

March 20, 2020

TO: Governor Kate Brown
BOLI Commissioner Val Hoyle
Members of the Joint Special Committee on Coronavirus Response

RE: Predictive Scheduling

FROM: Oregon Business & Industry
Oregon State Chamber of Commerce
NW Grocery Association
Oregon Restaurant & Lodging Association

On behalf of the industries with doors still largely open during our current new world crisis (your retail, grocery, lodging and modified restaurants services), we write to you to flag something that is unique just to Oregon. Oregon's statewide predictive scheduling laws impact the same industries that need the greatest flexibility to manage our workforces during this crisis in a safe and reasonable manner.

We need immediate emergency relief and flexibility from ORS 653.412 – 653.490.

We want to thank BOLI Commissioner Val Hoyle for issuing guidance related to the predictive scheduling law earlier this month. Her memo outlined that we are, in fact, in a situation where a public official has declared an emergency and recognized that the law provides for employer relief from penalties and obligations for providing additional compensation under situations like we currently face. We are concerned, however, the memo does not provide enough certainty to employers and employees as we seek to implement flexible scheduling during this crisis situation.

In order to mitigate these challenges, we ask for specific relief during this emergency to manage employee schedules as necessary without the obligation of penalty hourly compensation or the fear of regulatory penalties or other civil action. We urge you to immediately take the following steps:

- The Governor should issue an executive order that specifies the COVID-19 emergency declaration relieves employers from the obligation to provide additional compensation when changes to schedules occur
- The Legislature needs to take clarifying action during the proposed Special Session to modify the predictive scheduling statute to remove all uncertainty about this issue as follows:
 - Allow waiver of ORS 653.428 and ORS 653.450: “Good faith estimate of work schedule” and “Right to Input to work schedule” during times of emergency and hiring in response to customer demands and other needs related to that emergency
 - New 653.455(3): The requirements for additional compensation in this section do not apply when:
 - (i) An employee is not able to report to a work shift or on-call shift due to the

recommendation of a public official including a declaration of emergency by the Governor for public health purposes for the duration of the emergency;

- New 653.455(3)(j):
(j) An employer requests that an employee work additional hours to address unanticipated customer needs due to a declaration of emergency by the Governor that impacts business operations during the duration of the emergency.

When Oregon became the first state (and to-date only State) to adopt predictive scheduling, none of us could have envisioned the current situation we are dealing with. We did, however, envision the need for flexibility based on threats or declarations from public officials as evident in ORS 653.455(3) which provide relief from penalty pay during emergencies.

Thank you for hearing our concerns.

Contacts

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