As Introduced

133rd General Assembly
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Representatives Skindell, Kelly
Cosponsors: Representatives Boggs, Crossman, Crawley, Kent

A B I L L

To amend sections 121.083 and 121.084 and to enact sections 4119.01, 4119.02, 4119.03, 4119.04, 4119.05, 4119.06, 4119.07, 4119.08, 4119.09, 4119.10, 4119.11, 4119.12, 4119.13, 4119.14, 4119.15, 4119.16, 4119.17, and 4119.18 of the Revised Code to regulate employment practices of formula retail and food services establishment employers and contractors and to require the purchaser of a formula retail or food services establishment to retain certain employees.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 121.083 and 121.084 be amended and sections 4119.01, 4119.02, 4119.03, 4119.04, 4119.05, 4119.06, 4119.07, 4119.08, 4119.09, 4119.10, 4119.11, 4119.12, 4119.13, 4119.14, 4119.15, 4119.16, 4119.17, and 4119.18 of the Revised Code be enacted to read as follows:

Sec. 121.083. The superintendent of industrial compliance in the department of commerce shall do all of the following:

(A) Administer and enforce the general laws of this state
pertaining to buildings, pressure piping, boilers, bedding, upholstered furniture, and stuffed toys, steam engineering, elevators, plumbing, licensed occupations regulated by the department, and travel agents, as they apply to plans review, inspection, code enforcement, testing, licensing, registration, and certification.

(B) Exercise the powers and perform the duties delegated to the superintendent by the director of commerce under Chapters 4109., 4111., and 4115., and 4119. of the Revised Code.

(C) Collect and collate statistics as are necessary.

(D) Examine and license persons who desire to act as steam engineers, to operate steam boilers, and to act as inspectors of steam boilers, provide for the scope, conduct, and time of such examinations, provide for, regulate, and enforce the renewal and revocation of such licenses, inspect and examine steam boilers and make, publish, and enforce rules and orders for the construction, installation, inspection, and operation of steam boilers, and do, require, and enforce all things necessary to make such examination, inspection, and requirement efficient.

(E) Rent and furnish offices as needed in cities in this state for the conduct of its affairs.

(F) Oversee a chief of construction and compliance, a chief of operations and maintenance, a chief of licensing and certification, a chief of worker protection, and other designees appointed by the director to perform the duties described in this section.

(G) Enforce the rules the board of building standards adopts pursuant to division (A)(2) of section 4104.43 of the Revised Code under the circumstances described in division (D)
of that section.

(H) Accept submissions, establish a fee for submissions, and review submissions of certified welding and brazing procedure specifications, procedure qualification records, and performance qualification records for building services piping as required by section 4104.44 of the Revised Code.

**Sec. 121.084.** (A) All moneys collected under sections 3783.05, 3791.07, 4104.07, 4104.18, 4104.44, 4105.17, 4105.20, 4119.13, 4119.15, 4169.03, and 5104.051 of the Revised Code, and any other moneys collected by the division of industrial compliance shall be paid into the state treasury to the credit of the industrial compliance operating fund, which is hereby created. The department of commerce shall use the moneys in the fund for paying the operating expenses of the division, the cost of enforcing Chapter 4119. of the Revised Code, and the administrative assessment described in division (B) of this section.

(B) The director of commerce, with the approval of the director of budget and management, shall prescribe procedures for assessing the industrial compliance operating fund a proportionate share of the administrative costs of the department of commerce. The assessment shall be made in accordance with those procedures and be paid from the industrial compliance operating fund to the division of administration fund created in section 121.08 of the Revised Code.

**Sec. 4119.01.** As used in this chapter:

(A) "Confidential employee" means an employee who acts in a confidential capacity to formulate, determine, and effectuate management policies with regard to labor relations or who
regularly substitutes for an employee who has these duties.

(B) "Disposition" means the sale, assignment, transfer, contribution, consolidation, merger, or reorganization that causes a change in control of all or the majority of the assets of, or the controlling interests in, a business.

(C) "Employee" means an individual who is entitled to payment of a minimum wage from an employer or property services contractor under Section 34a of Article II, Ohio Constitution.

(D)(1) "Employer" means a person who owns or operates either of the following:

(a) A formula retail establishment with twenty or more employees in this state;

(b) A food services establishment.

(2) "Employer" includes a corporate officer or executive who, directly or indirectly, exercises control over the wages, hours, or working conditions of an individual, including through the services of a temporary agency or a professional employer organization.

(3) "Employer" does not include any of the following:

(a) A nonprofit corporation that is exempt from federal income taxation under subsection 501(c)(3) of the Internal Revenue Code;

(b) The state or any agency or instrumentality of the state;

(c) Any municipal corporation, county, township, school district, or other political subdivision or any agency or instrumentality of a municipal corporation, county, township,
school district, or other political subdivision.

(E) "Formula retail establishment" means a retail sales establishment doing business in this state that has at least twenty other retail sales establishments in operation worldwide that maintain two or more of the following features:

(1) Fifty per cent or more of merchandise stocked by the business comes from a single distributor and bears uniform markings;

(2) A standardized facade;

(3) A standardized style of interior furnishings, which may include the style of furniture, wall coverings, or permanent fixtures;

(4) A standardized selection of colors used throughout the business, such as on the furnishings, permanent fixtures, wall coverings, and the facade;

(5) Standardized items of clothing worn by employees, including standardized aprons, pants, shirts, smocks, dresses, hats, and pins, and standardized colors of clothing worn by employees;

(6) Standardized business signs;

(7) A trademark or service mark.

(F) "Food services establishment" means a food services establishment doing business in this state that employs five hundred or more employees worldwide, including a chain or franchise associated with a franchisor or network of franchises that employs five hundred or more employees in the aggregate.

(G) "Professional employer organization" has the same
meaning as in section 4125.01 of the Revised Code.

(H) "Property services contractor" means any contractor or subcontractor who enters into a contract with an employer to provide janitorial or security services to the employer at a formula retail establishment or food services establishment.

(I) "Successor employer" means an employer who owns, controls, or operates a formula retail establishment or food services establishment after a disposition of all or a majority of the assets of the establishment.

(J) "Workweek" means a fixed, regularly recurring period of one hundred sixty-eight hours, that an employer or property services contractor expressly adopts for purposes of complying with this chapter and the "Fair Labor Standards Act of 1938," 29 U.S.C. 207.

(K) "Normal hourly wage rate" means the following:

(1) For an employee who is paid on an hourly basis, the hourly wage rate at which the employee is customarily paid when working for the employer or property services contractor;

(2) For an employee who is not paid on an hourly basis, one fortieth of the weekly wage rate at which the employee is customarily paid when working for the employer or property services contractor.

(L) "On-call shift" includes a shift where an employee is not required to report to or remain at the employee's site of work, but is required to be available to work the shift if called upon to do so by the employer or property services contractor who employs the employee.

Sec. 4119.02. No employer or property services contractor
shall fail to comply with sections 4119.03, 4119.04, 4119.05,
4119.06, 4119.08, 4119.11, and 4119.17 of the Revised Code.

No employer shall fail to comply with sections 4119.09 and
4119.10 of the Revised Code.

Sec. 4119.03. (A)(1) Except as otherwise provided in
division (B) of this section, an employer or property services
contractor shall not hire a new employee, coemploy an employee
with a professional employer organization, engage an independent
contractor, or lease an employee from a temporary agency to
perform work in a formula retail establishment or food services
establishment unless the employer or property services
contractor first offers that work to any employee of the
employer or property services contractor who is available to
perform the additional work as described in division (A)(2) of
this section.

(2) An employee is available to perform additional work
for an employer or property services contractor if all of the
following apply to the employee:

(a) The employee is scheduled to work fewer than thirty-
five hours in a workweek.

(b) The employee is qualified to do the additional work as
reasonably determined by the employer or property services
contractor.

(c) The employee has performed work for the employer or
property services contractor that is the same as or similar to
the additional work to be performed.

(d) In a particular week, the employee performs at least
two hours of work for an employer or property services
contractor within this state or is scheduled to work at least
one on-call shift for the employer or property services contractor within this state.

(B) An employer or property services contractor is not required to offer more hours of work to an employee than is necessary for that employee's total hours of work for that workweek to reach thirty-five hours.

(C) An employer or property services contractor may divide the additional hours of work offered under this section among the employer's or property services contractor's available employees.

(D) An employee who is offered additional hours of work under this section is not required to accept the additional hours.

(E) When an employer or property services contractor offers additional work hours to an employee, the employer or property services contractor shall make the offer in writing.

Sec. 4119.04. (A) Except as otherwise provided in division (B) of this section, an employer or property services contractor shall provide an employee of the employer or property services contractor with a written work schedule at least fourteen calendar days before the first day of the schedule. The employer or property services contractor shall include in the written schedule all regular and on-call shifts for a fourteen day period. The employer or property services contractor shall post the written schedule in a conspicuous and accessible location at the work site.

(B) An employer or property services contractor may provide a newly hired employee or employee who returns to work after a leave of absence with a written work schedule that runs
through the last day of the work schedule in effect at the time employee is hired or returns to work. The employer or property services contractor shall include the employee on the next schedule posted in compliance with division (A) of this section and otherwise comply with division (A) of this section with respect to the employee at that time.

Sec. 4119.05. (A) As used in this section, "shift" includes an on-call shift.

(B) Except as provided in section 4119.07 of the Revised Code, an employer or property services contractor shall pay an employee of the employer or property services contractor for each scheduled shift that the employer or property services contractor changes or cancels or for each previously unscheduled shift that the employer or property services contractor requires the employee to work or be on call as follows:

(1) If the employer or property services contractor gives the employee less than fourteen days' notice, but more than twenty-four hours' notice, an amount equal to one hour of the employee's normal hourly wage rate;

(2) If the employer or property services contractor gives the employee less than twenty-four hours' notice and the changed, canceled, or required shift is four hours or less, an amount equal to two hours of the employee's normal hourly wage rate;

(3) If the employer or property services contractor gives the employee less than twenty-four hours' notice and the changed, canceled, or required shift is more than four hours, an amount equal to four hours of the employee's normal hourly wage rate.
(C) An employer shall pay any amount required to be paid to an employee under division (B) of this section in addition to, and shall not consider that amount to be part of, any wage or salary paid to the employee for time worked.

Sec. 4119.06. (A) Except as provided in division (B) of this section or in section 4119.07 of the Revised Code, an employer or property services contractor shall pay an employee of the employer or property services contractor for each on-call shift that the employee is not called in to work as follows:

(1) If the on-call shift is four hours or less, an amount equal to two hours of the employee's normal hourly wage rate;

(2) If the on-call shift is more than four hours, an amount equal to four hours of the employee's normal hourly wage rate.

(B) An employer or property services contractor is not required to pay the amount required by division (A) of this section if the employee is paid the employee's normal hourly wage rate for the on-call shift.

Sec. 4119.07. Sections 4119.05 and 4119.06 of the Revised Code do not apply in any of the following circumstances:

(A) Operations of an employer or property services contractor cannot begin or continue for any of the following reasons:

(1) A threat to the safety of the employer or property services contractor's employees or property exists.

(2) A government authority recommends that the operations of an employer or property services contractor should not begin or continue.
(3) An act of God or another cause outside of the control of the employer or property services contractor prevents the operations of the employer or property services contractor from beginning or continuing.

(B) An employer or property services contractor requires the employee to work a shift or be on call under any of the following circumstances:

(1) Another employee does not report to work the shift on time.

(2) Another employee is unable to work the shift due to illness or the use of any paid or unpaid leave if the employee did not give the employer or property services contractor at least seven days' notice of the absence.

(3) Another employee is unable to work the shift because the employee's employment was terminated or the employee was prohibited from working the shift as a disciplinary action.

(C) An employee who would otherwise be entitled to receive an amount under section 4119.05 or 4119.06 of the Revised Code requested the schedule change or on-call shift or such a change or shift is the result of a shift trade between the employee and another employee of the employer or property services contractor.

Sec. 4119.08. (A)(1) An employer or property services contractor shall not consider the status of an employee as full-time or part-time in determining the starting normal hourly wage rate of an employee.

(2) Division (A)(1) of this section does not prohibit an employer or property services contractor from considering either of the following:
(a) Reasons other than part-time or full-time status in determining starting normal hourly wage rates of employees, including the use of a seniority system, merit system, or other system that determines earnings by quantity or quality of production, performance, or responsibility;

(b) Full-time or part-time status in determining requirements for the receipt of employee benefits, including health care benefits.

(B) An employer or property services contractor shall provide part-time and full-time employees in the same job classification with access to the same types of paid and unpaid leave. An employer or property services contractor may prorate the amount of any time off an employee may receive based on hours worked by the employee.

(C)(1) An employer or property services contractor shall not consider the status of an employee as full-time or part-time in determining eligibility for a promotion.

(2) Division (C)(1) of this section does not prohibit an employer or property services contractor from doing either of the following:

(a) Conditioning eligibility for a promotion on an employee's availability for full-time employment in the new position;

(b) Considering reasons other than full-time status in determining eligibility for a promotion, including the nature and amount of work experience.

Sec. 4119.09. (A) On the day an employer executes documents to transfer ownership of a formula retail establishment or food services establishment to a successor
employer, the employer shall provide to the successor employer a list that includes all of the following information for each employee who is eligible to be retained for employment by the successor employer as determined under division (E) of this section:

(1) The employee's name;

(2) The employee's contact information;

(3) The employee's date of hire and rate of pay at the time of transfer;

(4) The average number of hours worked by the employee each week during the six months immediately before the transfer of ownership;

(5) The employee's position or title.

(B)(1) The employer shall post public notice of the transfer of ownership in a conspicuous place at the formula retail establishment or food services establishment within twenty-four hours after the transfer document is fully executed. The successor employer shall ensure that the notice remains posted for at least thirty days after the transfer.

(2) The employer shall include all of the following information in the notice required under division (B)(1) of this section:

(a) The name and contact information of the employer;

(b) The name and contact information of the successor employer;

(c) The postal address and electronic mail address that an employee may use to update the employee's contact information;
(d) The effective date of the transfer from the employer to the successor employer.

(C) For the transition period specified in division (H) of this section, a successor employer shall employ each employee identified on a list required under division (A) of this section under the same terms of employment with respect to position or title, compensation, and number of work hours that applied to the employee immediately before the date of the transfer. During the transition period, no successor employer shall discharge an employee identified on the list without just cause.

(D)(1) A successor employer offering employment to an employee included on the list required under division (A) of this section shall make the offer in writing.

(2) If an employee declines to accept an offer of employment made pursuant to division (D)(1) of this section, the successor employer who offered employment is deemed to have complied with division (C) of this section with respect to that employee.

(E) Except as provided in division (F) of this section, an employee is eligible to be retained for employment if the employee has been employed by the employer for at least ninety days before the date the employer executes documents to transfer ownership of the formula retail establishment or food services establishment.

(F) No managerial employee, supervisory employee, or confidential employee is eligible for retention under this section.

(G) The first time a successor employer pays wages to an employee retained under this section, the successor employer
shall provide with that employee's paycheck a notice of the 
rights of retained employees under this chapter.

(H)(1) This section applies to a transfer of ownership of 
a formula retail establishment or food services establishment 
until the earlier of three years after the date that the 
employer executes documents to transfer ownership to the 
successor employer or ninety days after the successor employer 
takes control of the establishment.

(2) The ninety-day period described in division (H)(1) of 
this section shall not run for any period of time during which 
the formula retail establishment or food services establishment 
is not open to the public during regular business hours.

(3) This section applies regardless of whether the 
successor employer elects to operate the formula retail 
establishment or food services establishment in the same 
location or elects to relocate to another location in the state.

(I) Notwithstanding any provision of this section to the 
contrary, a successor employer may retain fewer employees than 
those included in the list created pursuant to division (A) of 
this section if the successor employer determines that the 
successor employer requires fewer employees than the former 
employer to operate the establishment.

(J) If a successor employer chooses to retain fewer 
employees as provided in division (I) of this section, the 
successor employer shall retain employees by seniority, based on 
the date of hire by the former employer or, if an applicable 
collective bargaining agreement exists, pursuant to that 
agreement.

(K) For the transition period specified in division (H) of
this section, no successor employer shall employ an individual who is not included on the list created pursuant to division (A) of this section in a position at the formula retail establishment or food services establishment held by an individual included on that list whom the successor employer does not retain pursuant to division (J) of this section.

Sec. 4119.10. (A) Not later than ninety days after the effective date of this section, the director of commerce shall publish and make available to all employers a notice suitable for posting by employers in the workplace informing employees of their rights under this chapter. The director shall publish the notice in English and Spanish.

(B) Every employer shall post the notice prepared by the director under division (A) of this section in a conspicuous place at any workplace or job site at which any of the employer's employees work.

Sec. 4119.11. (A) An employer or property services contractor who offers additional work hours to an employee in accordance with section 4119.03 of the Revised Code shall retain a copy of the written offer for at least three years after the date the offer is made.

(B) A successor employer shall keep a record of a list provided by an employer under section 4119.09 of the Revised Code until the transition period described in division (H) of section 4119.09 of the Revised Code has elapsed.

(C) A successor employer shall keep a record of a written retention offer made pursuant to section 4119.09 of the Revised Code for at least three years after the date the offer is made.

Sec. 4119.12. (A) An individual who believes that a
violation of section 4119.02 of the Revised Code has occurred may file a complaint with the director of commerce. If the director has reason to believe that a violation of that section has occurred, the director shall proceed with an investigation under section 4119.13 of the Revised Code.

(B) The director shall keep confidential, to the maximum extent possible, any information that identifies an individual who files a complaint pursuant to division (A) of this section unless the individual has consented to disclosure of that information as necessary for the enforcement of section 4119.02 of the Revised Code or for other appropriate purposes.

Sec. 4119.13. (A) The director of commerce shall take appropriate steps to enforce and coordinate enforcement of this chapter, including investigation of possible violations of this chapter.

(B) If the director has reason to believe that a violation of section 4119.02 of the Revised Code has occurred, the director shall order any appropriate temporary or interim relief to mitigate the alleged violation or to maintain the status quo pending completion of a full investigation.

(C) If, after investigating an alleged violation of section 4119.02 of the Revised Code, the director determines that a violation has occurred, the director shall issue a determination. The determination shall identify the violation and the factual basis for the determination and shall order any appropriate relief, including any of the following:

(1) Requiring an employer or property services contractor to offer additional hours of work to an employee as required under section 4119.03 of the Revised Code;
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(2) Requiring an employer or property services contractor to pay an amount required to be paid to an employee under section 4119.05 or 4119.06 of the Revised Code;

(3) Reinstatement;

(4) Payment of lost wages;

(5) Assessment of an administrative penalty not to exceed the amount of lost wages included in the determination;

(6) Requiring the violator to pay to the department of commerce any costs of the enforcement action.

(D) The director shall deposit all moneys received from administrative penalties and costs paid under this section into the industrial compliance operating fund created in section 121.084 of the Revised Code.

(E) A property services contractor and an employer who contracts with the property services contractor shall be jointly and severally liable for any determination against a property services contractor under this section.

Sec. 4119.14. (A) The director of commerce shall serve a determination made under section 4119.13 of the Revised Code on the employer or property services contractor by regular mail.

(B) An employer or property services contractor may appeal that determination within fifteen days after the date the determination is mailed to the employer or property services contractor. The employer or property services contractor shall file the appeal in writing with the director. If a party fails to submit a timely written appeal, the determination is considered final on expiration of the fifteen-day period.

(C) The director shall, within thirty days after an appeal
is filed under division (B) of this section, make an effort to meet and confer in good faith with the employer or property services contractor regarding possible resolution of the determination in advance of further proceedings under this section.

(D) Beginning on the thirty-first day after an appeal is filed pursuant to division (B) of this section, the employer or property services contractor may request the attorney general to appoint a hearing officer to hear and decide the appeal. If the employer or property services contractor does not request a hearing officer, the determination is considered final on expiration of the sixtieth day following the date the appeal was filed.

(E) Within fifteen days after the attorney general receives a request for the appointment of a hearing officer, the attorney general shall appoint an impartial hearing officer who is not part of the department of commerce and shall immediately notify the director and the employer or property services contractor of the appointment. The appointed hearing officer shall be an administrative law judge or attorney with at least five years of experience in labor and employment law or wage and hour matters.

(F) Upon appointment, the hearing officer shall promptly set a date for a hearing that is not later than forty-five days after the date the attorney general provides the notice of the appointment under division (E) of this section. The hearing shall conclude within seventy-five days after the date that notice is provided. The hearing officer shall conduct a fair and impartial hearing in accordance with the time limitations set forth in this division, except that the hearing officer shall
have the discretion to extend the time limitations upon a
determination of good cause.

(G) An employer or property services contractor who
appeals has the burden of proving, by a preponderance of the
evidence, that the basis for a determination, or any calculation
of lost wages, interest, or penalty payments at issue in the
appeal, is incorrect.

(H) Within thirty days after the hearing, the hearing
officer shall issue a written decision affirming, modifying, or
dismissing the determination. The decision of the hearing
officer shall consist of findings and a determination and shall
constitute the final administrative determination.

(I) An employer or property services contractor may appeal
a decision issued under division (H) of this section to the
court of common pleas of the county in which the violation is
alleged to have occurred.

(J) Failure to appeal a determination as provided in this
section shall constitute a failure to exhaust administrative
remedies, which shall serve as a complete defense to any
petition or claim brought by an employer or property services
contractor against the state regarding the determination.

(K) If an employer or property services contractor fails
to comply with a final order of the director or hearing officer,
the director shall petition the court of common pleas of the
county in which the underlying violation occurred for
enforcement of the order.

Sec. 4119.15. (A) The director of commerce, in accordance
with Chapter 119. of the Revised Code, shall impose an
administrative fine on an employer or property services
contractor as follows:

(1) For a violation of section 4119.02 of the Revised Code due to an employer's failure to comply with section 4119.10 or division (A) of section 4119.11 of the Revised Code, up to five hundred dollars for each offense;

(2) For a violation of section 4119.02 of the Revised Code due to an employer's or property services contractor's failure to comply with division (B) or (C) of section 4119.11 of the Revised Code, up to five hundred dollars for each employee who was eligible for retention under section 4119.09 of the Revised Code.

(B) The director shall deposit all moneys received from fines paid under this section into the industrial compliance operating fund created in section 121.084 of the Revised Code.

Sec. 4119.16. The director of commerce may bring a civil action in any court of competent jurisdiction on behalf of an employee against an employer or property services contractor for violating section 4119.02 of the Revised Code. If the court determines that a violation has occurred, the court shall make the following awards:

(A) To the employee on behalf of whom the action was brought, any legal or equitable relief as may be appropriate to remedy the violation, including the payment of lost wages, the payment of a civil penalty not to exceed the amount awarded for lost wages, and reinstatement of employment or other injunctive relief;

(B) To the director, reasonable attorney's fees and costs.

Sec. 4119.17. (A) No employer or property services contractor shall take adverse action against an individual in...
retaliation for exercising rights protected under this chapter.

   (B) The protections provided by this section shall apply to any individual who mistakenly, but in good faith, alleges noncompliance with this chapter.

   (C) If an employer or property services contractor takes an adverse action against an individual within ninety days after the individual exercises a right protected under this chapter, a rebuttable presumption exists that the action was taken by the employer or property services contractor in retaliation because the individual exercised those rights.

Sec. 4119.18. The director of commerce may adopt rules in accordance with Chapter 119. of the Revised Code to implement this chapter. The director may establish in those rules procedures for ensuring fair, efficient, and cost-effective implementation and enforcement of this chapter, including supplementary procedures for notifying employees of their rights under this chapter and for monitoring compliance.

Nothing in this chapter shall be construed to limit the rights and remedies otherwise available to an employee, including any right the employee may have to remedies for an unlawful discriminatory practice or unlawful discharge.

Section 2. That existing sections 121.083 and 121.084 of the Revised Code are hereby repealed.

Section 3. Sections 1 and 2 of this act take effect six months after the effective date of this act.