

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

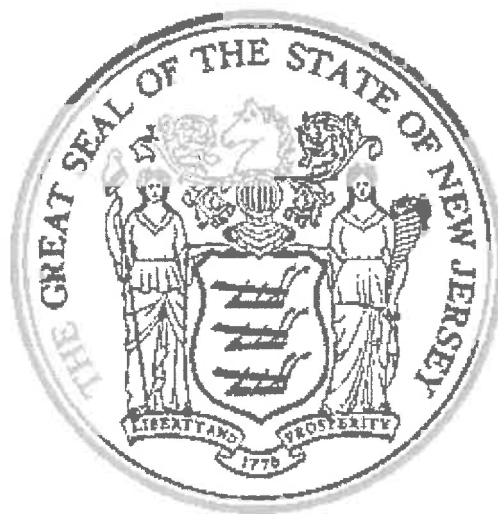
District 34 (Essex and Passaic)

SYNOPSIS

“New Jersey Fair Workweek Act.”

CURRENT VERSION OF TEXT

As introduced.



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

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 curb 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 restaurants 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)
43

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

STATEMENT

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 employer, upon hire, to provide an employee 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.