

By: Hernandez

H.B. No. 401

A BILL TO BE ENTITLED

AN ACT

relating to the requirement that certain employers provide advance notice of employee work schedules.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 3, Labor Code, is amended by adding Chapter 106 to read as follows:

CHAPTER 106. NOTICE OF EMPLOYEE WORK SCHEDULE

Sec. 106.001. DEFINITION; APPLICABILITY. (a) In this chapter, "food and general retail establishment" means a retail sales establishment that has a physical location with in-person food or merchandise sales to ultimate consumers for personal, family, or household purposes, including a restaurant, food retail store, grocery store, general merchandise store, department store, and health and personal care store.

(b) Except as provided by Subsection (c), this chapter applies only to a food and general retail establishment that:

(1) employs at least 500 employees in this state;
(2) has at least 10 other retail sales establishments in states other than this state; and

(3) maintains at least two of the following:
(A) a standardized array of merchandise;
(B) a standardized facade;
(C) a standardized decor and color scheme;
(D) uniform apparel;

1 (E) standardized signage; or

2 (F) a trademark or a service mark.

3 (c) This chapter does not apply to:

4 (1) a retail establishment at which the primary
5 activity is providing customer service and the sale of merchandise
6 is secondary or incidental to that service;

7 (2) an online retailer that does not have a physical
8 location with in-person sales in this state; or

9 (3) a new motor vehicle dealer.

10 Sec. 106.002. NOTICE REQUIRED. Except as provided by
11 Section 106.004, a food and general retail establishment shall
12 notify each hourly employee of the employee's scheduled work shift
13 at least two weeks before the time the shift is scheduled to begin.

14 Sec. 106.003. REMEDY FOR VIOLATION OF NOTICE REQUIREMENT.

15 (a) A food and general retail establishment that violates Section
16 106.002 by canceling or moving an employee's work shift to another
17 date or time shall pay the employee the following compensation for
18 each previously scheduled shift that is canceled or moved:

19 (1) one hour of pay at the employee's regular hourly
20 rate if the establishment notifies the employee less than seven
21 days but more than 24 hours before the time of the scheduled shift;

22 (2) two hours of pay at the employee's regular hourly
23 rate for each shift of four hours or less if the establishment
24 notifies the employee less than 24 hours before the time of the
25 scheduled shift; and

26 (3) four hours of pay at the employee's regular hourly
27 rate for each shift of more than four hours if the establishment

1 notifies the employee less than 24 hours before the time of the
2 scheduled shift.

3 (b) A food and general retail establishment that violates
4 Section 106.002 by requiring an employee to work an unscheduled
5 shift shall pay the employee the following compensation for each
6 previously unscheduled shift that the establishment requires the
7 employee to work, in addition to the employee's regular pay for that
8 shift:

9 (1) one hour of pay at the employee's regular hourly
10 rate if the establishment notifies the employee less than seven
11 days but more than 24 hours before the time of the shift;

12 (2) two hours of pay at the employee's regular hourly
13 rate for each shift of four hours or less if the establishment
14 notifies the employee less than 24 hours before the time of the
15 shift; and

16 (3) four hours of pay at the employee's regular hourly
17 rate for each shift of more than four hours if the establishment
18 notifies the employee less than 24 hours before the time of the
19 shift.

20 Sec. 106.004. EXCEPTIONS TO NOTICE REQUIREMENT. A food and
21 general retail establishment is not required to provide the notice
22 under Section 106.002 if:

23 (1) the establishment's operations cannot begin or
24 continue due to threats to employees or property, or because civil
25 authorities recommend that work not begin or continue;

26 (2) the establishment's operations cannot begin or
27 continue because public utilities fail to supply electricity,

1 water, or gas to the establishment, or there is a failure in the
2 public utility or sewer system at the establishment;

3 (3) the establishment's operations cannot begin or
4 continue due to an act of God or another cause not within the
5 establishment's control, including a state of emergency declared by
6 a local government or the governor;

7 (4) another employee who was previously scheduled to
8 work the previously unscheduled shift is unable to work and the
9 establishment did not receive at least seven days' notice of the
10 other employee's absence;

11 (5) another employee who was previously scheduled to
12 work the previously unscheduled shift does not report to work on
13 time or is fired, sent home, or told to stay home as a disciplinary
14 action;

15 (6) the establishment requires the employee to work
16 overtime, including mandatory overtime; or

17 (7) the employee works a previously unscheduled shift
18 because the employee traded shifts with another employee or
19 requested a change in shift, hours, or work schedule.

20 SECTION 2. Chapter 106, Labor Code, as added by this Act,
21 applies only to an employee's work shift that is scheduled by an
22 employer on or after the effective date of this Act. An employee's
23 work shift that is scheduled by an employer before the effective
24 date of this Act is governed by the law in effect immediately before
25 the effective date of this Act, and that law is continued in effect
26 for that purpose.

27 SECTION 3. This Act takes effect September 1, 2021.