



## 2021 ASSEMBLY BILL 486

August 4, 2021 - Introduced by Representatives HEBL, ANDERSON, CONLEY, HESSELBEIN, HONG, OHNSTAD, POPE, SHELTON, SINICKI, SPREITZER, STUBBS and SUBECK, cosponsored by Senators ROYS, AGARD, LARSON, JOHNSON and SMITH. Referred to Committee on Labor and Integrated Employment.

1     **AN ACT** *to amend* 111.322 (2m) (a) and 111.322 (2m) (b); and *to create* 103.035  
2           of the statutes; **relating to:** the rights of employees to request and receive work  
3           schedule changes; predictable work schedules for retail, food service, and  
4           cleaning employees; granting rule-making authority; and providing a penalty.

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### *Analysis by the Legislative Reference Bureau*

This bill provides that an employee who works for an employer, including the state and political subdivision employers, that employs at least 15 employees (employer) has the right to request and receive changes to the employee's work schedule under certain circumstances. The bill also provides rights regarding work scheduling for employees in certain retail, food service, or cleaning occupations, or other occupations designated by the Department of Workforce Development.

#### ***Employee right to request and receive work schedule changes***

The bill requires an employer must negotiate in good faith with an employee to accommodate requested changes to the employee's work schedule. Further, unless an employer has a bona fide business reason for denying the request, the employer must approve an employee's request if it is directly related to any of the following:

1. A serious health condition of the employee.
2. Responsibilities of the employee as a caregiver for a family member.
3. Enrollment of the employee in certain educational or training programs.
4. A part-time employee's work scheduling conflicts with the employee's other employment.

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If an employer denies an employee's request for a schedule change, the employer must inform the employee of the reasons for denial, including whether any of the reasons is a bona fide business reason as defined in the bill.

***Service employee right to predictable work schedule***

The bill requires an employer that employs an employee in certain retail, food service, or cleaning occupations (service employee) to provide the service employee with a written copy of the service employee's work schedule on or before the service employee's first day of work. With certain exceptions, if an employer changes a service employee's work schedule, the employer must provide the new work schedule to the service employee at least 14 days in advance.

The bill also requires that if an employer changes a service employee's work schedule with fewer than 14 days' advance notice, the employer must pay the service employee an amount equal to the service employee's regular rate of pay for one hour of work. Exceptions to this requirement include when the service employee consents to the change or when the employer requires the service employee to work additional time because another service employee was scheduled to work that time and is unexpectedly unavailable to do so.

The bill requires that if an employer uses certain scheduling practices, the employer must compensate a service employee as follows:

1. If the service employee reports to work and the employer does not allow the service employee to work all time scheduled, the employer shall provide the service employee with: 1) full compensation as if the employee had worked the full shift; or 2) if the service employee is scheduled to work more than four hours and works less than four hours, an amount equal to the service employee's regular rate of pay for the difference between four hours and the amount of time the service employee actually works.

2. If the employer requires the service employee to contact the employer, or wait to be contacted by the employer, less than 24 hours before a work shift to determine whether the service employee must report to work, the employer must pay the service employee an amount equal to the service employee's regular rate of pay for one hour of work.

3. If the employer requires the service employee to work a split shift, the employer must pay the service employee an amount equal to the service employee's regular rate of pay for one hour of work.

If a service employee experiences more than one type of these scheduling practices with respect to a particular work shift, the employer must pay only one type of compensation, whichever is greatest.

The bill also provides that, during any period in which the employer's regular operations are suspended due to an event outside of the employer's control, the employer is not required to comply with the service employee work scheduling requirements created in the bill.

The bill authorizes DWD to promulgate rules to apply the protections afforded under the bill to additional occupations if DWD determines that at least 10 percent of the individuals employed in an occupation either typically receive notice of changes to their work schedules less than 14 days before the changes take effect or

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regularly experience fluctuations in the number of hours the individuals are scheduled to work on a daily, weekly, or monthly basis.

***Enforcement***

The bill provides that an employer may not interfere with, restrain, or deny the exercise of the right of an employee created in the bill and may not discharge or discriminate against an employee for enforcing the employee's rights under the bill. An employee whose rights are violated may file a complaint with DWD, and DWD must process the complaint in the same manner that employment discrimination complaints are processed under current law. That processing may include the ordering of back pay, reinstatement, compensation in lieu of reinstatement, and costs and attorney fees.

The bill also provides that DWD or an employee whose rights are violated may bring an action in circuit court against the employer without regard to exhaustion of any administrative remedy. If the circuit court finds that a violation has occurred, the employer may be liable to the employee for compensatory damages, reasonable attorney fees and costs, and, under certain circumstances, liquidated damages equal to 100 percent of the amount of compensatory damages awarded to the employee. In addition to any damages imposed on an employer in an administrative proceeding or circuit court action, an employer that willfully violates the protections created in the bill may be required to forfeit not more than \$1,000 for each violation.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 103.035 of the statutes is created to read:

2           **103.035 Work schedule flexibility and predictability. (1) DEFINITIONS.**

3           In this section:

4           (a) "Bona fide business reason" means a reason that justifies an employer's  
5           action and that is based on the employer's determination that taking a different  
6           action would have any of the following results:

7           1. Additional costs to the employer, including costs of lost employee  
8           productivity, retaining or hiring employees, or transferring employees between work  
9           locations.

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1           2. A significant detrimental effect on the employer's ability to meet  
2 organizational needs or customer demand.

3           3. A significant inability of the employer, despite the employer's best efforts,  
4 to reorganize work among other employees.

5           4. A significant detrimental effect on the employer's business performance.

6           5. Insufficient work during the period an employee proposes to work.

7           6. Unfairness to other employees who request changes to work schedules if  
8 granting all requests would have a significant detrimental effect on the employer's  
9 ability to meet organizational needs.

10          (b) "Child" means an individual who is all of the following:

11           1. A biological, adopted, or foster child; a stepchild; a legal ward; or a child of  
12 a person standing in the place of a parent with respect to that child.

13           2. An individual to whom any of the following applies:

14           a. The individual is less than 18 years of age.

15           b. The individual is 18 years of age or older and is incapable of self-care because  
16 of a mental or physical disability.

17          (c) "Domestic partner" has the meaning given in s. 40.02 (21c) or 770.01 (1).

18          (d) "Employee" means an employee who is employed by an employer.

19          (e) "Employer" means an employer that employs at least 15 employees.

20 "Employer" includes the state, its political subdivisions, and any office, department,  
21 independent agency, authority, institution, association, society, or other body in state  
22 or local government created or authorized to be created by the constitution or any  
23 law, including the legislature and the courts.

24          (f) "Family member" means any of the following:

25           1. A spouse or domestic partner of an employee.

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1           2. A parent, child, sibling, brother-in-law, sister-in-law, grandparent, or  
2 grandchild of an employee or of an employee's spouse or domestic partner.

3           3. Any other individual who is related by blood, marriage, or adoption to an  
4 employee or to an employee's spouse or domestic partner and whose close association  
5 with the employee, spouse, or domestic partner makes the individual the equivalent  
6 of a family member of the employee, spouse, or domestic partner.

7           (g) "Grandchild" means the child of a child.

8           (h) "Grandparent" means the parent of a parent.

9           (i) "Nonexempt employee" means an employee who is not employed in a bona  
10 fide executive, administrative, or professional capacity, as described in 29 USC 213  
11 (a) (1).

12           (j) "Parent" means a biological parent, foster parent, adoptive parent,  
13 stepparent, or legal guardian of an employee or of an employee's spouse or domestic  
14 partner.

15           (k) "Part-time employee" means an employee who works on average fewer than  
16 30 hours per week for a particular employer.

17           (L) "Service employee" means a nonexempt employee who is employed in an  
18 occupation designated by the department under sub. (3) (g) or in any of the  
19 occupations classified under the following codes set forth in the Standard  
20 Occupational Classification system, 2018 edition, published by the bureau of labor  
21 statistics of the U.S. department of labor:

22           1. Major group code 35-0000 — Food preparation and serving related  
23 occupations.

24           2. Broad occupation code 37-2010 — Building cleaning workers.

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1           3. Detailed occupation code 41-1011 — First-line supervisors of retail sales  
2 workers.

3           4. Minor group code 41-2000 — Retail sales workers.

4           (m) “Sibling” means a brother, sister, half brother, half sister, stepbrother,  
5 stepsister, foster brother, or foster sister, whether by blood, marriage, or adoption.

6           (n) “Split shift” means a work shift that consists of work time that is not  
7 continuous. For purposes of determining whether a work shift is continuous, any of  
8 the following breaks in work time are not considered:

9           1. One or more breaks for meals that total one hour or less.

10          2. A break that is requested by the employee.

11          (o) “Work schedule” means the days and times during each successive work  
12 period when an employee is required by an employer to perform duties of  
13 employment.

14          (p) “Work shift” means the specific times during a day that an employer  
15 requires an employee to work.

16          (q) “Written” does not include a communication that is transmitted or received  
17 by electronic means.

18          **(2) EMPLOYEE RIGHT TO REQUEST AND RECEIVE WORK SCHEDULE CHANGES.** (a)  
19 *Employee right to request work schedule changes.* 1. An employee may request a  
20 change in the terms and conditions of employment related to any of the following:

21          a. The number of hours the employee is required to work or be on call for work.

22          b. The days or times when the employee is required to work or be on call for  
23 work.

24          c. The location where the employee is required to work.

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1           d. The amount of notification the employee receives regarding changes to the  
2 employee's work schedule.

3           e. Minimizing fluctuations in the number of hours the employee is scheduled  
4 to work on a daily, weekly, or monthly basis.

5           2. An employee who makes a request under subd. 1. shall specify in the request  
6 whether it is related to any of the following:

7           a. A serious health condition, as defined under s. 103.10 (1) (g), of the employee.

8           b. The employee's responsibilities as a significant provider of ongoing care,  
9 including responsibility for securing ongoing care, of the employee's child, family  
10 member with a serious health condition, as defined under s. 103.10 (1) (g), or parent  
11 who is 65 years of age or older.

12           c. The employee's responsibilities as a significant provider of education,  
13 including responsibility for securing education, of the employee's child.

14           d. The employee's enrollment in an educational or training program or program  
15 of study that leads to a recognized postsecondary credential.

16           e. If the employee is a part-time employee, conflicts with the employee's other  
17 employment.

18           (b) *Evaluating requests for work schedule changes.* If an employer receives a  
19 request from an employee under par. (a), the employer shall either grant the request  
20 without modification or negotiate in good faith with the employee to find a  
21 compromise that meets the employee's and the employer's work scheduling needs,  
22 including by considering any alternative proposals offered by the employee. If the  
23 employer denies the request and any alternative proposals offered, the employer  
24 shall inform the employee of the reasons for denial, including whether any of the  
25 reasons is a bona fide business reason.

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1           (c) *Requests related to serious health conditions, caregiving, education, or other*  
2 *part-time employment.* Notwithstanding par. (b), if an employer receives a request  
3 from an employee under par. (a) that is directly related to anything specified under  
4 par. (a) 2., the employer shall grant the request unless the employer has a bona fide  
5 business reason for denying the request.

6           (d) *Verification of reasons for requested changes.* If an employer receives a  
7 request from an employee under par. (a), the employer may require the employee to  
8 provide additional information to clarify or explain the reasons for the employee's  
9 requested work schedule change if the employer needs that information to properly  
10 evaluate the request under par. (b) or (c).

11           **(3) PREDICTABLE WORK SCHEDULES FOR RETAIL, FOOD SERVICE, AND CLEANING**  
12 **EMPLOYEES.** (a) *Advance notice of work schedules required.* 1. On or before the first  
13 day of work of a new service employee, an employer shall provide the service  
14 employee with a written copy of the service employee's work schedule.

15           2. Except as provided in pars. (b) and (c), if an employer changes a work  
16 schedule provided to a service employee under subd. 1. or this subdivision, the  
17 employer shall provide the service employee with a written copy of the new work  
18 schedule no later than 14 days before the new work schedule begins.

19           3. An employer shall post a copy of a work schedule provided under this  
20 paragraph in at least one of the following ways:

21           a. In one or more conspicuous places where notices to employees are  
22 customarily posted.

23           b. On an Internet site accessible by all of the employer's employees.

24           4. If an employer changes a work schedule after it is posted under subd. 3., the  
25 employer shall revise the posted work schedule to reflect those changes.



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1           (b) *Employer-initiated changes to work schedules without advance notice.* 1.

2           An employer may change, without the advance notice required under par. (a) 2., a  
3           work schedule provided to a service employee under par. (a) 1. or 2. as provided in  
4           this paragraph. Except as provided under subd. 2., if the employer changes a work  
5           schedule provided to a service employee under par. (a) 1. or 2. less than 14 days before  
6           the new work schedule begins, the employer shall provide the service employee  
7           compensation for the change in an amount equal to the service employee's regular  
8           rate of pay for one hour of work in addition to any other compensation earned by the  
9           service employee.

10           2. An employer is not required to pay compensation to a service employee under  
11           subd. 1. for a change to the service employee's work schedule if any of the following  
12           applies to the change:

13           a. The service employee consents to the change.

14           b. The employer requires the service employee to work additional time or an  
15           additional work shift because another service employee was scheduled to work that  
16           time or work shift and is unexpectedly unavailable to do so.

17           (c) *Employee-initiated changes to work schedules.* An employer may allow a  
18           service employee to agree to work in place of another service employee if the service  
19           employees mutually agree to the change. The employer is not required to provide  
20           compensation under par. (b) 1. to a service employee with respect to a work shift  
21           agreement under this paragraph.

22           (d) *Compensation for reporting time, on-call time, and split shifts.* 1. Except  
23           as provided in subd. 4., if a service employee reports to work and the service  
24           employee's employer does not allow the service employee to work all time that the

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1 service employee is scheduled to work, the employer shall provide the service  
2 employee with the following compensation:

3 a. If the service employee is scheduled to work 4 hours or less, an amount equal  
4 to the service employee's regular rate of pay for all time the service employee is  
5 scheduled to work but does not work in addition to any other compensation earned  
6 by the service employee for time the service employee actually works.

7 b. If the service employee is scheduled to work more than 4 hours and works  
8 less than 4 hours, an amount equal to the service employee's regular rate of pay for  
9 the difference between 4 hours and the amount of time the service employee actually  
10 works in addition to any other compensation earned by the service employee for time  
11 the service employee actually works.

12 2. Except as provided in subd. 4., if an employer requires a service employee  
13 to contact the employer, or wait to be contacted by the employer, less than 24 hours  
14 before a work shift begins to determine whether the employer will require the service  
15 employee to report to work for that work shift, the employer shall provide the service  
16 employee compensation in an amount equal to the service employee's regular rate of  
17 pay for one hour of work in addition to any other compensation earned by the service  
18 employee for time the service employee actually works.

19 3. Except as provided in subd. 4, if an employer requires a service employee to  
20 work a split shift, the employer shall provide the service employee compensation in  
21 an amount equal to the service employee's regular rate of pay for one hour of work  
22 in addition to any other compensation earned by the service employee for time the  
23 service employee actually works.

24 4. If a service employee is entitled to more than one type of compensation under  
25 subds. 1. to 3. with respect to a particular work shift, the employer shall pay the

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1 service employee the compensation required under subd. 1., 2., or 3., whichever is  
2 greatest.

3 (e) *Manner of payment of additional compensation.* An employer that is  
4 required to provide compensation to a service employee under par. (b) 1. or (d) shall  
5 pay that compensation on the service employee's regular paycheck or other wage  
6 payment. The employer shall identify on the paycheck, pay envelope, or paper  
7 accompanying the wage payment the amount of and reason for all additional  
8 compensation paid.

9 (f) *Exception.* An employer is not required to comply with this subsection  
10 during a period in which the employer's regular operations are suspended due to an  
11 event outside of the employer's control.

12 (g) *Designating additional covered occupations.* The department may  
13 promulgate rules to apply the protections afforded under pars. (a) to (f) to additional  
14 occupations. The department may designate an occupation under this paragraph if  
15 the department determines that at least 10 percent of the individuals employed in  
16 the occupation either typically receive notice of changes to their work schedules less  
17 than 14 days before the changes take effect or regularly experience fluctuations in  
18 the number of hours the individuals are scheduled to work on a daily, weekly, or  
19 monthly basis.

20 **(4) PROHIBITED ACTS.** (a) No employer may interfere with, restrain, or deny the  
21 exercise of the right of an employee to request and receive a change in the terms and  
22 conditions of employment as provided under sub. (2). No employer may interfere  
23 with, restrain, or deny the exercise of the right of a service employee to receive  
24 advance notice of work schedules as provided under sub. (3) (a), receive

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1 compensation as provided under sub. (3) (b) 1. and (d), or request approval to work  
2 in place of another employee as provided under sub. (3) (c).

3 (b) No employer may discharge or discriminate against an employee in  
4 promotion, in compensation, or in the terms, conditions, or privileges of employment  
5 for exercising a right of an employee described under par. (a), opposing a practice  
6 prohibited under this section, filing or indicating an intent to file a complaint or  
7 otherwise attempting to enforce a right under this section, or testifying, assisting,  
8 or participating in any manner in any investigation, action, or proceeding to enforce  
9 a right under this section.

10 (c) Section 111.322 (2m) applies to discharge or other discriminatory acts  
11 arising in connection with any proceeding under this section.

12 **(5) ENFORCEMENT.** (a) *Administrative proceeding.* An employee whose rights  
13 are interfered with, restrained, or denied in violation of sub. (4) (a) or who is  
14 discharged or discriminated against in violation of sub. (4) (b) may file a complaint  
15 with the department, and the department shall process the complaint in the same  
16 manner that employment discrimination complaints are processed under s. 111.39.  
17 If the department finds that a violation has occurred, the department may order the  
18 employer to take action to remedy the violation, including any action authorized  
19 under s. 111.39.

20 (b) *Civil action.* 1. The department or an employee whose rights are interfered  
21 with, restrained, or denied in violation of sub. (4) (a) or who is discharged or  
22 discriminated against in violation of sub. (4) (b) may bring an action in circuit court  
23 against an employer on the basis of the violation without regard to exhaustion of any  
24 administrative remedy.

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1           2. In an action under subd. 1., if the circuit court finds that a violation of sub.  
2           (4) (a) or (b) has occurred with respect to an employee, the circuit court shall order  
3           the defendant to pay to the employee all of the following:

4           a. Compensatory damages in an amount that the circuit court or jury finds  
5           appropriate.

6           b. Unless the employer proves that the employer acted in good faith and had  
7           a reasonable basis for believing that the act or omission that constituted the violation  
8           was not a violation of this section, an additional amount as liquidated damages equal  
9           to 100 percent of the amount of compensatory damages determined under subd. 2.

10          a.

11          c. Notwithstanding s. 814.04 (1), reasonable attorney fees and costs incurred  
12          in the action.

13          3. Damages awarded under subd. 2. are in addition to any back pay or other  
14          amounts awarded under s. 111.39 or 111.395.

15          **(6) PENALTIES.** In addition to any damages imposed under sub. (5), an employer  
16          that willfully violates this section may be required to forfeit not more than \$1,000 for  
17          each violation. Each day of continued violation constitutes a separate offense.

18          **(7) NOTICE POSTED.** An employer shall post, in one or more conspicuous places  
19          where notices to employees are customarily posted, a notice in a form approved by  
20          the department setting forth employees' rights under this section. An employer that  
21          violates this subsection shall forfeit not more than \$100 for each violation.

22          **SECTION 2.** 111.322 (2m) (a) of the statutes is amended to read:

23          111.322 **(2m)** (a) The individual files a complaint or attempts to enforce any  
24          right under s. 103.02, 103.035, 103.10, 103.11, 103.13, 103.28, 103.32, 103.34,

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1 103.455, 104.12, 109.03, 109.07, 109.075, 146.997, or 995.55, or ss. 101.58 to 101.599  
2 or 103.64 to 103.82.

3 **SECTION 3.** 111.322 (2m) (b) of the statutes is amended to read:

4 111.322 (2m) (b) The individual testifies or assists in any action or proceeding  
5 held under or to enforce any right under s. 103.02, 103.035, 103.10, 103.11, 103.13,  
6 103.28, 103.32, 103.34, 103.455, 104.12, 109.03, 109.07, 109.075, 146.997, or 995.55,  
7 or ss. 101.58 to 101.599 or 103.64 to 103.82.

8 **SECTION 4. Nonstatutory provisions.**

9 (1) PREDICTABLE WORK SCHEDULES FOR RETAIL, FOOD SERVICE, AND CLEANING  
10 EMPLOYEES; TRANSITIONAL PROVISIONS. No later than the effective date of this  
11 subsection, an employer, as defined in s. 103.035 (1) (e), shall provide each service  
12 employee, as defined in s. 103.035 (1) (L), with a written copy of the service  
13 employee's work schedule, as defined in s. 103.035 (1) (o). That work schedule is  
14 considered a work schedule provided to a service employee under s. 103.035 (3) (a)  
15 2. for all purposes under s. 103.035, including that the employer shall post a copy of  
16 the work schedule as provided in s. 103.035 (3) (a) 3., and, if the employer changes  
17 that work schedule, s. 103.035 (3) (a) 2. applies to that change.

18 **SECTION 5. Initial applicability.**

19 (1) This act first applies to an employee who is covered by a collective  
20 bargaining agreement that contains provisions inconsistent with s. 103.035 on the  
21 day on which the collective bargaining agreement expires or is extended, modified,  
22 or renewed, whichever occurs first.

23 **SECTION 6. Effective date.**

