



# Meeting Agenda

## General Government Committee

City Hall  
601 4th Avenue E  
Olympia, WA 98501

Information: 360.753.8244

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**Wednesday, June 19, 2019**

**4:00 PM**

**Council Chambers**

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### Special Meeting

**1. CALL TO ORDER**

**2. ROLL CALL**

**3. APPROVAL OF AGENDA**

**4. PUBLIC COMMENT**

*(Estimated Time: 0-15 Minutes)*

*During this portion of the meeting, citizens may address the Committee for up to three (3) minutes regarding the Committee's business meeting topics.*

**5. APPROVAL OF MINUTES**

**5.A**     [19-0580](#)     Approval of May 22, 2019 General Government Committee Meeting Minutes

**Attachments:**     [Minutes](#)

**6. COMMITTEE BUSINESS**

**6.A**     [19-0581](#)     Report on State Action Regarding Predictive Scheduling

**Attachments:**     [Seattle Secure Scheduling Ordinance Summary](#)

[House Bill 1491 Report](#)

[Senate Bill 5717 Report](#)

**6.B**     [19-0569](#)     Heritage Commission Interview

**7. REPORTS AND UPDATES**

**8. ADJOURNMENT**

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City Hall  
601 4th Avenue E.  
Olympia, WA 98501  
360-753-8244

## **General Government Committee**

### **Approval of May 22, 2019 General Government Committee Meeting Minutes**

**Agenda Date:** 6/19/2019  
**Agenda Item Number:** 5.A  
**File Number:** 19-0580

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**Type:** minutes   **Version:** 1   **Status:** In Committee

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**Title**

Approval of May 22, 2019 General Government Committee Meeting Minutes



# Meeting Minutes - Draft

## General Government Committee

City Hall  
601 4th Avenue E  
Olympia, WA 98501

Information: 360.753.8244

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**Wednesday, May 22, 2019**

**4:00 PM**

**Council Chambers**

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**1. CALL TO ORDER**

Chair Rollins called the meeting to order at 4:00 p.m.

**2. ROLL CALL**

**Present:** 3 - Chair Renata Rollins, Committee member Clark Gilman and Committee member Cheryl Selby

**3. APPROVAL OF AGENDA**

The Agenda was approved.

**4. PUBLIC COMMENT**

No one spoke.

**5. APPROVAL OF MINUTES**

- 5.A** [19-0474](#) Approval of April 24, 2019 General Government Committee Meeting Minutes

The minutes were approved.

**6. COMMITTEE BUSINESS**

- 6.A** [19-0471](#) Update on Public Safety/Olympia Police Department

Police Chief Ronnie Roberts gave an overview of the Office of Professional Standards reporting for 2018. He also shared information regarding the recruitment and hiring process within the Olympia Police Department.

Committee members asked clarifying questions.

The information was provided.

- 6.B** [19-0447](#) Parking and Business Improvement Area (PBIA) Advisory Board Update

Parking and Business Improvement Area (PBIA) Chair Danielle Ruse gave an update on the activities of the PBIA. Downtown Programs Manager Amy Buckler discussed potential changes to the PBIA ordinance. She requested a Study Session to discuss

these further with the full Council.

Committee members asked clarifying questions.

**The information was provided.**

**6.C**     [19-0469](#)     ArCH 2019 Work Plan Update

Assistant City Manager Jay Burney shared an update on year one of the City's ArCH profile and the work that has been completed thus far.

Committee members asked clarifying questions.

**The information was provided.**

**6.D**     [19-0473](#)     Discuss Heritage Commission Applications and Preparation for Interviews

Strategic Communications Director Kellie Purce Braseth discussed the recruitment for the two vacancies currently on the Heritage Commission. She noted the application period closed and two applications were received. The interviews are scheduled to occur at the June 19 General Government Committee meeting.

**The discussion was completed.**

**7.     REPORTS AND UPDATES**

Ms. Purce Braseth noted Greg Taylor, a lodging representative on the Lodging Tax Advisory Committee, has stepped down due to relocating to Oregon. She noted she is seeking a suitable replacement for the role and will be reporting back at the June 19 General Government Committee meeting.

Chair Rollins shared she discussed with Finance Committee Chair Jim Cooper and Land Use & Environment Committee Chair Clark Gilman the new structure related to Council Liaisons to Advisory Committees. She noted they are in agreement that Advisory Committee Chairs will direct any concerns or issues to the Chairs of their respective assigned Council Committee for triage (e.g. Heritage Commission would direct queries to the Chair of the General Government Committee). Ms. Braseth noted she would communicate this to the Advisory Committees.

Chair Rollins discussed an item she would like to bring to Council for referral back to the General Government Committee. The referral would explore the feasibility of a tenant relocation assistance program. The Committee members agreed to move the referral forward to the full Council.

**8.     ADJOURNMENT**

The meeting adjourned at 5:59 p.m.



## General Government Committee

### Report on State Action Regarding Predictive Scheduling

**Agenda Date:** 6/19/2019  
**Agenda Item Number:** 6.A  
**File Number:** 19-0581

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**Type:** report **Version:** 1 **Status:** In Committee

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**Title**

Report on State Action Regarding Predictive Scheduling

**Recommended Action**

**Committee Recommendation:**

Report/Briefing only.

**City Manager Recommendation:**

Briefing only; no action requested.

**Report**

**Issue:**

Report on State action regarding predictive scheduling.

**Staff Contact:**

Steve Hall, City Manager, 360.753.8447

**Presenter(s):**

Steve Hall, City Manager

**Background and Analysis:**

In the past the City Council has heard from members of the community about interest in legislating scheduling rules and requirements around employee work schedules.

In 2017 the City of Seattle passed an ordinance instituting secure scheduling for retail and food service establishments with 500 or more employees worldwide and restaurants with 500 or more employees and 40 more locations worldwide. Seattle has a Bureau of Labor Standards with a budget of \$6.6M and 28 FTEs to enforce this requirement and others.

Consequently, the City Council has expressed interest in statewide consideration of the issue. Currently there are no State level regulations regarding when and how workers are scheduled. Seattle is the only City in Washington that has such regulations and their experience emphasizes that this is a complicated and controversial consideration.

During 2019 Legislative Session, House Bill (HB) 1491 and Senate Bill (SB) 5717, *Concerning Employer and State Scheduling*, were introduced in January to their respective legislative bodies within several days of each other.

**HB 1491 Summary:**

- Requires food service, hospitality, and retail establishments with more than 100 employees worldwide to provide employees 14 days' notice of work schedules, compensate employees for schedule changes, grant employee requests for schedule changes under certain conditions, and meet other requirements.
- Requires employers to give access to additional hours to existing employees before hiring externally.
- Provides for administrative remedies and a civil cause of action.

**SB 5717 Summary:**

- Creates a comprehensive program for certain employees regarding their work schedules.
- Covers employers in food services, hospitality, or retail with 250 or more employees worldwide, except full service restaurants must have 40 or more locations worldwide.
- Covers chains and franchises with 250 or more employees in the aggregate, except for those employing less than 25 employees across locations operated by that franchisee.
- Provides exclusions for nonprofit service organizations, temporary service contractor, and roadside assistance services.
- Provides covered employees with 14 days' notice of work schedules, compensates employees for schedule changes, grants employee requests for schedule changes under certain conditions, and other protections.
- Provides a ten-hour rest period for employees working closing an store opening the next day.
- Exempts volunteers who offer to work in response a mass or in-person communication.
- Requires existing employees to be offered additional hours before an employer may hire new employees.
- Provides for administrative remedies and a civil cause of action.

HB 1491 and SB 5717 had hearings in the House Labor & Workplace Standards Committee and Senate Labor & Commerce Committee respectively.

In February, HB 1491 was referred to the House Appropriations Committee and SB 5717 was referred to the Senate Ways & Means Committee. Neither of the bills made any movement after they were referred. Because the bills were introduced in the first year of the biennium, at the start of the next legislative session the bills will be reintroduced.

Testimony and documentation received by the State points out how complex and controversial this can be. The possibility of unintended consequences and negative impacts on hourly wage employees requires careful legislative consideration. The City may direct its legislative liaison to continue to track this issue in the next session.

**Attachments:**

Seattle Secure Scheduling Ordinance Summary

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**Type:** report   **Version:** 1   **Status:** In Committee

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House Bill 1491 Report  
Senate Bill 5717 Report

# Seattle Secure Scheduling Ordinance



Effective July 1, 2017

## Key Requirements

1. **Employee coverage**
  - a. Hourly employees who work, or report to work, at a fixed point of sale location in Seattle for 50% of the services provided to the employer.
2. **Employer coverage.**
  - a. Retail and food services establishments with 500+ employees worldwide; and
  - b. Full service restaurants with 500+ employees and 40+ full-service restaurant locations worldwide.
3. **Good faith estimate.** Upon hire, employers must provide a good faith estimate of the median hours an employee can expect to work, and whether the employee will work on-call shifts.
4. **Right to request input into the work schedule.** Employees may request schedule preferences regarding times and location of work. Employers must engage in an interactive process with employees to discuss these requests, and must grant a request related to a major life event (i.e. employee's transportation, housing, other job(s), education, caregiving responsibility, and care of serious health condition) unless the employer has a bona fide business reason to support denying the request.
5. **Right to rest between work shifts.** Employers cannot schedule a closing and opening shift (i.e. "clopening") separated by less than 10 hours unless an employee requests, or consents, to such hours. Regardless of request or consent, employers must always pay time-and-a-half for the hours separated by less than 10 hours.
6. **Advance notice of work schedule.** Employers must post employees' work schedules 14 days in advance.
7. **Compensation for work schedule changes.**
  - a. Additional hours: If an employer adds hours to the employee's schedule after it is posted, the employer must pay the employee one additional hour of pay at the scheduled rate. For each employer-addition of less than one hour, the employer may pro-rate the additional compensation due.
  - b. Subtracted hours: If an employee is scheduled for a shift and then sent home early, the employer must pay the employee for half of the hours not worked.
  - c. Grace Period: Additions or Subtractions of less than 15 minutes do not incur additional compensation.
  - d. On-Call Protections: If an employee is scheduled for an on-call shift and is not called-in, the employer must pay the employee for half of the hours not worked.
  - e. Exceptions to compensation requirements.
    - Employee requests for schedule changes (e.g. when an employee requests to leave work early to attend a concert.)
    - Employee-to-employee shift swaps.
    - Employee acceptance of a schedule change in response to a "mass communication" from the employer about additional hours due to a scheduled employee not being able to work.
    - Employee acceptance of a schedule change in response to an "in-person group communication" initiated by the employer with two or more currently working employees about additional hours due to unanticipated customer needs.
    - Employee acceptance of an offer of hours under the "access to hours" provision described below.
    - Employer's reduction of employee hours due to bona fide discipline.



- Employer's inability to begin or continue operations due to (1) threats to employees or property; (2) recommendation of public official; (3) public utilities failure; (4) natural disaster; (5) weather event; (6) an event that would cause the employer to violate a law.
- 8. Access to hours for existing employees.** Before hiring external employees, employers must offer additional hours of work to existing employees, subject to certain exceptions. Employers must post notice of additional hours for three days and allow existing employees two days to consider job offers.
  - 9. Record-keeping requirements.** Employers must keep records for three years to show compliance.
  - 10. Poster and translation requirements.** Employers must display a Secure Scheduling workplace poster in a conspicuous and accessible place at the worksite. Employers must provide translations of the poster and certain documents in English and the employees' primary language(s). The Office of Labor Standards will create the poster and provide translations.
  - 11. Protection from retaliation.**
    - a. Employers may not interfere any right protected by the Secure Scheduling ordinance.
    - b. Employees have the right to decline any hours not on the originally posted schedule.
    - c. However, employers may discipline an employee for abuse of the employer's reasonable notification and job requirements for employee-requested work schedule changes, provided such changes are not due to a reason covered by another local, state or federal law (e.g. Paid Sick and Safe Time, disability accommodation).
  - 12. Waiver.** Secure scheduling requirements shall not apply when such requirements are expressly waived in a collective bargaining agreement, or addendum to a collective bargaining agreement, and employees ratify an alternative scheduling structure that meets the public policy goals of the ordinance.

**For more information, contact the Seattle Office of Labor Standards, 206-684-4500**  
<http://www.seattle.gov/laborstandards/ordinances/secure-scheduling>



# HB 1491 - 2019-20

Concerning employer and employee scheduling.

Sponsors: **Macri, Lekanoff, Frame, Davis, Fitzgibbon, Cody**

Companion Bill: **SB 5717**

## Bill History

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### 2019 REGULAR SESSION

- Jan 23 First reading, referred to Labor & Workplace Standards.
- Feb 5 Public hearing in the House Committee on Labor & Workplace Standards at 3:30 PM.
- Feb 21 Executive action taken in the House Committee on Labor & Workplace Standards at 8:00 AM.  
**LAWS - Majority; 1st substitute bill be substituted, do pass.**  
Minority; do not pass.
- Feb 22 Referred to Appropriations.
- Feb 25 Public hearing in the House Committee on Appropriations at 1:30 PM.

# HOUSE BILL REPORT

## HB 1491

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**As Reported by House Committee On:**  
Labor & Workplace Standards

**Title:** An act relating to secure scheduling.

**Brief Description:** Concerning employer and employee scheduling.

**Sponsors:** Representatives Macri, Lekanoff, Frame, Davis, Fitzgibbon and Cody.

**Brief History:**

**Committee Activity:**

Labor & Workplace Standards: 2/5/19, 2/21/19 [DPS].

**Brief Summary of Substitute Bill**

- Requires food service, hospitality, and retail establishments with more than 250 employees worldwide, but exempting employers in rural counties, to provide employees 14 days' notice of work schedules, compensate employees for schedule changes, grant employee requests for schedule changes under certain conditions, and meet other requirements.
- Requires employers to give access to additional hours to existing employees before hiring externally.
- Provides for administrative remedies and a civil cause of action.

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### HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Sells, Chair; Chapman, Vice Chair; Mosbrucker, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Gregerson and Ormsby.

**Minority Report:** Do not pass. Signed by 1 member: Representative Hoff.

**Staff:** Joan Elgee (786-7106).

**Background:**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

State law does not address when and how workers are scheduled. How much notice an employer gives an employee regarding a schedule change, for example, is up to the employer unless there is a collective bargaining agreement or employment contract that specifies the amount of notice required. A number of jurisdictions, including Seattle and Oregon, have enacted scheduling laws.

The Minimum Wage Act covers most employees in the state. Exemptions include some executive, administrative, and professional employees.

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### **Summary of Substitute Bill:**

#### Coverage.

Employees covered by the state's Minimum Wage Act who work at a fixed point of sale location are covered by provisions establishing scheduling requirements for certain employers. Employers are food service, hospitality, and retail establishments with 250 or more employees worldwide, except that employers located in rural counties are exempt. A rural county is a county with a population density of less than 100 persons per square mile or smaller than 225 square miles. A restaurant must also have 40 or more locations worldwide. Franchisees associated with a franchisor or network of franchisees with more than 250 employees in the aggregate are covered except that a franchise employing fewer than 25 employees aggregated across all locations operated by that franchisee is exempt. Nonprofit service organizations and temporary employment agencies are also exempt.

#### Requirements.

- *Good Faith Estimate of Work Schedule.* Upon hire, employers must provide employees with a good faith estimate of the employee's work schedule, which must include the expected median hours per week and whether the employee is expected to work on-call shifts. An employer must revise the estimate annually and when there is a significant change to the employee's work schedule.
- *Work Schedule Input.* Employees may identify any limitations or changes in availability, and may request schedule and location preferences. Employers must engage in an interactive process regarding requests not to work certain shifts or at certain locations or preferences for hours or locations of work. If the request is due to a major life event, the employer must grant the request unless the employer has a bona fide business reason for denial. A "major life event" is changes in the employee's transportation or housing; or the employee's serious health condition, responsibilities as a caregiver, enrollment in career-related education or training, or other job. An employer may require verifying information from the employee.
- *Rest Between Work Shifts.* Employers may not require employees to work shifts separated by fewer than 10 hours, and an employee who requests or agrees to work such hours is entitled to one and a half times the regular rate of pay for shifts separated by fewer than 10 hours.

- *Advance Notice of Work Schedule.* Employers must provide the work schedule to employees at least 14 days before the first day of the schedule. An employer must post the work schedule in English and the primary languages of all the employees at the workplace and transmit it to each employee. An employer who fails to timely post the work schedule must compensate each employee \$100 for each day the schedule is not posted.
- *Work Schedule Changes.* Employees may decline any schedule changes made by the employer after the advance notice. If an employee requests a change in the schedule after the advance notice, the employer may ask or require the employee to find a replacement as follows:
  - if another law prohibits asking the employee or protects the absence from employer interference, the employer may not ask or require the employee to find a replacement;
  - if the reason is an emergency or major life event, an employer may ask but not require the employee to find a replacement; and
  - for other reasons, the employer may require the employee to find a replacement.
- *Compensation for Work Schedule Changes.* For employer-requested changes after the advance notice, the employee is entitled to additional compensation as follows:
  - 1 hour of regular pay for adding hours or changing the date or start or end time of a work shift with no loss of hours, or changing the location; and
  - one-half the regular pay for any scheduled hours not worked, including on-call hours not worked.

Exceptions include additional hours that an employee agrees to work in response to a mass employer communication used only for hours that are the result of an other employee being unable to work, additional hours that an employer requests employees currently working to work to address present and unanticipated customer needs, mutually agreed shift swaps or coverage, employee-requested changes, and when operation closes because of a natural disaster.
- *Underscheduling.* An employer may not engage in a pattern or practice of systemic underscheduling in which the total hours actually worked are significantly greater than the hours in the work schedule. Employers must periodically provide data to the Department of Labor and Industries (Department) with aggregate data on discrepancies between hours scheduled and hours worked.
- *Access to Hours for Existing Employees.* Before hiring external employees, including temporary employees, employers must offer additional hours to current employees as follows:
  - Employers must post notice of the available hours for five days and must offer the hours to qualified existing employees. Details of the notice are specified.
  - Employees are not qualified if overtime pay would be required or if other laws would bar the employee from working.
  - The employer must give the employee offered hours at least five days to accept the offer.
  - The priorities for offering shifts to employees are specified.

- If no employee responds to the notice of additional hours or accepts offered hours within the timeframes specified, or all employees decline hours, the employer may hire externally.

An employer who fails to offer additional hours as required must compensate each employee \$100 for each occurrence. An employer who fails to award hours to a qualified employee must compensate the employee \$1,000.

#### Enforcement.

- *Administrative Enforcement.* The Department must investigate complaints and may order payment to the employee of unpaid compensation plus interest, statutory damages of twice the unpaid compensation, and payment to the Department of the costs of the investigation and enforcement. A prevailing employee is entitled to attorneys' fees and costs.
- *Civil Penalties.* The Department may also order payment of a civil penalty of not less than the greater of \$1,000 per violation or 10 percent of unpaid wages, up to \$20,000 per aggrieved party. Penalties may be waived if the employer pays the full remedy due to the employee within 10 days of the final order.
- *Whistleblower Enforcement.* An employee may seek the civil penalties through a civil action on behalf of the Director of the Department and other employees. The process for a whistleblower action is specified, including that the whistleblower must notify and give the Department an opportunity to investigate. An employee may designate an organization to represent it in the whistleblower proceedings. Penalties are distributed 70 percent to the Director for enforcement and education of employers and employees, and 30 percent to the aggrieved employees. Twenty percent of the Director's share of the penalties must be allocated to community-based enforcement partnerships.
- *Private Cause of Action.* An employee or class of employees may bring a civil action for remedies similar to those available in an administrative action.
- *Retaliation.* Retaliation for filing a complaint or taking other action under the provisions is prohibited. Prohibited retaliation includes demoting, reducing hours, and actions or threats relating to perceived immigration status or work authorization. An adverse action against an employee within 90 days of the employee's exercise of rights is presumed retaliatory. If an employer is found to have retaliated, the Director or court must order an additional payment to the employee of up to \$5,000.

#### Other.

- *Recordkeeping.* Employers must maintain specified records documenting compliance for three years. A failure to retain adequate records creates a presumption, rebuttable by clear and convincing evidence, that the employer violated the provisions.
- *Rulemaking/Technical Assistance.* The Department must adopt implementing rules and provide technical assistance to employers.

#### **Substitute Bill Compared to Original Bill:**

The substitute bill:

- raises the employer threshold to 250 employees, adds the rural county exemption, and adds the exemption for franchisees with fewer than 25 employees;
  - reduces the rest time;
  - adds the exemptions from additional pay for employees responding to employer communications;
  - removes unemployment insurance good cause quit provisions;
  - adds the exclusions for nonprofit service organizations and temporary employment agencies;
  - removes the definition of "work shift;" and
  - adds clarifying language regarding coverage and other matters.
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**Appropriation:** None.

**Fiscal Note:** Requested on February 21, 2019.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The nature of work has changed, and it is important to respect people's time away from work. Employees around the state have challenges balancing work and personal lives and multiple jobs. This bill will help families. Employees need reliable work schedules. Inconsistent schedules make it difficult to plan, such as for school and appointments. Arranging child care and transportation is hard with notice of only a day or two. Staff have to show up and then are sent home. Employees are pressured to have open availability and requests for schedule changes are not granted. Women are over-represented in industries with scheduling issues. It is very hard to budget when a person does not know how many hours they will work and what their paycheck will be. Inconsistent hours also make it impossible to find a second job.

Working opening and closing (known as "clopenings") compromises sleep. Workers should not have to choose between health and making a living. The Seattle ordinance has improved the lives of Seattle workers who no longer have to work clopenings. There have been few investigations, which shows the law is working. If schedules change, only a small predictability payment is required. The bill still allows flexibility; for example, employees could switch shifts for medical appointments.

(Opposed) The bill is unclear in its coverage. The coverage is unfair in that fine dining is exempt but hardware stores are covered. Temporary agencies are included. Thousands of small businesses are covered, even convenience stores. The bill prohibits shifts of less than six hours, which does not work in some industries. The requirements are not workable for industries with clients that call with two days' notice of needs, for example. This is one more expense. Seattle employers are having trouble adjusting to the ordinance and are closing down stores.

The bill creates restrictive scheduling and removes the flexibility that employees want. An employee may not agree to a different schedule. Employers are penalized when trying to adjust schedules. Employees who want clopenings to get a long weekend, would no longer be allowed to work these shifts. Immigrant workers will be harmed. Full-service restaurants, whose workers were not allowed to participate in the bill's development, should be exempt.

The bill is broader than the Seattle ordinance. There is a conflict with notice under paid family leave. The penalties encourage people to remove the posted schedules and a person has a remedy in court even if the Department waived the penalties. An employer may not be able to provide translations. The requirements are inconsistent with collective bargaining agreements.

**Persons Testifying:** (In support) Representative Macri, prime sponsor; Lee Ervin; Mckyndree Rogers; Randy Hoggarth; Lindsey Moore; April Frazier; Erin Bishop; Joel Nelson, United for Respect; Adam Scriptor; Josh Fogt, Working Washington; David Rojas; Amy Dayley Angell; and Nicole Bloam.

(Opposed) Bob Battles, Association of Washington Business; Lisa Castro, The UPS Store; Julia Gorton, Washington Hospitality Association; Paula Craft; Simone Barron; Dee Firmschild; Benjermin Leslie; Sean Beavers; Tracie Schmitt, Ridge Motorsports Park; Naresh Bhatt, The UPS Store–Seattle; Jack Graham, The UPS Store–Tumwater; Carolyn Logue, Washington Food Industry Association; Tyler Myers, The Myers Group and Kress Independent Grocers Alliance; Patrick Connor, National Federation of Independent Business; and Holly Chisa, Northwest Grocery Association.

**Persons Signed In To Testify But Not Testifying:** Melissa and Joshua Baker, Dirty Deeds Cleaning.



# SB 5717 - 2019-20

Concerning employer and employee scheduling.

Sponsors: **Saldaña, Das, Hasegawa, Nguyen, Keiser, Lias, Conway, Hunt, Randall, Wilson, C.**

Companion Bill: **HB 1491**

## Bill History

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### 2019 REGULAR SESSION

- Jan 29 First reading, referred to Labor & Commerce.
- Feb 15 Public hearing in the Senate Committee on Labor & Commerce at 1:05 PM.
- Feb 20 Executive session scheduled, but no action was taken in the Senate Committee on Labor & Commerce at 5:45 PM.
- Feb 21 Executive action taken in the Senate Committee on Labor & Commerce at 8:00 AM.  
**LBRC - Majority; 1st substitute bill be substituted, do pass.**  
And refer to Ways & Means.  
Minority; do not pass.
- Feb 22 Referred to Ways & Means.

# SENATE BILL REPORT

## SB 5717

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As Reported by Senate Committee On:  
Labor & Commerce, February 21, 2019

**Title:** An act relating to secure scheduling.

**Brief Description:** Concerning employer and employee scheduling.

**Sponsors:** Senators Saldaña, Das, Hasegawa, Nguyen, Keiser, Liias, Conway, Hunt, Randall and Wilson, C..

**Brief History:**

**Committee Activity:** Labor & Commerce: 2/15/19, 2/21/19 [DPS-WM, DNP].

### Brief Summary of First Substitute Bill

- Creates a comprehensive program for certain employees regarding their work schedules.
- Covers employers in food services, hospitality, or retail with 250 or more employees worldwide, except full service restaurants must have 40 or more locations worldwide.
- Covers chains and franchises with 250 or more employees in the aggregate, except for those employing less than 25 employees across locations operated by that franchisee.
- Provides exclusions for nonprofit service organizations, temporary service contractor, and roadside assistance services.
- Provides covered employees with 14 days' notice of work schedules, compensates employees for schedule changes, grants employee requests for schedule changes under certain conditions, and other protections.
- Provides a ten-hour rest period for employees working closing an store opening the next day.
- Exempts volunteers who offer to work in response a mass or in-person communication.
- Requires existing employees to be offered additional hours before an employer may hire new employees.
- Provides for administrative remedies and a civil cause of action.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

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## SENATE COMMITTEE ON LABOR & COMMERCE

**Majority Report:** That Substitute Senate Bill No. 5717 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña and Wellman.

**Minority Report:** Do not pass.

Signed by Senators King, Ranking Member; Braun and Walsh.

**Staff:** Richard Rodger (786-7461)

**Background:** State law does not address when and how workers are scheduled. A number of jurisdictions, including the cities of Seattle and San Francisco and the state of Oregon, have enacted scheduling laws.

The Minimum Wage Act (MWA) covers most employees in the state. The MWA include exemptions for some executive, administrative, and professional employees.

To be eligible for unemployment insurance, a claimant who quits work must quit only under good cause quit circumstances listed in statute.

**Summary of Bill (First Substitute):** The scheduling provisions apply to employees who are covered under the state's MWA, work at a fixed point of sale location, and work for specified employers. Covered employers are food service, hospitality, and retail establishments with 250 or more employees worldwide. Covered full service restaurants must also have 40 or more locations worldwide. Establishments include franchises associated with a franchisor or network of franchises employing 250 or more employees in the aggregate, with and exemption for a franchise with less than 25 FTE's across locations operated by that franchisee. Excludes from the definition of employer: nonprofit service organizations, temporary employment agencies, and roadside assistance services "

Covered employers are required to meet the following provisions:

1. Good Faith Estimate of Work Schedule. Employers must provide employees, at the time of hire, a good faith estimate of their work schedule, expected median hours per week, and if on-call shifts are expected. An employer must revise the estimate annually and when there is a significant change to the employee's work schedule.
2. Work Schedule Input. Employees may identify any limitations or changes in availability, and may request schedule and location preferences. Employers must engage in an interactive process regarding requests not to work certain shifts, or at certain locations, or preferences for hours or locations of work. If the request is due to a major life event, the employer must grant the request, unless the employer has a bona fide business reason for denial. A major life event includes changes in transportation or housing, a serious health condition, responsibilities as a caregiver, enrollment in career-related education or training, or other job. An employer may require verifying information, as long as it does not exceed privacy or verification requirements otherwise in law.

3. Rest Between Work Shifts. Employers may not require employees to work shifts separated by less than ten hours. An employee who requests or agrees to work such hours is entitled to one and a half times the regular rate of pay for hours separated by fewer than ten hours.
4. Advance Notice of Work Schedule. Employers must provide the work schedule to employees at least 14 days before the first day of the schedule. An employer must post the work schedule in English and the primary languages of all the employees at the workplace and transmit it to each employee. An employer who fails to timely post the work schedule must compensate each employee \$100 for each day the schedule is not posted.
5. Work Schedule Changes. Employees may decline any schedule changes made by the employer after the advance notice. If the employee requests a change in the schedule after the advance notice, the employer may ask or require the employee to find a replacement as follows:
  - if another law prohibits asking the employee or protects the absence from employer interference, the employer may not ask or require the employee to find a replacement;
  - if the reason is an emergency or major life event, an employer may ask but not require the employee to find a replacement; and
  - for other reasons, the employer may require the employee to find a replacement.
6. Compensation for Work Schedule Changes. For employer requested changes after the advance notice, the employee is entitled to additional compensation as follows:
  - one hour of regular pay for adding hours or changing the date or start or end time of a work shift with no loss of hours, or changing the location. The hour of premium pay does not include any requirement for overtime pay that would not ordinarily be paid to the employee.
  - one-half the regular pay for any scheduled hours not worked, including on-call hours not worked. Exceptions include mutually agreed shift swaps or coverage, employee-requested changes, voluntary responses to a mass communication or to an in-person group communication for employees who are currently working, and when operations close because of a natural disaster.
7. Under Scheduling. An employer may not engage in a pattern or practice of systemic under scheduling in which the total hours actually worked are significantly greater than the hours in the work schedule. Employers must periodically provide aggregate data on discrepancies between hours scheduled and hours worked to the Department of Labor and Industries (L&I).
8. Access to Hours for Existing Employees. Before hiring external employees, including temporary employees, employers must offer additional hours to current employees as follows:
  - employers must post notice of the available hours for five days, must offer the hours to qualified existing employees, and details of the notice are specified;

- employees are not qualified if overtime pay would be required or if other laws would bar the employee from working;
- the employer must give the employee offered hours at least five days to accept the offer;
- the priorities for offering shifts to employees are specified;
- if no employee responds to the notice of additional hours or accepts offered hours within the timeframe specified; or
- all employees decline hours, the employer may hire externally.

An employer who fails to offer additional hours as required must compensate each employee \$100 for each occurrence. An employer who fails to award hours to a qualified employee must compensate the employee \$1,000.

L&I and private enforcement provisions and job protections include:

1. Administrative Enforcement. L&I must investigate complaints and may order payment to the employee of unpaid compensation plus interest, statutory damages of twice the unpaid compensation, and payment to L&I for the costs of the investigation and enforcement. A prevailing employee is entitled to attorneys' fees and costs.
2. Civil Penalties. L&I may also order payment of a civil penalty of not less than the greater of \$1,000 per violation or 10 percent of unpaid wages, up to \$20,000 per aggrieved party. Penalties may be waived if the employer pays the full remedy due to employee within ten days of the final order.
3. Whistleblower Enforcement. An employee may seek civil penalties through a civil action on behalf of the director of L&I and other employees, if the director, after notice, decides not to investigate the alleged violation. The process for a whistleblower action is specified. An employee may designate an organization to represent them in the whistleblower proceedings. Penalties are distributed as follows: 70 percent to the director for enforcement and education of employers and employees; and 30 percent to the aggrieved employees. Twenty percent of the director's share of penalties must be allocated to community-based enforcement partnerships.
4. Private Cause of Action. An employee or class of employees may bring a civil action for remedies similar to those available in an administrative action.
5. Retaliation. Retaliation for filing a complaint or taking other action under the provisions is prohibited. Prohibited discrimination includes demoting, reducing hours, and actions or threats relating to perceived immigration status or work authorization. An adverse action against an employee within 90 days of the employee's exercise of rights is presumed retaliatory. If an employer is found to have retaliated, the director or court must order an additional payment to the employee up to \$5,000.

Miscellaneous provisions include:

1. Unemployment. If an employer knowingly fails to comply with the requirements or makes a significant change in the employee's work schedule due to changes in the

employer's needs, an employee has good cause to quit for purposes of unemployment insurance.

2. Recordkeeping. Employers must maintain specified records documenting compliance for three years. A failure to retain adequate records creates a presumption, rebuttable by clear and convincing evidence, that the employer violated the provisions.
3. Rulemaking and Technical Assistance. L&I must adopt implementing rules and provide technical assistance to employers.

**EFFECT OF CHANGES MADE BY LABOR & COMMERCE COMMITTEE (First Substitute):**

- Raises the employer threshold from 100 to 250 employees.
- Adds franchise exemption at less than 25 FTE's across locations operated by that franchisee.
- Rest time between clopening is reduced from 12 to 10 hours.
- Definition changes:
  - Clarifies the requirements apply to employers that are food services, hospitality, or retail establishments meeting the threshold requirement and not all employers.
  - Makes additional cross-references between the terms "employee" and "employer."
  - Excludes nonprofit service organizations, temporary employment agencies, and roadside assistance services from the definition of "employer."
- Removes the definition of "work shift."
- Changes definitions of "employ" and "parent" to use definitions in the Minimum Wage Act.
- Clarifies that the employer's requirement that an employee provide verifying information regarding scheduling request may not exceed privacy or verification requirements otherwise in law.
- Exempts additional hours that the employee volunteers to work in response to a mass communication, and for employees who are currently working, through an in-person group communication.
- Clarifies that the hour of premium pay, does not include any requirement for overtime pay.
- Removes all provisions related to unemployment insurance.

**Appropriation:** None.

**Fiscal Note:** Requested on January 30, 2019.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: The industry and workers'

representatives have been very engaged in encouraging and supporting this effort. Individuals need more clarity around their schedules, especially for workers outside of Seattle. It is very challenging to balance work and school schedules, when the schedules change weekly for work and quarterly for schools. Knowing schedules in advance allows us to schedule and plan medical appointments and child care for our children. Openings are very difficult for employees to deal with. Workers need secure, reliable schedules so we can take care of our families and lives and make our lives less of a struggle. Erratic shifts and inconsistent hours make it difficult to plan a budget and are harmful to our health. Allowing employees to discuss their availability for shifts and locations create a better working relationship between the employers and employees. As a small business owner, we find secure scheduling provides stability for our employees.

CON: As a full service worker I do not support this bill. I like the flexibility the current system offers, if the business is slow we can leave and spend time with our families. How can a sports bar plan for such events as Seahawks playoff post season schedules? Penalties for call-offs are ridiculous to pay people to stay home and not work. The bill does not work for full service restaurants, they are not comparable to fast food, coffee, or retail establishments. Secure scheduling is restrictive scheduling, it takes away the power workers have to schedule their own work/life balance and puts it into the hands of government and our employers. We enjoy the perks of having flexible schedules that we can plan for ourselves. These are not rights that are being offered, but obligate the employees to the set schedules. Concerns with the Seattle law included the perils of algorithm software for fast food and coffee chains, as no such software exists for full service restaurants.

Please exclude temporary worker companies as was done in Oregon. This is not what was done in Seattle, as its law less restrictive than what is proposed today. We are required to honor our CBA agreements, which conflicts with this law on notice of schedules and splitting shifts. Posting of notices in all the languages of the employees present at a work site, that may cover 20 to 30 languages. If we offer out additional hours, the law still requires us to pay a penalty to those who accept the hours. Wineries maintain standard business hours, but our customer traffic is not predictable. The bill sets up drastic and punitive enforcement measures that will prevent us from providing our employees with the flexibility they need. These laws across the country have resulted in fewer hours and less money for our employees. The bill is unfair as it only covers large employers and franchisees. Weather is a big factor in our business and it is unpredictable 14 days in advance. Five degrees can double my business or cut my business in half. Full service is not Fred Meyers or Dominos. The term covered employers is used inconsistently with employer. A small franchise with five employees is covered by the bill, as are some agricultural businesses that provide retail services to farmers. This adds a layer of paperwork for both employers and our employees. The bill locks in antiquated work schedules versus the flexible nature of the new businesses and environment. This is much different from Oregon's law.

**Persons Testifying:** PRO: Senator Rebecca Saldaña, Prime Sponsor; Amy Dayley-Angell, citizen; Peter Charlie, citizen; Sarah Rawlings, citizen; Adam Scriptor, citizen; David Rojas, citizen; Karynn Pauly, citizen; Matt Hipp, citizen; Joel Nelson, United for Respect.

CON: Natalie McNair, Tue Blue; Holly Chisa, NW Grocery Association; Steve Gano, Ste Michelle Wine Estates; Carolyn Logue, Washington Food Industry Association; Bruce

Beckett, Washington Retail Association; Simone Baron, citizen; Sean Beavers, citizen; Dee Firnschild, citizen; Julia Gorton, Washington Hospitality Association; Mike McKinnon, Dairy Queen; Valerie Fisk, Dairy Queen; Rick Nelsen, Ricardo's; Bob Battles, AWB.

**Persons Signed In To Testify But Not Testifying:** No one.





## General Government Committee

### Heritage Commission Interview

**Agenda Date:** 6/19/2019  
**Agenda Item Number:** 6.B  
**File Number:** 19-0569

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**Type:** recommendation   **Version:** 1   **Status:** In Committee

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**Title**

Heritage Commission Interview

**Recommended Action**

**Committee Recommendation:**

Not referred to a committee.

**City Manager Recommendation:**

Interview an applicant and finalize appointment recommendation to the Heritage Commission.

**Report**

**Issue:**

Whether to interview Andrea Pareigis for a vacant position on the Heritage Commission.

**Staff Contact:**

Kellie Purce Braseth, Strategic Communications Director, 360.753.8361

**Presenter(s):**

N/A

**Background and Analysis:**

The General Government Committee will interview an applicant for a vacancy on the Heritage Commission.

The interview will be in Council Chambers at Olympia City Hall, 601 4<sup>th</sup> Avenue E.

**Options:**

1. Conduct the interview and finalize appointment recommendation.
2. Do not conduct the interview and direct staff to reschedule another date for the process.

**Attachments:**

None