39 the covered individual, or child of a civil union partner of the  
40 covered individual, who is less than 19 years of age or is 19 years  
41 of age or older but incapable of self-care because of mental or  
42 physical impairment.

43 “Civil union” means a civil union as defined in section 2 of  
44 P.L.2006, c.103 (C.37:1-29).

45 “Domestic partner” means a domestic partner as defined in  
46 section 3 of P.L.2003, c.246 (C.26:8A-3).

47 “Employee” means any individual who is suffered or permitted  
48 to work by an employer.

1 "Employer" means a person or corporation, partnership,  
2 individual proprietorship, joint venture, firm, company, or other  
3 similar legal entity, or successor thereof, which engages the  
4 services of an employee, and which employs 15 or more employees.  
5 For purposes of determining the number of employees who work  
6 for an employer, all employees performing work for compensation  
7 on a full time, part time, or temporary basis shall be counted, except  
8 that if the number of employees who perform work for an employer  
9 for compensation fluctuates, the number may be determined for a  
10 calendar year based upon the average number of employees who  
11 performed work for the employer for compensation during the  
12 preceding calendar year. "Employer" includes any individual who  
13 acts, directly or indirectly, in the interest of the employer to any of  
14 the employer's employees and includes any successor. "Employer"  
15 includes the State, any political subdivision thereof, and all public  
16 offices, agencies, authorities, boards, or bodies.

17 "Family relationship" means a relationship with a child, spouse,  
18 civil union partner, domestic partner, parent, grandchild,  
19 grandparent, sibling, or parent of a spouse or domestic partner.

20 "Minimum number of expected work hours" means the minimum  
21 number of hours an employee will be assigned to work on a weekly  
22 or monthly basis.

23 "Part time employee" means an employee who works fewer than  
24 30 hours per week on average during any one month period.

25 "Retail, food service, or cleaning employee" means an individual  
26 employee who is employed in any of the following occupations, as  
27 described by the Bureau of Labor Statistics Standard Occupational  
28 Classification System: retail sales occupations consisting of  
29 occupations described in 41-1010 and 41-2000, and all subdivisions  
30 thereof, of the Standard Occupational Classification System, which  
31 includes first line supervisors of sales workers, cashiers, gaming  
32 change persons and booth cashiers, counter and rental clerks, parts  
33 sales persons, and retail sales persons; food preparation and serving  
34 related occupations as described in 35-0000, and all subdivisions  
35 thereof, of the Standard Occupational Classification System, which  
36 includes supervisors of food preparation and serving workers, cooks  
37 and food preparation workers, food and beverage serving workers,  
38 and other food preparation and serving related workers; and  
39 building cleaning occupations as described in 37-2011, 37-2012,  
40 and 37-2019 of the Standard Occupational Classification System,  
41 which includes janitors and cleaners, maids and housekeeping  
42 cleaners, and building cleaning workers. "Retail, food service, or  
43 cleaning employee" does not mean any employee employed in a  
44 bona fide executive, administrative, or professional capacity as  
45 defined in section 13(a)(1) of the "Fair Labor Standards Act of  
46 1938," 29 U.S.C. 213(a)(1).

47 "Serious health condition" means an illness, injury, impairment  
48 or physical or mental condition which requires: inpatient care in a

1 hospital, hospice, or residential medical care facility; or continuing  
2 medical treatment or continuing supervision by a health care  
3 provider.

4 “Split shift” means a schedule of daily hours in which the hours  
5 worked are not consecutive, except that a schedule in which the  
6 total time out for meals does not exceed one hour shall not be  
7 treated as a split shift.

8 “Work schedule” means those days and times within a work  
9 period when an employee is required by an employer to perform the  
10 duties of the employee’s employment for which the employee will  
11 receive compensation.

12 “Work schedule change” means any modification to an  
13 employee’s work schedule, such as an addition or reduction of  
14 hours, cancellation of a shift, or a change in the date or time of a  
15 work shift, by an employer.

16 “Work shift” means the specific hours of the workday during  
17 which an employee works.

18

19 3. a. An employee may apply to the employee’s employer to  
20 request a change in the terms and conditions of employment as they  
21 relate to the following:

22 (1) the number of hours the employee is required to work or be  
23 on call for work;

24 (2) the times when the employee is required to work or be on  
25 call for work;

26 (3) the location where the employee is required to work;

27 (4) the amount of notification the employee receives of work  
28 schedule assignments;

29 (5) minimizing fluctuations in the number of hours the  
30 employee is scheduled to work on a daily, weekly, or monthly  
31 basis; and

32 (6) whether or not the request is because of any of the reasons  
33 set forth in subsection c. of this section.

34 b. If an employee applies to the employee’s employer to  
35 request a change in the terms and conditions of employment as set  
36 forth in subsection a. of this section, then the employer shall engage  
37 in a timely, good faith interactive process with the employee that  
38 includes a discussion of potential schedule changes that would meet  
39 the employee’s needs. This process shall result in the employer  
40 either granting or denying the request. In the event of a denial the  
41 employer shall:

42 (1) consider alternatives to the proposed change that might meet  
43 the employee’s needs;

44 (2) grant or deny a request for an alternative change in the terms  
45 and conditions of employment as set forth in subsection a.; and

46 (3) state the reason for any denial.

47 If information provided by the employee making a request for a  
48 change requires clarification, the employer shall explain what

1 further information is needed and give the employee reasonable  
2 time to produce the information.

3 c. If an employee makes a request for a change in the terms and  
4 conditions of employment as set forth in subsection a. of this  
5 section because of a serious health condition of the employee, due  
6 to the employee's responsibilities as a caregiver, or due to the  
7 employee's enrollment in a career related educational or training  
8 program, or if a part time employee makes a request for such a  
9 change for a reason related to a second job, the employer shall grant  
10 the request, unless the employer has a bona fide business reason for  
11 denying the request.

12 d. If an employee makes a request for a change in the terms and  
13 conditions of employment as set forth in subsection a. of this  
14 section, for a reason other than those reasons set forth in subsection  
15 c. of this section, then the employer may deny the request for any  
16 reason that is not unlawful, but shall comply with the applicable  
17 provisions of subsections b. and e. of this section, including  
18 providing the employee with the reason for the denial, including  
19 whether the reason for the denial was a bona fide business reason.

20 e. If an employee makes any request for a change in the terms  
21 and conditions of employment as provided for in this section in  
22 writing, the employer shall provide a written response.

23

24 4. a. An employer shall pay a retail, food service, or cleaning  
25 employee the following:

26 (1) at least four hours at the employee's regular rate of pay for  
27 each day on which the retail, food service, or cleaning employee  
28 reports for work under specific instructions but is given less than  
29 four hours of work, except that if the retail, food service, or  
30 cleaning employee's scheduled hours are less than four hours, the  
31 retail, food service, or cleaning employee shall be paid for the  
32 employee's scheduled hours for that day if given less than the  
33 scheduled hours of work; and

34 (2) at least one hour at the employee's regular rate of pay for  
35 each day the retail, food service, or cleaning employee is given  
36 specific instructions to contact the employer, or wait to be contacted  
37 by the employer, less than 24 hours in advance of the start of a  
38 potential work shift to determine whether the employee must report  
39 to work for that shift.

40 b. An employer shall pay a retail, food service, or cleaning  
41 employee for one additional hour at the employee's regular rate of  
42 pay for each day during which the employee works a split shift.

43 c. The employer shall provide any retail, food service, or  
44 cleaning employee the following advance notification:

45 (1) on or before a new employee's first day of work, in writing,  
46 the employee's work schedule and minimum number of expected  
47 work hours the employee will be assigned to work per month; and

1 (2) a new work schedule, in writing, not less than 14 days before  
2 the first day of the new work schedule if the employee's work  
3 schedule changes from the work schedule for which the employee  
4 was notified pursuant to paragraph (1) of this subsection. If the  
5 minimum number of work hours the employee will be assigned  
6 changes, then the employer shall provide written notification of that  
7 change, not less than 14 days in advance of the first day the change  
8 will go into effect. Nothing in this subsection shall be construed to  
9 prohibit an employer from providing greater advance notice of a  
10 retail, food service, or cleaning employee's work schedule than is  
11 required under this section.

12 An employer may use, in addition to the written notices required  
13 by this subsection, any additional means to notify an employee of  
14 the employee's work schedule.

15 d. An employer may make work schedule changes as needed,  
16 including by offering additional hours of work to a retail, food  
17 service, or cleaning employee beyond those previously scheduled,  
18 but an employer shall be required to provide one extra hour of pay  
19 at the retail, food service, or cleaning employee's regular rate for  
20 each shift that is changed with less than 24 hours' notice, except in  
21 the case of the need to schedule the employee due to the unforeseen  
22 unavailability of an employee previously scheduled to work that  
23 shift.

24 e. Every employer employing any retail, food service, or  
25 cleaning employee shall post the schedule of all retail, food service,  
26 or cleaning employees in every establishment where any retail,  
27 foods service, or cleaning employee is employed and keep it posted  
28 in a conspicuous place so as to permit the employee to observe  
29 readily a copy. Availability of that schedule by electronic means  
30 accessible by all retail, food service, or cleaning employees of that  
31 employer shall be considered compliance with this subsection.

32 f. Nothing in this section shall be construed to prevent an  
33 employer from allowing a retail, food service, or cleaning employee  
34 to work in place of another employee who has been scheduled to  
35 work a particular shift as long as the change in schedule is mutually  
36 agreed upon by the employees. An employer shall not be subject to  
37 the requirements of paragraph (2) of subsection c. of this section or  
38 subsection d. of this section for voluntary shift trades.

39 g. The requirements of this section shall not apply during  
40 periods when regular operations of the employer are suspended due  
41 to events beyond the employer's control.

42

43 5. a. It shall be unlawful for any employer to interfere with,  
44 restrain, or deny the exercise or the attempt to exercise, any right of  
45 an employee as set forth in sections 3 or 4 of this act. It shall be  
46 unlawful for any employer to discharge, threaten to discharge,  
47 demote, suspend, reduce work hours of, or take any other adverse  
48 employment action against any employee in retaliation for

1 exercising the rights of an employee under this act or opposing any  
2 practice made unlawful by this act. For purposes of section 3 of this  
3 act, retaliation shall include taking an adverse employment action  
4 against any employee on the basis of that employee's eligibility or  
5 perceived eligibility to request or receive a change in the terms and  
6 conditions of employment, as described in that section, on the basis  
7 of a reason set forth in subsection c. of section 3 of this act.

8 b. It shall be unlawful for any employer to discharge, threaten  
9 to discharge, demote, suspend, reduce work hours of, take any other  
10 adverse employment action against any employee, or in any other  
11 manner discriminate against any employee because that employee  
12 has:

13 (1) filed any charge or complaint, or has instituted or caused to  
14 be instituted any proceeding, under or related to this act;

15 (2) given, or is about to give, any information in connection  
16 with any inquiry or proceeding relating to any right provided under  
17 this act; or

18 (3) testified, or is about to testify, in any inquiry or proceeding  
19 relating to any right provided under this act.  
20

21 6. a. The commissioner shall receive, investigate, and attempt  
22 to resolve complaints of violations of this act and may issue an  
23 order making determinations and the assessment of a civil penalty  
24 to be paid by an employer who violates the provisions of this act in  
25 an amount not to exceed \$500 for the first violation, \$1,000 for the  
26 second violation, and \$5,000 for each subsequent violation,  
27 collectible by the commissioner in a summary proceeding pursuant  
28 to the "Penalty Enforcement Law of 1999," P.L.1999, c.274  
29 (C.2A:58-10 et seq.).

30 b. The commissioner may bring an action in any court of  
31 competent jurisdiction on behalf of an aggrieved employee to:

32 (1) restrain violations of this act;

33 (2) award equitable relief as may be appropriate, including  
34 employment, reinstatement, and promotion; and

35 (3) recover the compensation and damages described in  
36 paragraphs (3) through (5) of subsection a. of section 7 of this act.

37 c. In the case of a failure to make payments to employees  
38 required pursuant to subsection a. of section 4 of this act, the  
39 commissioner may, as an alternative to any other sanctions or in  
40 addition thereto, supervise the payment to the employees of the  
41 amounts due and collect administrative fees in the manner provided  
42 by section 24 of P.L.1966, c.113 (C.34:11-56a23).  
43

44 7. a. Upon a violation of any of the provisions of this act, an  
45 employee may institute a civil action in the Superior Court for  
46 relief. All remedies available in common law tort actions shall be  
47 available to a prevailing plaintiff. The court may also order any or  
48 all of the following relief:

- 1 (1) an injunction to restrain the continued violation of any of the  
2 provisions of this act;
  - 3 (2) reinstatement of the employee to the same position or to a  
4 position equivalent to that which the employee held prior to any  
5 unlawful discharge or retaliatory action;
  - 6 (3) compensation for any wages, benefits and other  
7 remuneration denied, lost, or owed to the employee by reason of the  
8 violation;
  - 9 (4) in a case in which wages, benefits and other remuneration  
10 have not been denied, lost, or owed to the employee, compensation  
11 for any actual monetary losses sustained by the employee as a direct  
12 result of the violation;
  - 13 (5) an additional amount of compensation as liquidated damages  
14 equal to the amount described in paragraph (3) or (4) of this  
15 subsection;
  - 16 (6) payment of reasonable costs and attorney's fees.
- 17 b. The right provided by subsection a. of this section to  
18 institute a civil action shall terminate upon the filing of a complaint  
19 by the commissioner in an action under subsection b. of section 6 of  
20 this act in which a recovery is sought of the damages described in  
21 paragraph (3) of subsection a. of this section, unless the action  
22 described is dismissed without prejudice on motion of the  
23 commissioner.
  - 24 c. An action may be brought under this section not later than  
25 two years after the date of the last event constituting the alleged  
26 violation for which the action is brought.  
27
- 28 8. a. Every employer subject to the provisions of this act shall  
29 post and keep conspicuously posted, in the establishment and  
30 location where notices or postings to employees and applicants for  
31 employment are customarily posted, a notice, to be furnished by the  
32 Department of Labor and Workforce Development, setting forth  
33 excerpts from, or summaries of, the pertinent provisions of this act  
34 and information pertaining to the filing of a complaint under this  
35 act.
  - 36 b. Each employer of an employee subject to the provisions of  
37 section 4 of this act shall keep and make available to the department  
38 upon request, as part of the wage records required pursuant to  
39 section 21 of P.L.1966, c.113 (C.34:11-56a20), a record of each  
40 instance in which the employer is required by the provisions of  
41 subsection a of section 4 of this act to make wage payments to the  
42 employee and the amount of wages paid in each instance.  
43
- 44 9. This act shall not be construed to preempt, limit, or  
45 otherwise affect the applicability of any other federal, State or local  
46 law, ordinance, regulation, requirement, policy, or standard that  
47 provides rights or benefits to employees which are more favorable



1 to employees than those required by this act or which provide rights  
2 or benefits to employees not covered by this act.

3

4 10. No provision of this act, or any regulations promulgated to  
5 implement or enforce this act, shall be construed as:

6 a. Requiring an employer to reduce, or justifying an employer  
7 in reducing, rights or benefits provided by the employer pursuant to  
8 an employer policy or collective bargaining agreement which are  
9 more favorable to employees than those required by this act or  
10 which provide rights or benefits to employees not covered by this  
11 act; or

12 b. Preventing or prohibiting the employer from agreeing,  
13 through a collective bargaining agreement or employer policy, to  
14 provide rights or benefits which are more favorable to employees  
15 than those required by this act or to provide rights or benefits to  
16 employees not covered by this act.

17

18 11. This act shall take effect on the first day of the fourth month  
19 next following the date of enactment.

20

21

22

#### STATEMENT

23

24 This bill enacts the “New Jersey Schedules That Work Act.” The  
25 bill provides that employees may request a change to their work  
26 schedules without fear of retaliation, and requires that employers  
27 consider these requests. The bill also requires employers to provide  
28 more predictable and stable schedules for employees in certain low  
29 wage occupations. For purposes of the bill, “employer” is defined  
30 as any employer that employs 15 or more employees.

31 The bill permits employees to apply to their employer to request  
32 a change in the terms and conditions of employment as they relate  
33 to the following: the number of hours the employee is required to  
34 work or be on call for work; the times when the employee is  
35 required to work or be on call for work; the location where the  
36 employee is required to work; the amount of notification the  
37 employee receives of work schedule assignments; and minimizing  
38 fluctuations in the number of hours the employee is scheduled to  
39 work on a daily, weekly, or monthly basis.

40 If an employee applies to the employer to request a change in the  
41 terms and conditions of employment, then the employer must  
42 engage in a timely, good faith interactive process with the employee  
43 that includes a discussion of potential schedule changes that would  
44 meet the employee’s needs. This process must result in the  
45 employer either granting or denying the request.

46 The bill provides that if an employee makes a request for a  
47 change in the terms and conditions of employment because of a  
48 serious health condition of the employee, due to the employee’s

1 responsibilities as a caregiver, or due to the employee's enrollment  
2 in a career related educational or training program, or if a part time  
3 employee makes a request for such a change for a reason related to  
4 a second job, then the employer must grant the request, unless the  
5 employer has a bona fide business reason for denying the request.

6 The bill also requires an employer to pay any retail, food service,  
7 or cleaning employee the following:

8 1. At least four hours at the employee's regular rate of pay for  
9 each day on which the retail, food service, or cleaning employee  
10 reports for work under specific instructions but is given less than  
11 four hours of work, except that if the retail, food service, or  
12 cleaning employee's scheduled hours are less than four hours, the  
13 retail, food service, or cleaning employee must be paid for the  
14 employee's scheduled hours for that day if given less than the  
15 scheduled hours of work; and

16 2. At least one hour at the employee's regular rate of pay for  
17 each day the retail, food service, or cleaning employee is given  
18 specific instructions to contact the employer, or wait to be contacted  
19 by the employer, less than 24 hours in advance of the start of a  
20 potential work shift to determine whether the employee must report  
21 to work for that shift.

22 An employer must pay any retail, food service, or cleaning  
23 employee one additional hour at the employee's regular rate of pay  
24 for each day during which the employee works a split shift.

25 The bill also requires an employer to provide any retail, food  
26 service, or cleaning employee the following advance notification  
27 regarding the employee's work schedule:

28 1. On or before a new employee's first day of work, in writing,  
29 the employee's work schedule and minimum number of expected  
30 work hours the employee will be assigned to work per month; and

31 2. A new work schedule, in writing, not less than 14 days  
32 before the first day of the new work schedule if the employee's  
33 work schedule changes from the work schedule for which the  
34 employee was previously notified as a new employee, and if the  
35 minimum number of work hours the employee will be assigned  
36 changes, then the employer shall provide notification of that  
37 change, not less than 14 days in advance of the first day the change  
38 will go into effect.

39 The bill provides that an employer of any retail, food service, or  
40 cleaning employee may make work schedule changes as needed,  
41 including by offering additional hours of work to the employee  
42 beyond those previously scheduled, but an employer must provide  
43 one extra hour of pay at the retail, food service, or cleaning  
44 employee's regular rate for each shift that is changed with less than  
45 24 hours' notice, except in the case of the need to schedule the  
46 employee due to the unforeseen unavailability of an employee  
47 previously scheduled to work that shift.

1       The bill requires every employer employing any retail, food  
2 service, or cleaning employee to post the work schedule and keep it  
3 posted in a conspicuous place in every establishment where any  
4 retail, food service, or cleaning employee is employed so as to  
5 permit the employee to observe it.

6       The bill makes it an unlawful employment practice for any  
7 employer to interfere with, restrain, or deny the exercise or the  
8 attempt to exercise, any right of an employee as set forth in the bill.  
9 Under the bill, it is unlawful for any employer to discharge, threaten  
10 to discharge, demote, suspend, reduce work hours of, or take any  
11 other adverse employment action against any employee in  
12 retaliation for exercising the rights of an employee under the bill or  
13 opposing any practice made unlawful by the bill.

14       The Commissioner of Labor and Workforce Development may  
15 file a complaint on behalf of an employee, and may also assess a  
16 civil penalty to be paid by an employer who violates the provisions  
17 of the bill. The bill also provides that an employee may institute a  
18 civil action in the Superior Court for relief. However, the right of an  
19 employee to institute a civil action shall terminate upon the filing of  
20 a complaint by the commissioner.

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

26       Finally, the bill states that nothing contained therein will be  
27 construed to preempt, limit, or otherwise affect the applicability of  
28 any other federal, State or local law, ordinance, regulation,  
29 requirement, policy, or standard that provides rights or benefits to  
30 employees which are more favorable to employees than those  
31 required by the bill or which provide rights or benefits to employees  
32 not covered by the bill.