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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 954 Session of  
2023

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INTRODUCED BY MERSKI, KINSEY, SANCHEZ, KHAN, PARKER, CEPEDA-  
FREYTIZ, SHUSTERMAN, GREEN, HARKINS, FREEMAN, ROZZI AND  
HOWARD, APRIL 24, 2023

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REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, APRIL 24, 2023

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AN ACT

1 Providing for employee's right to request a flexible working  
2 arrangement; imposing duties on the Department of Labor and  
3 Industry; and imposing penalties.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Flexible  
8 Working Arrangements Act.

9 Section 2. Definitions.

10 The following words and phrases when used in this act shall  
11 have the meanings given to them in this section unless the  
12 context clearly indicates otherwise:

13 "Department." The Department of Labor and Industry of the  
14 Commonwealth.

15 "Employee." A person who is employed by an employer or may  
16 be permitted, required or directed by an employer to perform  
17 services in consideration of direct or indirect gain or profit.

18 "Employer." An individual, organization or governmental

1 body, including a partnership, association, trustee, estate,  
2 corporation, joint stock company, insurance company, or legal  
3 representative, whether domestic or foreign, or the receiver,  
4 trustee in bankruptcy, trustee or successor thereof, and any  
5 common carrier by mail, motor, water, air or express company  
6 doing business in or operating within this Commonwealth, and any  
7 agent of the employer, that has 50 or more individuals  
8 performing services for the employer within this Commonwealth.

9 "Flexible working arrangement." Intermediate or long-term  
10 changes in the employee's regular working arrangements,  
11 including changes in the number of days or hours worked, changes  
12 in the time the employee arrives at or departs from work, work  
13 from home or job sharing. The term does not include vacation,  
14 routine scheduling of shifts or another form of employee leave.

15 "Inconsistent with business operations." A determination by  
16 an employer based on the following considerations:

17 (1) The burden on an employer of undue additional costs.

18 (2) A legitimate or practical detrimental effect on  
19 aggregate employee morale unrelated to discrimination or  
20 other unlawful employment practices.

21 (3) A legitimate or practical detrimental effect on the  
22 ability of an employer to meet consumer demand.

23 (4) A significant inability to reorganize work among  
24 existing staff.

25 (5) A legitimate or practical inability to recruit  
26 additional staff.

27 (6) A detrimental impact on business quality or business  
28 performance.

29 (7) An insufficiency of work during the periods that the  
30 employee proposes to work.

1 (8) Planned structural changes to the business.

2 (9) Other reasonable concerns that would negatively  
3 impact business operations.

4 Section 3. Employee's right to request a flexible working  
5 arrangement.

6 An employee may request from the employee's employer a  
7 flexible working arrangement that meets the needs of both the  
8 employer and employee. An employee may make a request under this  
9 section to the same employer once per year.

10 Section 4. Duties of employer.

11 (a) Consideration of request.--An employer shall consider an  
12 employee's request under section 3 in good faith and the  
13 employer shall determine whether the employee's request or a  
14 similar arrangement could be granted in a manner that is not  
15 inconsistent with business operations or legal or contractual  
16 obligations.

17 (b) Decision of request.--An employer shall notify an  
18 employee who made a request under section 3 of the employer's  
19 decision in a reasonably timely manner. If an employee's request  
20 under section 3 was in writing, the employer shall issue a  
21 decision of a complete or partial denial in writing.

22 (c) Standards.--An employer may establish reasonable  
23 standards to determine the time, place and manner in which the  
24 employer may discuss the request of an employee under section 3.

25 (d) Retaliation prohibited.--An employer may not retaliate  
26 against an employee who makes a request under section 3.

27 Section 5. Duties of department.

28 The department shall promulgate regulations for the  
29 implementation of this act.

30 Section 6. Enforcement.

1 (a) Duties of department.--The department shall enforce and  
2 investigate alleged violations of this act. In enforcing and  
3 investigating alleged violations of this act, the department may  
4 subpoena witnesses, administer oaths, examine witnesses and take  
5 testimony or compel the production of documents for the purpose  
6 of ascertaining an employer's compliance with this act.

7 (b) No private cause of action.--A violation of this act  
8 shall not create a private cause of action.

9 Section 7. Penalties.

10 An employer who violates this act shall be subject to the  
11 following:

12 (1) For a first violation, the department shall issue a  
13 warning letter to the employer detailing the violation and  
14 provide the employer with 30 days to correct the violation.

15 (2) For a second or subsequent violation, the department  
16 may assess an administrative fee up to \$500 per violation.

17 Section 8. Miscellaneous provisions.

18 Nothing in this act shall:

19 (1) Affect legal rights an employer or employee may have  
20 under applicable law to create, terminate or modify a  
21 flexible working arrangement.

22 (2) Diminish employment rights or agreements pursuant to  
23 a collective bargaining agreement.

24 (3) Require an employer to accept a flexible working  
25 arrangement of an employee under section 3.

26 (4) Prohibit an employer from instituting a flexible  
27 working arrangement policy that is more generous than an  
28 employee's request.

29 Section 9. Effective date.

30 This act shall take effect in 180 days.