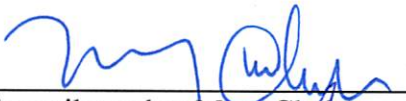
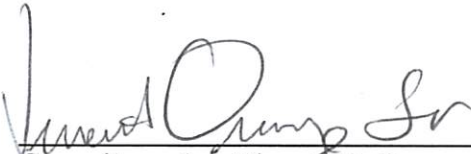



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2 Councilmember Mary Chen


Councilmember Vincent B. Orange, Sr.

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6 Councilmember Elissa Silverman

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- Councilmember Brianne Nadeau

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16 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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20 To establish standards for responsible business practices by retail and food service employers by
21 ensuring that they provide employees with advance notice of work schedules, equal
22 treatment regardless of number of hours worked, and available additional hours of work.

23 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
24 act may be cited as the "Hours and Scheduling Stability Act of 2015."

25 Sec 2. Definitions.

26 For the purposes of this chapter, the term:

27 (1) "Chain" means a set of establishments, which share a common brand, or are
28 characterized by standardized options of décor, marketing, packaging, products and services.

29 (2) "Covered employer" shall mean a retail employer or food services employer.

30 (3) "Department" means the Department of Employment Services.

31 (4) "Employ" shall have the same meaning as under D.C. Official Code § 32-
32 1002(1).

33 (5) "Employee" means any individual who:

34 (A) Is an employee as defined under D.C. Official Code §§ 32-1001(2)
35 and 32-1003(b);

36 (B) Is eligible to receive compensation at one-and-one-half times the
37 employee's regular rate under either D.C. Official Code § 32-1003(c) or 29 U.S.C. § 207; and

38 (C) Is employed by a retail employer or food services employer.

39 (6) "Food services employer" means any entity that:

40 (A) Is an employer under DC Code § 32-1002(3); and

41 (B) Employs employees in the District of Columbia in a food services
42 establishment.

43 (7) "Food services establishment" means entities that employ employees in a full
44 service or limited service restaurant as defined under the North American Industry Classification
45 System ("NAICS") 7221 and NAICS 7222 where that restaurant:

46 (A) Is part of a chain of at least 20 restaurant establishments nationwide;

47 or (B) Is a franchisor or franchisee where the franchisor or franchisee is one
48 of 20 or more establishments nationally, including:

49 (i) An integrated enterprise which owns or operates 20 or more
50 such establishments in the aggregate nationally; or

51 (ii) An establishment operated pursuant to a franchise where the
52 franchisor and franchisee(s) of such franchisor owns or operate 20 or more such establishments
53 in the aggregate nationally.

54 (8) "Franchisee" means a person to whom a franchise is offered or granted.

55 (9) "Franchisor" means a person who grants a franchise to another person.

56 (10) "Franchise" means a written agreement by which:

57 (A) A person is granted the right to engage in the business of offering,
58 selling or distributing goods or services under a marketing plan prescribed or suggested in
59 substantial part by the grantor or its affiliate;

60 (B) The operation of the business is substantially associated with a
61 trademark, service mark, tradename, advertising or other commercial symbol; designating,
62 owned by, or licensed by the grantor or its affiliate; and

63 (C) The person pays, agrees to pay, or is required to pay, directly or
64 indirectly, a franchise fee.

65 (11) “On-call hours” or “On-call shifts” means the time that an employer requires
66 an employee to be available to work, to contact the employer or its designee, or wait to be
67 contacted by the employer or its designee, to determine whether the employee must report to
68 work at that time.

69 (12) “Predictability pay” means payments to an employee, calculated on an hourly
70 basis at the employee’s regular rate of pay, as compensation for changes made by an employer to
71 an employee’s schedule pursuant to Section 3 of this act, in addition to any wages earned for
72 work performed by that employee.

73 (13) “Regular rate of pay” has the meaning given under D.C. Official Code § 32-
74 1002(7).

75 (14) “Retail employer” means any entity that:

76 (A) Is an employer under D.C. Official Code § 32-1002(3);

77 (B) Employs employees in a retail establishment that is part of a chain of
78 at least 5 retail establishments nationwide; and

79 (C) Has at least one retail establishment located in the District of
80 Columbia.

81 (15) "Retail establishment" means any retail business where goods are sold on the
82 premises.

83 (16) "Retaliatory personnel action" means:

84 (A) Any form of intimidation, threat, reprisal, harassment, discrimination,
85 or adverse employment action; or

86 (B) Interference with an investigation, proceeding, or hearing mandated by
87 this act.

88 (17) "Shift" means the consecutive hours an employer requires an employee to
89 work or to be on call to work, provided that breaks totaling one hour or less shall not be
90 considered an interruption of consecutive hours.

91 (18) "Work Schedule" means all of an employee's regular and on-call shifts,
92 including specific start and end times for each shift, during a consecutive 7 day period.

93 (19) "Year" means a regular and consecutive 12 month period, as determined by
94 an employer and communicated to the employer's employees.

95 Sec. 3. Advance notice of work schedules for employees of covered employers.

96 (a) Upon hiring, a covered employer shall provide each employee with a good faith
97 estimate of the number of hours and the days and times the employee is expected to work each
98 week.

99 (b) On or before the commencement of employment, a covered employer shall provide
100 the employee with a written work schedule for the employee's first 3 weeks of employment.

101 (c)(1) A covered employer shall give each employee his or her individual work schedule
102 in writing at least 21 days prior to the first day of that work schedule.

103 (2) An employee may decline to work any hours not included in the written work
104 schedule required by this section.

105 (d) If an employee consents to work such hours not included in the written work
106 schedule, consent must be recorded in writing, which can be transmitted via electronic means on
107 or before the start of the shift for which consent is required.

108 (e) A covered employer shall contact the employee to notify him or her of any change to
109 the employee's work schedule prior to the change taking effect. A covered employer shall also
110 provide the employee with a revised written work schedule reflecting any changes within 24
111 hours of making the change.

112 (f) The covered employer shall post a written schedule 21 days in advance of the start of
113 each week that includes the shifts of all employees at that worksite, whether or not they are
114 scheduled to work or be on call that week. The covered employer must update that posted
115 schedule within 24 hours of any change. The schedule must be posted in a place that is readily
116 accessible and visible to all employees of the employer at that worksite.

117 Sec. 4. Compensation for changed shifts for employees of covered employers.

118 (a) Less than 21 days before the first scheduled hour of a shift, a covered employer may
119 add hours of work pursuant to Section 3 of this act, subtract hours from a shift, cancel a shift, or
120 change the start or end time or date of a shift, provided that the covered employer pays each
121 affected employee one hour of predictability pay, in addition to wages earned, for each shift that
122 is added, cancelled, or changed.

123 (b) A covered employer shall pay an employee a minimum of 4 hours or the number of
124 hours in the employee's scheduled shift, whichever is less, at the employee's regular rate of pay,
125 regardless of the actual hours worked by the employee, on any day that the employee reports for
126 duty or is notified less than 24 hours before a regular or on-call shift that the employee does not
127 need to report to work or when the hours in the shift have been reduced. Payment under this
128 section shall be required instead of, rather than in addition to, predictability pay owed under
129 subsection (a) of this section.

130 (c) Written consent required by Section 3 of this act and the predictability pay and
131 minimum pay required by subsections (a) and (b) of this section shall not apply to shift changes
132 made at the request of the employee, including:

133 (1) Employee-initiated requests to work specific hours other than those scheduled
134 by the employer, requests to use sick leave, vacation time, personal days, or other leave policies
135 offered by the covered employer; or

136 (2) A schedule change is the result of a mutually agreed upon shift change among
137 employees.

138 Sec. 5. Equal treatment for employees regardless of hours worked.

139 (a) Employees who hold jobs that require substantially equal skill, effort, responsibility,
140 and duties and that are performed under similar working conditions, regardless of the number of
141 hours that an employee is scheduled to work or expected duration of employment shall be
142 provided the same:

143 (1) Hourly wage;

144 (2) Eligibility to accrue employer-provided benefits, provided that this section
145 shall not affect the minimum hourly requirements for receipt of benefits; and

146 (3) Promotion opportunities.

147 (b) This section shall not be construed to prohibit differences in hourly wages based on
148 reasons other than the number of hours the employee is scheduled to work or expected duration
149 of employment, including on the basis of seniority, a merit system, or a system which measures
150 earnings by quantity per hour or quality of production.

151 Sec. 6. Offer of work hours to existing employees.

152 (a) A covered employer shall offer additional hours of work to existing employees before
153 hiring additional employees or subcontractors, including hiring through the use of temporary
154 services or staffing agencies.

155 (b)(1) The covered employer shall post a notice of available work, including the total
156 hours of work being offered, the schedule of available shifts, whether those shifts will occur at
157 the same time each week, the length of time the employer anticipates requiring coverage of the
158 additional hours, the process by which employees may notify the employer of their desire to
159 work the offered hours, and the criteria the employer will use for distribution of hours.

160 (2) The notice shall be posted for at least 7 days, in a place that is readily accessible
161 and visible to all employees, before a covered employer may hire additional employees or
162 subcontractors.

163 (c) The covered employer shall assign additional hours of work to an employee who has
164 responded to the offer of work, and who, in the employer's good faith and reasonable judgment,
165 has the skills and experience to perform the work. If more than one such employee has
166 responded to the offer of work, the employer shall distribute the work among interested
167 employees according to the employer's posted process. An employee's written response to the
168 offer of work shall serve as consent to the addition of those hours, as is required by this act. If

169 no such employee responds to the offer of work, the employer may hire such new employees as
170 are necessary to perform the work described pursuant to subsection (b) of this section.

171 (d) Covered employers shall make reasonable efforts to offer employees training
172 opportunities to gain the skills and experience to perform work for which the employer typically
173 has additional needs.

174 (e) This section shall not be construed to require any covered employer to offer
175 employees work hours paid at a premium rate under 29 U.S.C. 207(c), D.C. Official Code § 32-
176 1003(c), or this act, nor to prohibit any covered employer from offering such work hours.

177 (f) When hiring additional employees or subcontractors, including hiring through the use
178 of temporary services or staffing agencies, the covered employer shall document the time and
179 method of offering the additional hours of work to existing staff. Failure to preserve
180 documentation pursuant to this subsection for 3 years after the date of hiring employees or
181 subcontractors shall give rise to a rebuttable presumption of a violation of this section.

182 Sec. 7. Exercise of rights protected.

183 (a) It shall be unlawful for a covered employer or any other person to interfere with,
184 restrain, or deny the exercise of, or the attempt to exercise, any right protected under this act.

185 (b) A covered employer shall not take retaliatory personnel action against an employee
186 because the employee has exercised rights protected under this act.

187 (c) An employee shall not be required to search for or find a replacement employee to
188 cover any hours during which an employee is unable to work a scheduled shift.

189 (d) Protections of this section shall apply to any person who mistakenly, but in good faith
190 alleges violations of this act.

191 (e) There shall be a rebuttable presumption of unlawful retaliation under this section
192 whenever a covered employer takes adverse action against an employee within 90 days of when
193 that employee:

194 (1) Files a complaint with the Department or a court alleging a violation of any
195 provision of this act;

196 (2) Informs any person about a covered employer's alleged violation of this act;

197 (3) Cooperates with the Department or other persons in the investigation or
198 prosecution of any alleged violation of this act;

199 (4) Opposes any policy, practice, or act that is unlawful under this act; or

200 (5) Informs any person of his or her rights under this act.

201 Sec. 8. Notice and recordkeeping requirements.

202 (a) (1) Every covered employer subject to any provision of this act or of any regulation
203 issued under this act shall preserve for a period of not less than 3 years records showing the
204 hours worked daily by all employees, the wages and predictability and minimum pay paid to all
205 employees, and the initial work schedule and all subsequent revisions to the work schedule of all
206 employees. Failure to maintain records required under this act shall give rise to a rebuttable
207 presumption that the employer has violated this act.

208 (2) All records shall be made available for inspection or transcription by the
209 Department. Every covered employer shall furnish the Department on demand a sworn
210 statement of records and information upon forms prescribed or approved by the Department.

211 (b) Every covered employer who is subject to any provision of this act or any regulation
212 issued under this act shall keep a copy or summary of this act and any applicable regulation
213 issued under this act, in a form prescribed or approved by the Department, posted in a

214 conspicuous and accessible place in or about the premises at which any employee covered by the
215 regulation is employed.

216 (c) Covered employers shall be furnished copies or summaries of this act by the
217 Department without charge, within 60 days of the effective date of this act. A covered employer
218 shall not be liable for failure to post notice if the Department has failed to provide the covered
219 employer a copy of the notice required by this section.

220 Sec. 9. No effect on more generous policies.

221 (a) Nothing in this act shall be construed to discourage or prohibit a covered employer
222 from the adoption or retention of policies that are more beneficial to employees.

223 (b) Nothing in this act shall be construed as diminishing the obligation of a covered
224 employer to comply with any contract, collective bargaining agreement, employment benefit
225 plan or other agreement providing policies that are more beneficial to an employee.

226 Sec. 10. Other legal requirements.

227 This act shall provide for minimum requirements and shall not be construed to preempt,
228 limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or
229 standard which provides employees with additional rights or remedies, or that extends other
230 protections to employees.

231 Sec. 11. Enforcement and penalties.

232 (a)(1) An employee or similarly situated employees injured by a violation of this act shall
233 be entitled to maintain a civil action or an administrative action.

234 (2) When an administrative complaint is filed against any covered employer or
235 other person alleged to have violated this act, a hearing by an administrative law judge shall be
236 scheduled following the same procedure available in D.C. Official Code § 32-1308.01.

237 (b) If the Department determines that a covered employer has violated any provision of
238 this act, the Department shall order the covered employer to provide affirmative remedies
239 including:

240 (1) The full amount of pay that would have been earned if the covered employer
241 had not violated the act including interest thereon and liquidated damages of 2 times that amount
242 of pay;

243 (2) Any actual damages suffered as the result of the covered employer's violation
244 of this act;

245 (3) Reinstatement or other injunctive relief; and

246 (4) Reasonable attorney's fees and costs of enforcement.

247 (c) An action may be maintained against any covered employer in a court of competent
248 jurisdiction by any one or more employees for and on behalf of himself, herself or themselves. A
249 covered employer who violates the provisions of this act shall be liable to the employee or
250 employees affected for:

251 (1) The full amount of pay that would have been earned if the covered employer
252 had not violated the act including interest thereon and liquidated damages of 2 times that amount
253 of pay;

254 (2) Any actual damages suffered as the result of the employer's violation of this
255 act;

256 (3) Reinstatement or other injunctive relief; and

257 (4) Reasonable attorney's fees and costs.

258 (d) Where compliance with this act or regulations enacted to implement this act is not
259 forthcoming, the Department shall take any appropriate enforcement action to secure

260 compliance, including initiating a civil action and, except where prohibited by another law,
261 revoking or suspending any registration certificates, or permits or licenses held or requested by
262 the employer or person until the violation is remedied.

263 (e) In any administrative or civil action brought under this act, the Department or court
264 shall award interest on all amounts due and unpaid at the rate of interest specified in D.C.
265 Official Code §§ 28-3302(b) or 28-3302(c).

266 (f) Any money awarded to an employee under this act shall be enforceable by the
267 employee to whom the debt is owed or may be collected by the District on behalf of the
268 employee.

269 (g) The limitations period found in D.C. Official Code § 32-1308(c)(1) shall apply to all
270 civil or administrative actions filed under this section.

271 Sec. 12. Severability.

272 If any provision of this act or application thereof to any person or circumstance is judged
273 invalid, the invalidity shall not affect other provisions or applications of the act which can be
274 given effect without the invalid provision or application, and to this end the provisions of this act
275 are declared severable.

276 Sec. 13. Rulemaking.

277 The Department shall promulgate rules to implement this act.

278 Sec. 14. Fiscal impact statement.

279 The Council adopts the fiscal impact statement in the committee report as the fiscal
280 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
281 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1 206.02(c)(3)).

282 Sec. 15. Effective date.

283 This act shall take effect following approval by the Mayor (or in the event of veto by the
284 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
285 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
286 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
287 Columbia Register.