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Labor and Employment Alert: Congress Proposes Regulating Employee Schedules

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CLIENT ALERT | 7.30.2015

Democrats in Congress recently introduced the Schedules that Work Act to control how employers schedule their employees' to work. The bill would apply to employers of 15 or more employees.

The bill would require employers to provide employees with predictable schedules and consider employees' requests for schedule changes. The bill would prohibit employers from retaliating against employees for requesting a more flexible, predictable or stable schedule. It would also require employers to engage in an "interactive process" to discuss employees' requests for schedule changes. If the employee requests the schedule change for caregiving, health, or educational reasons, or because he has a second job, the employer would have to grant the request unless it has a "bona fide business reason" for denying it.

The bill also contains special provisions that would apply to non-exempt retail, food service and cleaning employees. For those employees, employers would have to pay them for at least four hours of work if they report to work when scheduled for at least four hours but are then sent home early. Employers also would have to provide those employees their work schedules at least two weeks in advance and pay them one hour of extra pay if the schedule is then changed with less than 24 hours' notice. Finally, retail, food service and cleaning employees would be entitled to an extra hour of pay if they are scheduled to work split shifts or non-consecutive shifts within a single day.

While still early in the legislative process, it appears unlikely that the Schedules that Work Act will be enacted during this session of Congress. However, it remains to be seen whether the U.S. Department of Labor through rulemaking or President Obama through Executive Orders directed at federal contractors will attempt to impose "fair scheduling" requirements. This legislation – like the efforts to increase minimum wage – may foreshadow increased efforts to pass similar legislation at the local level. San Francisco's Retail Worker Bill of Rights, which imposes scheduling requirements on employers, became effective on July 3, 2015. An effort is underway in Minneapolis to enact

similar scheduling legislation. Contact your Vorys lawyer if you have questions about how such legislation may impact your operations.