

# SENATE, No. 921

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JANUARY 27, 2020

**Sponsored by:**

**Senator LORETTA WEINBERG**

**District 37 (Bergen)**

**Senator NIA H. GILL**

**District 34 (Essex and Passaic)**

**SYNOPSIS**

“New Jersey Fair Workweek Act.”

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 1/30/2020.)

S921 WEINBERG, GILL

2

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

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

7  
8 1. (New section) As used in sections 1 through 14 of this act:  
9 “At the time of hire” means after offer and acceptance of  
10 employment and before or upon the commencement of employment.  
11 For an employee jointly employed by a covered employer and a  
12 labor contractor, as defined in section 9 of P.L.2019, c.212  
13 (C.34:11-58.2), the time of hire shall be the first day of the  
14 employee’s placement with the covered employer, provided that the  
15 employee has not performed work for the covered employer during  
16 the previous thirty days.

17 “Bona fide business reason” means:

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

20 (2) A significant and quantifiable burden of additional costs to  
21 the covered employer;

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

24 (4) A significant and quantifiable detrimental effect on the  
25 covered employer’s ability to meet organizational demands,  
26 including:

27 (a) A significant and quantifiable inability of the covered  
28 employer, despite best efforts, to reorganize work among existing  
29 employees;

30 (b) A significant and quantifiable detrimental effect on business  
31 performance; or

32 (c) A significant and quantifiable inability to meet customer  
33 needs or demands.

34 “Chain” means a set of establishments including, but not limited  
35 to, franchises, that do business under the same trade name or brand  
36 or that are characterized by standardized options for decor,  
37 marketing, packaging, products, and services, regardless of the type  
38 of ownership of each individual establishment.

39 “Commissioner” means the Commissioner of the Department of  
40 Labor and Workforce Development.

41 “Covered employer” means an employer that employs workers at  
42 one or more covered establishments and employs 250 or more  
43 employees worldwide regardless of where those employees perform  
44 work, including but not limited to chain establishments or  
45 franchises associated with a chain of establishments, or network of

**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 thus is new matter.

1 franchises, that employ 250 or more employees in aggregate. In  
2 determining the number of employees, all employees including but  
3 not limited to those employed on a full-time, part-time, seasonal, or  
4 temporary basis, shall be counted, including workers placed with  
5 the covered employer through a labor contractor, provided that  
6 where the number of employees fluctuates, the number of  
7 employees shall be determined for the current calendar year based  
8 upon the average number of employees employed per week during  
9 the preceding calendar year, and provided further that in  
10 determining the number of employees employed by or for a chain  
11 business, the total number of employees in that group of  
12 establishments shall be counted.

13 “Covered establishment” means a mercantile establishment,  
14 hospitality establishment, restaurant establishment, warehouse  
15 establishment, or other establishment of the business which owns or  
16 operates any of these establishments.

17 “Department” means the Department of Labor and Workforce  
18 Development.

19 “Employee” means any person suffered or permitted to work at a  
20 covered establishment who is deemed to be in employment under  
21 the criteria set forth in R.S.43:21-19(i)(6)(A), (B), and (C) and  
22 who is:

23 (1) required under State or federal law to be paid at an overtime  
24 rate for hours in excess of a maximum number per workweek;  
25 including but not limited to full-time employees, part-time  
26 employees, and seasonal and temporary workers; or

27 (2) an employee at a hospitality establishment paid on an hourly  
28 basis, regardless of whether the employee is paid at an overtime  
29 rate.

30 An alleged covered employer shall bear the burden of proof that  
31 the individual is an independent contractor rather than an employee.

32 “Employer” means any individual, partnership, association,  
33 corporation or business trust or any other person or group of  
34 persons, or a successor thereof, that employs an individual, and  
35 includes any entity, person, or individual acting directly or  
36 indirectly in the interest of the employer in relation to the  
37 employee. More than one entity may be the employer if  
38 employment by one employer is not completely disassociated from  
39 employment by the other employer. “Employer” shall include, in  
40 the case of a client employer and a labor contractor providing  
41 workers to the client employer, both the client employer and the  
42 labor contractor, both of whom shall be subject to joint and several  
43 liability pursuant to section 9 of P.L.2019, c.212 (C.34:11-58.2) for  
44 violations of this act.

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

47 “Hospitality establishment” means an establishment kept, used,  
48 maintained, advertised as, or held out to be a place where sleeping

1 accommodations are supplied for pay to transient or permanent  
2 guests, in which 15 or more rooms are available for rental furnished  
3 or unfurnished; except this definition shall not include summer  
4 camps and country clubs that are not part of a hotel or motel  
5 establishment.

6 “Interactive process” means a timely, good faith process that  
7 includes a discussion between the covered employer and the  
8 employee for the purpose of arriving at a mutually beneficial  
9 arrangement of a work schedule that meets the needs of the  
10 employee and the covered employer. The discussion may include  
11 the proposal of alternatives by the covered employer and the  
12 employee.

13 “Mercantile establishment” means a place of business selling or  
14 offering for sale any type of merchandise, wares, goods, articles, or  
15 commodities, or distributing such merchandise, wares, goods,  
16 articles, or commodities.

17 “On-call” means any time that a covered employer requires an  
18 employee to be available to work, and to contact the covered  
19 employer or the covered employer’s designee or wait to be  
20 contacted by the employer or its designee, to determine whether the  
21 employee shall report to work at that time.

22 “Regular hourly wage” means the amount an employee is  
23 regularly paid for each hour of work as determined by dividing the  
24 total hours during a week into the employee’s total earning per  
25 week, exclusive of overtime pay.

26 “Restaurant establishment” means any eating or drinking place  
27 which prepares and offers food or beverages for human  
28 consumption either in any of its premises or by such services as  
29 catering, banquets, box lunch or curbside service and which is part of a  
30 chain of 30 or more restaurant establishments worldwide, or is  
31 operated under a franchise for which the total worldwide number of  
32 restaurant establishments owned or operated by the franchisor and  
33 by all franchisees of the franchisor, or by any entity that directly or  
34 indirectly owns or operates the franchisor, is 30 or more.

35 “Shift” means the consecutive hours a covered employer requires  
36 an employee to work or to be on-call to work, provided that breaks  
37 totaling two hours or less shall not be considered an interruption of  
38 consecutive hours.

39 “Successor” means any person to whom a covered employer  
40 quitting, selling out, exchanging, or disposing of a business sells or  
41 otherwise conveys in bulk and not in the ordinary course of the  
42 employer’s business, a major part of the property, whether real or  
43 personal, tangible or intangible, of the employer’s business. For  
44 purposes of this definition, “person” means an individual, receiver,  
45 administrator, executor, assignee, trustee in bankruptcy, trust,  
46 estate, firm, corporation, business trust, partnership, limited liability  
47 partnership, company, joint stock, company, limited liability  
48 company, association, joint venture, or any other legal or

1 commercial entity. A rebuttable presumption that an employer has  
2 established a successor entity shall arise if the employer and  
3 successor entity share at least two of the following capacities or  
4 characteristics:

- 5 (1) perform similar work within the same geographical area;
- 6 (2) occupy the same premises;
- 7 (3) have the same telephone or fax number;
- 8 (4) have the same email address or Internet website;
- 9 (5) employ substantially the same work force, administrative  
10 employees, or both;
- 11 (6) utilize the same tools, facilities, or equipment;
- 12 (7) employ or engage the services of any person or persons  
13 involved in the direction or control of the other; or
- 14 (8) list substantially the same work experience.

15 “Warehouse establishment” means a warehouse, distribution  
16 center, sortation facility, fulfillment center, or any other building  
17 containing products, goods, or commodities to be stored, loaded,  
18 packed, sorted, wrapped, delivered, or otherwise redistributed to  
19 retailers, wholesalers, or directly to consumers.

20 “Work schedule” means a schedule of the regular and on-call  
21 shifts of the employees in an establishment, including specific start  
22 and end times for each shift, during a consecutive seven-day period.

23 “Work schedule change” means any covered employer-initiated  
24 modification to the employee's work schedule, including but not  
25 limited to: the addition or reduction of hours; cancellation of a work  
26 shift or portion of a work shift; a change in the date, time, or  
27 location of a work shift; or scheduling the employee for an on-call  
28 work shift for which the employee does not need to report to work.

29 “Written” or “writing” means a printed or printable  
30 communication in physical or electronic format including a  
31 communication transmitted through email, text message, or a  
32 computer system, or is otherwise sent and maintained  
33 electronically.

34

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

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

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

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

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

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

11 c. A covered employer does not violate the requirements of this  
12 section when an employee's average weekly work hours  
13 significantly exceed the number provided in the good faith estimate  
14 if the employer has a bona fide business reason and has made every  
15 effort to schedule the employee for the employee's desired number  
16 of weekly work hours.

17 d. At the time of hire and thereafter, the employee has the right  
18 to make work schedule requests including but not limited to:

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

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

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

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

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

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

35  
36 3. (New section) a. Not later than the time of  
37 commencement of employment, a covered employer shall provide  
38 the employee with a written work schedule that runs through the  
39 last date of the currently posted work schedule. Thereafter, the  
40 employer shall provide written notice of work hours pursuant to  
41 subsection b. of this section no later than 14 days prior to the first  
42 day of any new schedule. Nothing in this section shall be construed  
43 to prohibit a covered employer from providing greater advance  
44 notice of employee's work schedules or changes in schedules than  
45 that required by this section.

46 b. Written notice of the work schedule shall be provided by  
47 posting the work schedule in a conspicuous place at the workplace  
48 that is readily accessible and visible to all employees and by

1 transmitting the posted work schedule to each employee. Such  
2 transmission may be done electronically only if electronic means  
3 are regularly used to communicate scheduling information to  
4 employees. The work schedule shall identify all employees  
5 currently employed at that worksite, regardless of whether they are  
6 scheduled to work any hours in the schedule.

7 c. A covered employer shall provide to any affected employee  
8 written notice of any revision of a work schedule posted pursuant to  
9 subsection b. of this section as promptly as possible and prior to the  
10 change taking effect. The covered employer shall post and transmit  
11 the revised written work schedule to reflect any work schedule  
12 changes within 24 hours of making the change.

13 d. An employee may decline, without retaliation or adverse  
14 action, to work any hours not included in the posted work schedule.  
15 If the employee provides informed consent to work such hours, the  
16 consent shall be recorded in writing.

17

18 4. (New section) a. For each work schedule change that  
19 occurs after the advance notice required by section 3 of this act, a  
20 covered employer shall pay to any affected employee predictability  
21 pay at the following rates:

22 (1) One hour of pay at the employee's regular hourly wage for  
23 each instance when the covered employer adds hours of work or  
24 changes the date, time, or location of the employee's work shift  
25 without loss of hours; and

26 (2) One-half times the employee's regular hourly wage for any  
27 scheduled hours the employee does not work when the covered  
28 employer cancels or subtracts hours from a regular or on-call shift,  
29 provided that the employee shall, for any shift for which the hours  
30 of work were reduced, be paid, in combined wages and  
31 predictability pay, not less than the equivalent of four hours of pay  
32 at the employee's regular hourly wage.

33 b. A covered employer is not required to pay predictability pay  
34 under this section or to obtain written consent pursuant to  
35 subsection d. of section 3 of this act when:

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

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

43 A failure to make any payment required by this section in the  
44 manner required by this section shall be a violation of this act and  
45 be subject to the remedies provided by this act and other applicable  
46 provisions of State wage and hour laws as defined in R.S.34:11-57,  
47 including remedies provided by section 10 of P.L.1965, c.173  
48 (C.34:11-4.10).

1       5. (New section) a. An employee may decline, without  
2 retaliation or adverse action, any work hours that are scheduled or  
3 otherwise occur less than 12 hours after the end of the employee's  
4 most recent shift. The employee may consent to work such shifts if  
5 the consent is provided in writing for each shift or for multiple  
6 shifts, and the consent may be revoked by the employee in writing  
7 at any time.

8       b. The covered employer shall provide rest shortfall pay to the  
9 employee at one and one-half times the employee's regular rate of  
10 pay for any hours the employee works that occur less than twelve  
11 hours after the end of the employee's most recent shift.

12       A failure to make any payment required by this section in the  
13 manner required by this section shall be a violation of this act and  
14 be subject to the remedies provided by this act and other applicable  
15 provisions of State wage and hour laws as defined in R.S.34:11-57,  
16 including remedies provided by section 10 of P.L.1965, c.173  
17 (C.34:11-4.10).

18

19       6. (New section) a. Before hiring any new employees,  
20 including but not limited to, hiring through a labor contractor or an  
21 applicant pool, a covered employer shall make every effort to  
22 schedule its existing employees for the desired number of weekly  
23 work hours identified in the written statements provided pursuant to  
24 subsection a. of section 2 of this act, provided that the employer  
25 may hire a new employee if existing employees lack, and cannot  
26 obtain with reasonable training, the qualifications necessary to  
27 perform the work. This section shall not be construed to require  
28 any employer to schedule employees to work hours required to be  
29 paid at an overtime rate under State or federal law.

30       b. When a covered employer fails to offer an existing employee  
31 opportunities to work the employee's desired number of weekly  
32 work hours before hiring a new employee, the existing employee  
33 shall be provided retention pay at the employee's regular hourly  
34 rate for hours worked by a newly hired employee that occurred  
35 within the existing employee's written availability.

36       A failure to make any payment required by this section in the  
37 manner required by this section shall be a violation of this act and  
38 be subject to the remedies provided by this act and other applicable  
39 provisions of State wage and hour laws as defined in R.S.34:11-57,  
40 including remedies provided by section 10 of P.L.1965, c.173  
41 (C.34:11-4.10).

42

43       7. (New section) a. Except as provided in subsection b. of  
44 this section, a covered employer shall pay each employee minimum  
45 weekly pay not less than an amount nine times the employee's  
46 regular hourly wage, or the minimum wage in effect pursuant to  
47 subsection a. of section 5 of P.L.1966, c.113 (C.34:11-56a4),  
48 whichever is more, during any 7-day period. Wages paid for hours



1 worked or paid leave, including paid benefit time during the 7-day  
2 pay period, may be used to meet the covered employer's obligation  
3 under this section.

4 b. An employee who, with the covered employer's consent,  
5 does not work or takes unpaid leave during a particular week may  
6 waive the requirement of subsection a. of this section, if the  
7 employee designates in writing the specific week or weeks for  
8 which minimum weekly pay is waived.

9 A failure to make any payment required by this section in the  
10 manner required by this section shall be a violation of this act and  
11 be subject to the remedies provided by this act and other applicable  
12 provisions of State wage and hour laws as defined in R.S.34:11-57,  
13 including remedies provided by section 10 of P.L.1965, c.173  
14 (C.34:11-4.10).

15

16 8. (New section) a. With respect to employees who are  
17 employed in positions that require substantially similar skill, effort,  
18 responsibility, and duties, and that are performed under similar  
19 working conditions, a covered employer shall not discriminate,  
20 retaliate, or take any adverse action against any employee on the  
21 basis of number of hours the employee is scheduled to work or  
22 actually works, expected duration of employment, or the hours,  
23 days, or times indicated pursuant to subsection a. of section 2 of  
24 this act. Discrimination includes, but is not limited to, providing  
25 similarly situated employees with different:

26 (1) hourly wages;

27 (2) eligibility to accrue covered employer-provided paid and  
28 unpaid time off and other benefits; or

29 (3) promotion opportunities or other conditions of employment.

30 b. This section shall not be construed to prohibit differences in  
31 hourly wages or other conditions of employment for reasons other  
32 than the number of hours the employee is scheduled to work or  
33 expected duration of employment, or the hours, days, or times  
34 indicated pursuant to subsection a. of section 2 of this act. For the  
35 purposes of this act, the date of hire, a merit system, or a system  
36 which measures earnings by quantity per hour or quality of  
37 production shall be acceptable basis for differences in hourly wages  
38 or other conditions of employment.

39

40 9. (New section) Each covered employer shall post and keep  
41 posted, on the premises of the covered employer in conspicuous  
42 places where notices to employees and applicants for employment  
43 are customarily posted, a notice, to be prepared or approved by the  
44 commissioner, setting forth the rights and privileges provided under  
45 this act, stating that retaliation or adverse action against employees  
46 for exercising these rights is prohibited, and providing such other  
47 information as the department may require. If the covered employer

1 has an employee handbook, the notice shall also be included in the  
2 employee handbook.

3

4 10. (New section) a. Covered employers shall keep records  
5 necessary to demonstrate compliance with this act, including but  
6 not limited to records for each pay period for each covered  
7 employee of:

8 (1) the hours, days, times, and number of weekly hours the  
9 employee desires to work;

10 (2) the good faith estimate of the work schedule;

11 (3) any work schedule request and the interactive process;

12 (4) the written work schedule and any modifications of the  
13 schedule and the transmission of the schedule;

14 (5) any written designation made pursuant to subsection b. of  
15 section 7 of this act;

16 (6) the number of weekly work hours, and the days and times of  
17 those hours;

18 (7) any predictability pay paid pursuant to section 4 of this act;

19 (8) any rest shortfall pay paid pursuant to section 5 of this act;

20 (9) any minimum weekly pay adjustment paid pursuant to  
21 section 6 of this act;

22 (10) any retention pay paid pursuant to section 7 of this act; and

23 (11) any written consent required by this act.

24 Covered employers shall retain the records for a period of six years,  
25 and the records shall be open to inspection by the commissioner or  
26 the commissioner's authorized representative at any reasonable  
27 time. Any covered employer that hinders or delays the  
28 commissioner or the commissioner's authorized representative in  
29 the performance of their duties in the enforcement of this act, or  
30 fails to make, keep, or preserve, any record as required under the  
31 provisions of this act, or falsifies the record, or refuses to make any  
32 the record or other information required for the proper enforcement  
33 of this act accessible to the commissioner or the commissioner's  
34 authorized representative upon demand, shall be presumed to have  
35 violated this act, absent clear and convincing evidence otherwise,  
36 and be subject to penalties provided by P.L.1965, c.173 (C.34:11-  
37 4.1 et seq.).

38 b. Upon request by any employee, and in accordance with the  
39 rules of the department, a covered employer shall provide the  
40 employee with records of good faith estimates of work schedules,  
41 employee's desired work hours, written work schedules for any  
42 previous week worked in the past six years, including any  
43 modifications thereto, transmission of work schedules, notifications  
44 of modifications thereto, and any written consent required by this  
45 act.

46 c. In recording employee consent and employee requests  
47 required by subsections a. and d. of section 2 of this act, subsection  
48 d. of section 3 of this act, and subsection a. of section 5 of this act,

1 a covered employer may use as the record any printed or printable  
2 communication in physical or electronic format, including a  
3 communication that is transmitted through email, text message, or a  
4 computer system, or is otherwise sent and maintained  
5 electronically.

6 d. Any pay provided to an employee pursuant to sections 4, 5,  
7 6, or 7 of this act shall be included in the employee's regular  
8 paycheck for the period in which the pay is accrued. The covered  
9 employer shall, in the corresponding written wage statement or pay  
10 stub, identify separately the compensation included in the paycheck  
11 that the covered employer is required to provide pursuant to each  
12 section and the specific provision or provisions, and their  
13 corresponding amounts, under which the covered employer is  
14 required to provide the compensation, including any of the  
15 following or any combination thereof:

16 (1) paragraph (1) of subsection a. of section 4 of this act, to  
17 which the covered employer shall refer on the wage statement or  
18 pay stub as "Excess Time Predictability Pay";

19 (2) paragraph (2) of subsection a. of section 4 of this act, to  
20 which the covered employer shall refer on the wage statement or  
21 pay stub as "Short Time Predictability Pay";

22 (3) subsection b. of section 5 of this act, to which the covered  
23 employer shall refer on the wage statement or pay stub as "Rest  
24 Shortfall Pay";

25 (4) subsection b. of section 6 of this act, to which the covered  
26 employer shall refer on the wage statement or pay stub as  
27 "Minimum Weekly Pay Adjustment";

28 (5) subsection a. of section 7 of this act, to which the covered  
29 employer shall refer on the wage statement or pay stub as  
30 "Retention Pay."

31

32 11. (New section) a. For violations of this act or any other  
33 State wage and hour law as defined R.S.34:11-57, unless an  
34 employee or an agent or representative of the employee brings a  
35 civil action pursuant to subsection c. of section 10 of P.L.1965,  
36 c.173 (C.34:11-4.10), the department, or, in the case of a civil  
37 action, a court, may grant, in addition to, or as an alternative to, any  
38 other remedies provided by law, the following to employees or  
39 former employees:

40 (1) Compensatory damages and other remedies equal to those  
41 available to employees under a civil action brought under  
42 subsection c. of section 10 of P.L.1965, c.173 (C.34:11-4.10);

43 (2) An order directing compliance with the notice and posting of  
44 rights and recordkeeping requirements set forth in sections 8 and 9  
45 of this act; and

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

- 1 (a) Section 2: \$200;
- 2 (b) Section 3: \$200;
- 3 (c) Section 4: \$300;
- 4 (d) Section 5: \$500;
- 5 (e) Section 6: \$500;
- 6 (f) Section 8: \$500; and
- 7 (g) Section 7: \$300.

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

10 b. The department or the Attorney General may bring a civil  
11 action in a court of competent jurisdiction against a covered  
12 employer alleged to be in violation or to have violated this act. For  
13 violations of this act, the remedies specified in this section may be  
14 recovered through such action.

15 c. For violations of this act, the remedies specified in this  
16 section may be recovered through a civil action brought on behalf  
17 of the department in a court of competent jurisdiction by any  
18 employee allegedly harmed by a violation of this act, regardless of  
19 whether that person has received full or partial relief, or by a  
20 representative nonprofit or labor organization designated by said  
21 employee pursuant to regulations established by the department,  
22 pursuant to the following procedures:

23 (1) The employee or representative organization shall give  
24 written notice to the department of the specific provisions of this act  
25 alleged to have been violated, including the facts to support the  
26 alleged violation, and shall submit a fee of \$75 which may be  
27 waived subject to rules issued by the department.

28 (2) If the department decides to investigate the alleged violation,  
29 it shall notify the employee or representative organization of its  
30 decision within 65 calendar days of the postmark date of the notice  
31 provided for in subsection (1) of subsection c. of this section.  
32 Within 60 calendar days of that decision, the department shall  
33 investigate the alleged violation and take any enforcement action  
34 authorized by law. If the department, during the course of its  
35 investigation, determines that additional time is necessary to  
36 complete the investigation, it may extend the time by not more than  
37 60 additional calendar days and shall notify the employee or  
38 representative organization of the extension. If the department  
39 determines that no enforcement action will be taken, it shall notify  
40 the employee or representative organization of that decision within  
41 five business days.

42 (3) The employee or representative organization may commence  
43 a civil action pursuant to section 11 of this act if the department  
44 determines that no enforcement action will be taken, or if no  
45 enforcement action is taken by the department within the time limits  
46 prescribed by paragraph (2) of subsection c. of this section; or if the  
47 department fails to provide timely notifications.

1 (4) No action may be brought under this section alleging the  
2 violation of any section of this act for which the department, on the  
3 same facts, initiates an enforcement action, or for minimal  
4 violations of section 9 of this act. The department may intervene in  
5 an action brought under this section and proceed with all claims in  
6 the action as of right within thirty days after the commencement of  
7 the action, or for good cause, as determined by the court, after the  
8 expiration of the thirty-day period.

9 (5) Penalties recovered pursuant to paragraph (3) of subsection  
10 a. of this section shall be distributed as follows: 70 percent to the  
11 department for enforcement of this act, with 25 percent of that  
12 amount reserved for grants to community organizations for outreach  
13 and education about employee rights under this act, pursuant to  
14 regulations adopted by the department; and 30 percent to the  
15 employees or representative organization to be distributed to the  
16 employees affected by the violation, including a service award that  
17 reflects the burdens and risks assumed by the employee or  
18 representative organization in bringing the action.

19 (6) No covered employer or his or her agent or any other person  
20 shall retaliate in any manner, including but not limited to taking  
21 adverse action as defined in section 1 of P.L.1965, c.173 (C.34:11-  
22 4.1) or threaten to retaliate, against an employee because the  
23 employee has, or is believed to have, participated in or cooperated  
24 with an action under this section. Any person who believes he or  
25 she has been subject to retaliation or adverse action or a threat of  
26 retaliation or adverse action in violation of this subsection (6) of  
27 subsection c. of section 11 of this act may bring an action under  
28 P.L.1965, c.173 (C.34:11-4.1 et seq.). Protections of this section  
29 shall apply to any person who brings such action mistakenly but in  
30 good faith.

31 (7) An action under this section may allege multiple violations  
32 that have affected different employees aggrieved by the same  
33 defendant and may seek injunctive and declaratory relief that the  
34 department would be entitled to seek. No action brought pursuant to  
35 this act shall be required to meet the requirements of Rule 4:32-1 of  
36 the New Jersey Rules of Civil Procedure. Any person that prevails  
37 in an action under this section, regardless of whether the department  
38 has intervened in that action, shall be entitled to an award of  
39 reasonable attorney's fees and costs. The right to bring an action  
40 under this section shall not be impaired by any private contract.

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

47 e. Any contract which infringes on the ability of someone to  
48 take an action under this section shall be invalid.

1 f. The provisions of this section shall not apply to any civil  
2 action brought by an employee or an agent or representative of the  
3 employee pursuant to section 3 of this act or subsection c. of section  
4 10 of P.L.1965, c.173 (C.34:11-4.10).

5  
6 12. (New section) The provisions of this act shall not apply to  
7 any employee covered by a valid collective bargaining agreement, if  
8 those provisions are expressly waived in that collective bargaining  
9 agreement and the agreement addresses employee scheduling by  
10 providing employees with predictable, stable hours into which  
11 employees have input.

12  
13 13. (New section) The commissioner shall adopt rules and  
14 regulations pursuant to the "Administrative Procedure Act,"  
15 P.L.1968, c.40 (C.52:14B-1 et seq.) to effectuate the purposes of  
16 this act.

17  
18 14. (New section) This act shall be known and may be cited as  
19 the "New Jersey Fair Workweek Act."

20  
21 15. Section 1 of P.L.2009, c.194 (C.34:1A-1.11) is amended to  
22 read as follows:

23 1. As used in this act:

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

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

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

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

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

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

39 (4) A certificate of limited partnership or a certificate of  
40 authority pursuant to the "Uniform Limited Partnership Law  
41 (1976)," P.L.1983, c.489 (C.42:2A-1 et seq.);

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

45 (6) Any license, certificate, permit or registration pursuant to  
46 R.S.48:16-1 et seq., R.S.48:16-13 et seq.; the "New Jersey  
47 Alcoholic Beverage Control Act," R.S.33:1-1 et seq.; section 4 of  
48 P.L.2001, c.260 (C.34:8-70); P.L.1971, c.192 (C.34:8A-7 et seq.);

1 section 12 of P.L.1975, c.217 (C.52:27D-130); section 14 of  
2 P.L.1981, c.1 (C.56:8-1.1); or "The Public Works Contractor  
3 Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.).

4 "State wage, benefit and tax laws" means:

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

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

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

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

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

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

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

15 (8) The "New Jersey Gross Income Tax Act," N.J.S.54A:1-  
16 1 et seq.; and

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

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

20

21 16. Section 1 of P.L.1965, c.173 (C.34:11-4.1) is amended to  
22 read as follows:

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

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

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

40 d. "Commissioner" means the Commissioner of Labor and  
41 Workforce Development.

42 e. "Adverse action" includes threatening, intimidating,  
43 disciplining, discharging, demoting, suspending, or harassing an  
44 employee; assigning an employee to a lesser position in terms of job  
45 classification, job security, or other condition of employment;  
46 reducing the hours or pay of an employee or denying the employee  
47 additional hours; informing another employer that an employee has  
48 engaged in activities protected by P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_)(pending

1 before the Legislature as this bill); and discriminating against the  
2 employee, including actions or threats related to perceived  
3 immigration status or work authorization.  
4 (cf: P.L.1991, c.205, s.1)

5  
6 17. Section 10 of P.L.1965, c.173 (C.34:11-4.10) is amended to  
7 read as follows:

8 10. a. Any employer who knowingly fails to pay the full  
9 amount of wages to an employee agreed to or required by, or in the  
10 manner required by, the provisions of article 1 of chapter 11 of Title  
11 34 of the Revised Statutes and all acts supplementing that article  
12 (R.S.34:11-2 et al.), or who knowingly violates any other provision  
13 of P.L.1965, c.173 (C.34:11-4.1 et seq.), or who knowingly violates  
14 any provision of P.L. , c. (C. )(pending before the  
15 Legislature as this bill), or who takes a retaliatory or adverse action  
16 against an employee by discharging or in any other manner  
17 discriminating against the employee because the employee has  
18 made a complaint to that employee's employer, to the  
19 commissioner, or to that employee's authorized representative, that  
20 the employer has not paid the employee the full amount of wages  
21 agreed upon or required by, and in the manner required by, the  
22 provisions of article 1 of chapter 11 of Title 34 of the Revised  
23 Statutes and all acts supplementing that article (R.S.34:11-2 et al.),  
24 or has violated any provision of P.L. , c. (C. )(pending  
25 before the Legislature as this bill), or because the employee has  
26 caused to be instituted or is about to cause to be instituted any  
27 proceeding under or related to that article or those acts, or because  
28 that employee has testified or is about to testify in any proceeding  
29 under or relating to that article or those acts, or because the  
30 employee has informed any employee of the employer about rights  
31 under State laws regarding wages and hours worked shall be guilty  
32 of a disorderly persons offense and, upon conviction for a first  
33 violation, shall be punished by a fine of not less than \$500 nor more  
34 than \$1,000 or by imprisonment for not less than 10 nor more than  
35 90 days or by both the fine and imprisonment and, upon conviction  
36 for a second or subsequent violation, be punished by a fine of not  
37 less than \$1,000 nor more than \$2,000 or by imprisonment for not  
38 less than 10 nor more than 100 days or by both the fine and  
39 imprisonment. Each week, in any day of which any violation of this  
40 act article 1 of chapter 11 of Title 34 of the Revised Statutes and all  
41 acts supplementing that article (R.S.34:11-2 et al.) continues shall  
42 constitute a separate and distinct offense. In the case of a discharge  
43 or other discriminatory action against the employee which is in  
44 violation of this subsection or of P.L. , c. (C. )(pending  
45 before the Legislature as this bill), the employer shall also be  
46 required to offer reinstatement in employment to the discharged  
47 employee and to correct the discriminatory action, and also to pay  
48 to the employee, in full, all wages lost as a result of that discharge



1 or discriminatory action, plus liquidated damages equal to not more  
2 than 200 percent of the wages due, under penalty of contempt  
3 proceedings. Taking an adverse action, as defined in section 1 of  
4 P.L.1965, c.173 (C.34:11-4.1), against an employee within ninety  
5 days of the employee filing a complaint with the commissioner or a  
6 claim or action being brought by or on behalf of the employee in a  
7 court of competent jurisdiction for a violation of article 1 of chapter  
8 11 of Title 34 of the Revised Statutes, all acts supplementing that  
9 article (R.S.34:11-2 et al.), and any provision of  
10 P.L. , c. (C. )(pending before the Legislature as this bill),  
11 shall be considered presumptive evidence that the employer's action  
12 was knowingly taken in retaliation or adverse action against the  
13 employee. In the case of seasonal employment that ended before  
14 the close of the 90 calendar day period, the presumption also  
15 applies if the employer fails to rehire a former employee at the next  
16 opportunity for work in the same position. An employee complaint  
17 or other communication need not make explicit reference to any  
18 section or provision of any State law regarding wages and hours  
19 worked to trigger the protections of this section. The protections of  
20 this section shall apply to any person who alleges violations of this  
21 act mistakenly but in good faith.

22 b. As an alternative to or in addition to any other sanctions  
23 provided by law for violations of P.L.1965, c.173 (C.34:11-  
24 4.1 et seq.), when the Commissioner of Labor and Workforce  
25 Development finds that an employer has violated any provision of  
26 that act or of P.L. , c. (C. )(pending before the Legislature  
27 as this bill), or taken any retaliatory action against the employee in  
28 violation of subsection a. of this section, the commissioner is  
29 authorized to assess and collect administrative penalties, up to a  
30 maximum of \$250 for a first violation and up to a maximum of  
31 \$500 for each subsequent violation, specified in a schedule of  
32 penalties to be promulgated as a rule or regulation by the  
33 commissioner in accordance with the "Administrative Procedure  
34 Act," P.L.1968, c.410 (C.52:14B-1 et seq.). When determining the  
35 amount of the penalty imposed because of a violation, the  
36 commissioner shall consider factors which include the history of  
37 previous violations by the employer, the seriousness of the  
38 violation, the good faith of the employer and the size of the  
39 employer's business. No administrative penalty shall be levied  
40 pursuant to this section unless the Commissioner of Labor and  
41 Workforce Development provides the alleged violator with  
42 notification of the violation and of the amount of the penalty by  
43 certified mail and an opportunity to request a hearing before the  
44 commissioner or his designee within 15 days following the receipt  
45 of the notice. If a hearing is requested, the commissioner shall  
46 issue a final order upon such hearing and a finding that a violation  
47 has occurred. If no hearing is requested, the notice shall become a  
48 final order upon expiration of the 15-day period. Payment of the

1 penalty is due when a final order is issued or when the notice  
2 becomes a final order. Any penalty imposed pursuant to this  
3 section may be recovered with costs in a summary proceeding  
4 commenced by the commissioner pursuant to the "Penalty  
5 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).  
6 Any sum collected as a fine or penalty pursuant to this section shall  
7 be applied toward enforcement and administration costs of the  
8 Division of Workplace Standards in the Department of Labor and  
9 Workforce Development.

10 c. If any employer fails to pay the full amount of wages to an  
11 employee agreed to or required by, or in the manner required by,  
12 the provisions of article 1 of chapter 11 of Title 34 of the Revised  
13 Statutes and all acts supplementing that article (R.S.34:11-2 et al.),  
14 or fails to pay any amounts required by sections, 4, 5, 6, or 7 of  
15 P.L. , c. (C. )(pending before the Legislature as this bill), in  
16 the manner required by those sections, the employee may recover in  
17 a civil action the full amount of any wages due, or any wages lost  
18 because of any retaliatory action taken in violation of subsection a.  
19 of this section, plus an amount of liquidated damages equal to not  
20 more than 200 percent of the wages lost or of the wages due,  
21 together with costs and reasonable attorney's fees as are allowed by  
22 the court, except that if there is an agreement of the employee to  
23 accept payment of the unpaid wages supervised by the  
24 commissioner pursuant to section 9 of P.L.1965, c. 173 (C.34:11-  
25 4.9) or R.S.34:11- 58, the liquidated damages shall be equal to not  
26 more than 200 percent of wages that were due prior to the  
27 supervised payment. The payment of liquidated damages shall not  
28 be required for a first violation by an employer if the employer  
29 shows to the satisfaction of the court that the act or omission  
30 constituting the violation was an inadvertent error made in good  
31 faith and that the employer had reasonable grounds for believing  
32 that the act or omission was not a violation, and the employer  
33 acknowledges that the employer violated the law and pays the  
34 amount owed within 30 days of notice of the violation. In a case of  
35 retaliation or adverse action against an employee in violation of the  
36 provisions of subsection a. of this section, the employer shall also  
37 be required to offer reinstatement in employment to the discharged  
38 employee and take other actions as needed to correct the retaliatory  
39 action. For purposes of this subsection, an employer taking an  
40 adverse action against an employee within ninety days of the  
41 employee filing a complaint with the commissioner, or a claim or  
42 action being brought by or on behalf of the employee in a court of  
43 competent jurisdiction, for a violation of provisions of article 1 of  
44 chapter 11 of Title 34 of the Revised Statutes and all acts  
45 supplementing that article (R.S.34:11-2 et al.) and  
46 P.L. , c. (C. )(pending before the Legislature as this bill),  
47 shall raise a presumption that the employer's action was taken in  
48 retaliation against the employee, which presumption may be

1 rebutted only by clear and convincing evidence that the action was  
2 taken for other, permissible, reasons. In the case of seasonal  
3 employment that ended before the close of the 90 calendar day  
4 period, the presumption also applies if the employer fails to rehire a  
5 former employee at the next opportunity for work in the same  
6 position. The protections of this section shall apply to any person  
7 who mistakenly but in good faith alleges violations of  
8 P.L. , c. (C. )(pending before the Legislature as this bill).  
9 Any agreement by the employee to work for, or accept, wages paid  
10 which are less than the amount agreed to or required by law, or paid  
11 in a manner other than that required by article 1 of chapter 11 of  
12 Title 34 of the Revised Statutes and all acts supplementing that  
13 article (R.S.34:11-2 et al.), and P.L. , c. (C. )(pending  
14 before the Legislature as this bill), shall be no defense to the action.  
15 The employee shall be entitled to maintain the action for and on  
16 behalf of other similarly situated employees, or designate an agent  
17 or representative to maintain the action for and on behalf of all  
18 similarly situated employees. The employee may bring the action  
19 for all appropriate relief, including reinstatement, the payment of  
20 damages and the recovery of lost wages or unpaid wages pursuant  
21 to this section in the Superior Court. Upon the request of any  
22 employee not paid the full wages agreed upon or required by law  
23 and in the manner required by the provisions of article 1 of chapter  
24 11 of Title 34 of the Revised Statutes, all acts supplementing that  
25 article (R.S.34:11-2 et al.), and P.L. , c. (C. )(pending  
26 before the Legislature as this bill), the commissioner may take an  
27 assignment of the wage claim in trust for the assigning employee  
28 and may bring any legal action necessary to collect the claim, and  
29 the employer shall be required to pay to the employee the unpaid  
30 wages and liquidated damages equal to not more than 200 percent  
31 of the amount of the unpaid wages and pay to the commissioner the  
32 costs and reasonable attorney's fees as determined by the court. The  
33 payment of liquidated damages shall not be required for a first  
34 violation by an employer if the employer shows to the satisfaction  
35 of the court that the act or omission constituting the violation was  
36 an inadvertent error made in good faith and that the employer had  
37 reasonable grounds for believing that the act or omission was not a  
38 violation, and the employer acknowledges that the employer  
39 violated the law and pays the amount owed within 30 days of notice  
40 of the violation.  
41 (cf: P.L.2019, c.212, s.2)

42  
43 18. R.S. 34:11-57 is amended to read as follows:

44 34:11-57. As used in this article:

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

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

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

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

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

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

16 "State wage and hour laws" means article 1 of chapter 11 of Title  
17 34 of the Revised Statutes and all acts supplementing that article  
18 (R.S.34:11-2 et al.), P.L.1966, c.113 and all acts supplementing that  
19 act (C.34:11-56a et al.), P.L.2005, c.379 (C.34:11-56.58 et seq.),  
20 P.L. , c. (C. )(pending before the Legislature as this bill),  
21 and article 3 of chapter 11 of Title 34 of the Revised Statutes  
22 (R.S.34:11-57 et seq.), but "State wage and hour laws" do not  
23 include the "New Jersey Prevailing Wage Act," P.L.1963, c.150  
24 (C.34:11-56.25 et seq.), or "The Public Works Contractor  
25 Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.).

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

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

32

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

35 9. a. A client employer and a labor contractor providing  
36 workers to the client employer shall be subject to joint and several  
37 liability and shall share civil legal responsibility for any violations  
38 of the provisions of State wage and hour laws or violations of the  
39 provisions of section 10 of P.L.1999, c.90 (C.2C:40A-2) regarding  
40 compliance with State wage and hour laws, including compliance  
41 with P.L. , c. (C. )(pending before the Legislature as this  
42 bill, including provisions regarding retaliatory actions against  
43 employees for exercising their rights under any of those laws, and  
44 both may be subject to any remedy provided for violations of those  
45 laws. A client employer shall not shift to the labor contractor any  
46 legal duties or liabilities under the provisions of the "Worker Health  
47 and Safety Act," P.L.1965, c.154 (C.34:6A-1 et seq.) or "The  
48 Worker and Community Right to Know Act," P.L.1983, c.315

1 (C.34:5A-1 et seq.) with respect to workers supplied by the labor  
2 contractor. A waiver of the provisions of this section is contrary to  
3 public policy, and is void and unenforceable.

4 b. This section shall not be interpreted as:

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

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

17 c. As used in this section:

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

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

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

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

34

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

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

37 (a) For the week in which the individual has left work  
38 voluntarily without good cause attributable to such work, and for  
39 each week thereafter until the individual becomes reemployed and  
40 works eight weeks in employment, which may include employment  
41 for the federal government, and has earned in employment at least  
42 ten times the individual's weekly benefit rate, as determined in each  
43 case. This subsection shall apply to any individual seeking  
44 unemployment benefits on the basis of employment in the  
45 production and harvesting of agricultural crops, including any  
46 individual who was employed in the production and harvesting of  
47 agricultural crops on a contract basis and who has refused an offer  
48 of continuing work with that employer following the completion of

1 the minimum period of work required to fulfill the contract. This  
2 subsection shall not apply to an individual who voluntarily leaves  
3 work with one employer to accept from another employer  
4 employment which commences not more than seven days after the  
5 individual leaves employment with the first employer, if the  
6 employment with the second employer has weekly hours or pay not  
7 less than the hours or pay of the employment of the first employer,  
8 except that if the individual gives notice to the first employer that  
9 the individual will leave employment on a specified date and the  
10 first employer terminates the individual before that date, the seven-  
11 day period will commence from the specified date.

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

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

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

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

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

43 To sustain disqualification from benefits because of misconduct  
44 under this subsection (b), the burden of proof is upon the employer,  
45 who shall, prior to a determination by the department of  
46 misconduct, provide written documentation demonstrating that the  
47 employee's actions constitute misconduct or gross misconduct.

1 Nothing within this subsection (b) shall be construed to interfere  
2 with the exercise of rights protected under the "National Labor  
3 Relations Act," (29 U.S.C. s.151 et seq.) or the "New Jersey  
4 Employer-Employee Relations Act," P.L.1941, c.100 (C.34:13A-  
5 1 et seq.).

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

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

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

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

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

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

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

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

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

27 (4) For any claim for a period of unemployment commencing on  
28 or after July 1, 2018, if the unemployment is caused by a labor  
29 dispute, including a strike or other concerted activities of employees  
30 at the claimant's workplace, whether or not authorized or sanctioned  
31 by a union representing the claimant, but not including a dispute  
32 subject to the provisions of paragraph (2) or (3) of this subsection  
33 (d), the claimant shall not be provided benefits for a period of the  
34 first 30 days following the commencement of the unemployment  
35 caused by the labor dispute, except that the period without benefits  
36 shall not apply if the employer hires a permanent replacement  
37 worker for the claimant's position. A replacement worker shall be  
38 presumed to be permanent unless the employer certifies in writing  
39 that the claimant will be permitted to return to his or her prior  
40 position upon conclusion of the dispute. If the employer does not  
41 permit the return, the claimant shall be entitled to recover any  
42 benefits lost as a result of the 30-day waiting period before  
43 receiving benefits, and the department may impose a penalty upon  
44 the employer of up to \$750 per employee per week of benefits lost.  
45 The penalty collected shall be paid into the unemployment  
46 compensation auxiliary fund established pursuant to subsection (g)  
47 of R.S.43:21-14.



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

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

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

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

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

44 (2) For purposes of this subsection (h), the term "suitable"  
45 employment means, with respect to an individual, work of a  
46 substantially equal or higher skill level than the individual's past  
47 adversely affected employment, as defined for purposes of the  
48 "Trade Act of 1974," Pub.L.93-618 (19 U.S.C. s.2101 et seq.) and

1 wages for this work at not less than 80% of the individual's average  
2 weekly wage, as determined for the purposes of the "Trade Act of  
3 1974."

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

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

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

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

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

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

37 (2) A police record documenting the domestic violence;

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

41 (4) Medical documentation of the domestic violence;

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

45 (6) Other documentation or certification of the domestic  
46 violence provided by a social worker, member of the clergy, shelter  
47 worker or other professional who has assisted the individual in  
48 dealing with the domestic violence.

1 For the purposes of this subsection (j):

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

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

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

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

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44 21. This act shall take effect on the 120th day following  
45 enactment.

## STATEMENT

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This bill, the “New Jersey Fair Workweek Act,” provides that employees may request a change to their work schedules without fear of retaliation or adverse action, and requires that employers consider these requests in good faith. The bill also requires employers to provide more predictable and stable schedules for employees in certain low-wage occupations. For the purposes of this bill, “employer” is defined as any employer that employs 250 or more employees.

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

The bill requires an employer to provide, transmit, and post notice of an employee’s schedule at least 14 days prior to the start of the work period that schedule covers. The employer is required to give prior notice to affected employees of any revision of the posted schedule and post the revised schedule within 24 hours. 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 twelve hours after the end of the employee’s most recent shift. Any shifts worked by the employee within 12 hours of their most recent shift shall be compensated with rest shortfall pay 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 those 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 existence or the right 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 whose work requires substantially similar skills, duties, and responsibility, an employer shall not

1 discriminate against any employee on the basis of their hours  
2 worked.

3 The bill provides, in cases where the employee does not initiate a  
4 civil action under current law, for the Commissioner of Labor and  
5 Workforce Development or the Attorney General to bring a civil  
6 action against a covered employer in violation or alleged to be in  
7 violation of the bill or other State wage and hour laws. Under the  
8 bill, an employee or employee representative may, after providing  
9 the commission an opportunity to investigate the complaint, bring a  
10 civil action on behalf of the State, but the right of the employee to  
11 bring a civil action under the bill terminates if the commissioner  
12 initiates an enforcement action regarding the complaint.

13 The bill requires an employer to pay an employee nine times the  
14 employee's regular wage, or the minimum wage, whichever is  
15 larger, in retention pay for every 7-day work period; with an  
16 employee's normal pay or paid time-off counting toward  
17 compliance with this requirement.

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

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

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

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

31 The bill amends R.S.34:11-57 and P.L.2009, c.194 (C.34:1A-  
32 1.11) to include itself under the definition of "State wage and hour  
33 laws," thus allowing for penalties imposed under other state wage  
34 and hour laws to apply to violations of this bill.

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