

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/CS/HB 433 Employment Regulations

**SPONSOR(S):** Commerce Committee and Regulatory Reform & Economic Development Subcommittee, Esposito and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1492

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**FINAL HOUSE FLOOR ACTION:** 74 Y's

36 N's

**GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/CS/HB 433 passed the House on March 1, 2024. The bill was amended in the Senate on March 5, 2024, and was returned to the House. The bill was amended in the House on March 7, 2024, and was returned to the Senate. The bill was amended in the Senate on March 8, 2024, and was returned to the House. The House concurred with the Senate amendment and passed the bill as amended on March 8, 2024.

The federal Fair Labor Standards Act (FLSA) provides workers with minimum wage, overtime pay, record keeping, and child labor protections for full and part-time workers in both the public and private sectors. The FLSA allows states to expand the rights of employers and employees. Florida generally follows federal law on overtime pay and occupational health and safety.

The Florida Minimum Wage Act, enacted in 2005, implements the minimum wage provisions in the State Constitution. Florida's wage and employment benefits law preempts the establishment of a minimum wage to the state. Thus, local governments cannot establish a minimum wage for private employers in their jurisdiction. Local governments are also prohibited from requiring private employers to provide employment benefits not required by state or federal law. However, local governments have limited authority to establish a minimum wage and to require specific employment benefits for their own employees and those of their vendors or contractors.

The Occupational Safety and Health Act of 1970 is the federal labor law governing occupational health and safety in the private sector and federal government. Currently, there are no specific federal or state laws that provide heat exposure protections for outdoor workers.

Regarding heat exposure protections, the bill prohibits political subdivisions from:

- Requiring an employer, including an employer contracting with the political subdivision, to meet or provide heat exposure requirements not otherwise required under state or federal law.
- Giving preference, or considering or seeking information, in a competitive solicitation to an employer based on the employer's heat exposure requirements.

Regarding Florida's wage and employment benefits law, effective September 30, 2026, the bill prohibits political subdivisions from:

- Seeking to control or affect the wages or employment benefits provided by its vendors, contractors, service providers, or other parties doing business with it through its purchasing or contracting procedures.
- Using evaluation factors, qualification of bidders, or otherwise awarding preferences on the basis of wages or employment benefits provided by its vendors, contractors, service providers, or other parties doing business with the political subdivision.

The bill removes the ability of local governments to require a minimum wage for certain employees under the terms of a contract, and provides that the bill's revisions to Florida's wage and employment benefits law do not impair any contract entered into before September 30, 2026.

The bill prohibits local governments from adopting or enforcing any ordinance, resolution, order, rule, policy, or contract requirement regulating scheduling, including predictive scheduling, by a private employer except as expressly authorized or required by state or federal law, rule, or regulation; or pursuant to federal grant requirements.

The bill does not appear to have a fiscal impact on state or local government.

The bill was approved by the Governor on April 11, 2024, ch. 2024-80, L.O.F., and except as otherwise provided, will become effective on July 1, 2024.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives .**

**STORAGE NAME** h0433z1.DOCX

**DATE** 4/15/2024

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Current Situation

##### Fair Labor Standards Act

The federal Fair Labor Standards Act (FLSA), enacted in 1938, provides covered workers with minimum wage, overtime pay, and child labor protections.<sup>1</sup> In 1938, the FLSA established a minimum wage of \$.25 an hour. The current federal minimum wage rate is \$7.25 an hour, which went into effect July 24, 2009. The FLSA applies to employment within any state in the U.S., the District of Columbia, or any territory or possession of the U.S.<sup>2</sup>

The FLSA covers most private and public sector employees. However, certain employers and employees are exempt from coverage, including individuals with disabilities, youth workers, tipped workers, and executive, administrative, and professional workers. The FLSA covers businesses if the business has annual sales of at least \$500,000.<sup>3</sup> It also covers certain individual employees if such employee is engaged in interstate commerce.

The FLSA applies to all:<sup>4</sup>

- **Governments:** Federal, state, or local government agencies.
- **Hospitals:** Hospitals, or institutions primarily engaged in the care of the sick, the aged, or the mentally ill or disabled who live on the premises. It does not matter if the hospital or institution is public or private or is operated for profit or not-for-profit.
- **Schools:** Pre-schools, elementary or secondary schools or institutions of higher learning (e.g., college), or a school for mentally or physically handicapped or gifted children. It does not matter if the school or institution is public or private or operated for profit or not-for-profit.

The FLSA includes several exemptions from the federal minimum wage provisions, including:<sup>5</sup>

- Executive, administrative, and professional employees.
- Employees in certain seasonal amusement or recreational establishments, employees in certain small newspapers, seamen employed on foreign vessels, employees engaged in fishing operations, and employees engaged in newspaper delivery.
- Farm workers employed by certain employers.
- Casual babysitters and persons employed as companions for the elderly or infirm.
- Border patrol agents.<sup>6</sup>
- Baseball players who are compensated pursuant to a contract that provides for a weekly salary for services performed during the league's championship season at a rate that is not less than a weekly salary equal to the minimum wage.

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<sup>1</sup> 29 U.S.C. § 201-219 and 29 C.F.R. ch. V.

<sup>2</sup> Congressional Research Service, CRS Report R42713, *The Fair Labor Standards Act (FLSA): An Overview*, <https://crsreports.congress.gov/product/pdf/R/R42713>, (last visited Dec. 5, 2023). (The main FLSA provisions and accompanying Department of Labor (DOL) regulations constitute what is commonly known as federal wage and hour laws and federal child labor law.)

<sup>3</sup> The size of an enterprise is measured by its "annual sales or business done." Annual sales or business done includes all business activities that can be measured in dollars. Thus, retailers are covered by the FLSA if their annual sales are at least \$500,000. Owners of rental properties are covered if they collect at least \$500,000 annually in rent. 29 C.F.R. §§ 779.258-779.259.

<sup>4</sup> U.S. Department of Labor, Fair Labor Standards Act Advisor, <https://webapps.dol.gov/elaws/whd/flsa/scope/screen10.asp>, (last visited Dec. 5, 2023).

<sup>5</sup> 29 U.S.C. § 213. (It also includes separate exemptions from overtime pay.)

<sup>6</sup> See Border Patrol Agent Pay Reform Act of 2014, S.1691, 113<sup>th</sup> Cong. (2014).

The FLSA was amended in 2014, concerning border patrol agents, and again in 2018, to exempt minor league baseball players who are paid at least \$290 per week during the 2018 championship season from the federal minimum wage rate and overtime pay.<sup>7</sup> These two amendments were the only amendments made to the minimum wage exemptions provisions of the FLSA since Florida passed its minimum wage law in 2005.<sup>8</sup>

The FLSA provides that if states enact worker protections, including minimum wage rates, that are more protective of employees than what is provided by the FLSA, the state law applies.<sup>9</sup> Consequently, no state law may weaken the worker protections in the FLSA. However, state laws that impose greater worker protections will supersede those in the FLSA.<sup>10</sup>

Thirty states plus Washington DC, Guam, Puerto Rico, and the Virgin Islands provide a minimum wage greater than the federal minimum wage. Thirteen states provide a minimum wage that is equal to the federal minimum wage. Five states have not adopted a minimum wage and two states have a minimum wage that is below the federal minimum wage.<sup>11</sup> For those seven states, the federal minimum wage applies, but only to those workers covered by the FLSA.

### **Article X, Section 24 of the Florida Constitution**

On November 2, 2004, Floridians voted to amend the Florida Constitution by adding a minimum wage provision (Section 24) that established the state minimum wage.<sup>12</sup> Prior to this date, Florida did not have a state minimum wage so the FLSA applied for covered workers. Section 24 provides the amount of the minimum wage and the procedure for calculating increases in the minimum wage.<sup>13</sup> The amendment also provides that “all working Floridians are entitled to be paid a minimum wage sufficient to provide a decent and healthy life, that protects their employers from unfair low wage competition, and that does not force them to rely on taxpayer-funded public services.”<sup>14</sup>

On November 3, 2020, Florida voters again approved a constitutional amendment related to the state’s minimum wage, Amendment 2, to gradually increase the state’s minimum wage to \$15 an hour by the year 2026.<sup>15</sup> Pursuant to the passage of Amendment 2, on September 30, 2021, Florida’s minimum wage increased to \$10 per hour. Each year, thereafter, Florida’s minimum wage will increase by \$1

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<sup>7</sup> See Levi Weaver, On Minor-League Pay, *MLB’s Stance Doesn’t Line Up with the Facts*, *The Athletic* (Apr. 4, 2018), <https://www.theathletic.com/293189/202018/04/04/on-minor-league-pay-mlbs-stance-doesnt-line-up-with-the-facts/> (last visited Dec. 5, 2023). (When recounting salary scale per level of minor league baseball, the article notes “federally-recognized poverty line is \$12,140 per year for single-individual households.” According to the article, a not-insignificant percentage of minor league players are able to subsidize their relatively meager monthly salaries by drawing upon the signing bonuses they received from their MLB clubs when first entering the professional ranks. These bonuses can range anywhere from \$10,000 to several million dollars. “The top 64 picks [in the MLB draft] last year all received a bonus of over \$1,000,000 before taxes, but roughly 40% of players signed for one-time bonuses of \$10,000 or less.”

<sup>8</sup> S. 448.110, F.S., expressly references ss. 213 and 214 of the FLSA, which address minimum wage exemptions and employment under special certificates, respectively. However, s. 214 has not been amended since 1989. (See Pub. L. 101–157, § 4(d), Nov. 17, 1989, 103 Stat. 941).

<sup>9</sup> 29 U.S.C. §218.

<sup>10</sup> Congressional Research Service, CRS Report R42713, *The Fair Labor Standards Act (FLSA): An Overview, Updated March 8, 2023*, <https://crsreports.congress.gov/product/pdf/R/R42713>, (last visited Dec. 5, 2023).

<sup>11</sup> U.S. Department of Labor, Consolidated Minimum Wage Table, <https://www.dol.gov/agencies/whd/mw-consolidated> (last visited Dec. 5, 2023).

<sup>12</sup> Art. X, s. 24, Fla. Const.

<sup>13</sup> Art. X, s. 24(c), Fla. Const.

<sup>14</sup> Art. X, s. 24(a), Fla. Const.

<sup>15</sup> U.S. Department of State, *Notice of Increase to State of Florida’s Minimum Wage*, <https://www.state.gov/wp-content/uploads/2021/01/2021-01-29-Notice-FL-Minimum-Wage-Increase.pdf> (last visited Dec. 5, 2023).

until the minimum wage reaches \$15 per hour on September 30, 2026.<sup>16</sup> Beginning in 2027, the minimum wage will be adjusted annually for inflation, as it had been done from 2004 to 2021.

The Florida Constitution references the FLSA and specifically ties the meaning<sup>17</sup> of “employer,” “employee,” and “wage,” to the meanings established under the FLSA and its implementing regulations.<sup>18</sup> It also indicates that case law, administrative interpretations, and other guiding standards developed under the federal FLSA must guide the construction of Florida’s Constitution related to Section 24 and any implementing statutes or regulations.<sup>19</sup>

### **Florida Minimum Wage Act**

The Florida Minimum Wage Act (Act) was enacted in 2005 to implement the minimum wage provisions in the Florida Constitution.<sup>20</sup> The Act designates the Department of Commerce (DC) as the state agency that implements the minimum wage requirements, establishes procedures with respect to civil actions alleging violations, and provides that it is the exclusive remedy under state law for violations of Section 24.<sup>21</sup>

The Act provides that, effective May 2, 2005, employers are required to pay employees a minimum wage at an hourly rate of \$6.15 for all hours worked in Florida. Only those individuals entitled to receive the federal minimum wage under the FLSA and its implementing regulations are eligible to receive the state minimum wage pursuant to the Florida Constitution and this statute. The provisions of ss. 213 and 214 of the federal FLSA, as interpreted by applicable federal regulations and implemented by the Secretary of Labor, are incorporated by reference.<sup>22</sup>

### **Local Wage Ordinances**

The Florida Constitution authorizes counties to enact ordinances that are not inconsistent with state law,<sup>23</sup> while municipalities are authorized to enact ordinances on any subject that state law may address, except:<sup>24</sup>

- The subjects of annexation, merger, and exercise of extraterritorial power;
- Any subject expressly prohibited by the Florida Constitution;
- Any subject expressly preempted to state or county government by the Florida Constitution or by law; or
- Any subject preempted to a county under a county charter.

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<sup>16</sup> Department of Economic Opportunity, *Florida’s Minimum Wage*, [https://floridajobs.org/docs/default-source/business-growth-and-partnerships/for-employers/posters-and-required-notices/2022-minimum-wage/2022-florida-minimum-wage-announcement.pdf?sfvrsn=961754b0\\_2](https://floridajobs.org/docs/default-source/business-growth-and-partnerships/for-employers/posters-and-required-notices/2022-minimum-wage/2022-florida-minimum-wage-announcement.pdf?sfvrsn=961754b0_2) (last visited Dec. 5, 2023).

<sup>17</sup> *In re Advisory Opinion to the Atty. Gen. re Fla. Minimum Wage Amend.*, 880 So.2d 636, 641–42 (Fla. 2004). (“The proposed amendment does not state that it is adopting the FLSA’s definition of the term “employee,” but provides that it is adopting the meaning of the term “employee,” which is a much broader concept.”)

<sup>18</sup> Art. X, s. 24(b), Fla. Const.

<sup>19</sup> Art. X, s. 24(f), Fla. Const.

<sup>20</sup> Ch. 2005-353, Laws of Fla., codified in s. 448.110, F.S.

<sup>21</sup> S. 448.110(10), F.S. HB 5 (2023) renames the Department of Economic Opportunity as the Department of Commerce; SB 82 (2024), section 220, makes this conforming change in the Florida Minimum Wage Act.

<sup>22</sup> S. 448.110(3), F.S.

<sup>23</sup> S. 1(f) and (g), Art. VIII, Fla. Const.; *see also* s. 125.01, F.S.

<sup>24</sup> S. 2(b), Art. VIII, Fla. Const.

In 2003, the Legislature preempted the establishment of minimum wages to the state.<sup>25</sup> However, a political subdivision (local government)<sup>26</sup> retains the authority to establish a minimum wage other than a state or federal minimum wage or to provide employment benefits not otherwise required under state or federal law for:<sup>27</sup>

- Its employees;
- The employees of an employer contracting to provide goods or services for the local government, or for the employees of a subcontractor of such an employer, under the terms of a contract with the local government; or
- The employees of an employer receiving a direct tax abatement or subsidy from the local government, as a condition of the direct tax abatement or subsidy.

The preemption also does not apply to “a domestic violence or sexual abuse ordinance, order, rule, or policy adopted by a political subdivision.”<sup>28</sup>

The law contains an exception for situations where compliance would prevent a local government from receiving federal funds. This allows compliance with the Davis-Bacon and related acts,<sup>29</sup> which direct the federal Department of Labor to determine fair wages for contractors and subcontractors working on public buildings and public works. Florida law only allows non-compliance with regard to local minimum wage alterations to the extent necessary to allow receipt of federal funds.<sup>30</sup>

Additionally, local governments are prohibited from requiring an employer to provide employment benefits<sup>31</sup> not required by state or federal law. “

Despite these provisions, in 2016, the City of Miami Beach enacted a local ordinance establishing a minimum hourly wage significantly exceeding the current Florida minimum wage. The ordinance applied to all employers operating within the city. The ordinance, which was scheduled to take effect on January 1, 2018, established both a local minimum wage of \$10.31 an hour and annual increases to \$13.31 an hour effective January 2021. Subsequently, the ordinance was challenged on the grounds that it was preempted by state law and Florida’s Third District Court of Appeals struck down the ordinance.

The court held that the Florida Constitution authorizes the Legislature to preempt municipal powers by statute. The court also rejected the city’s principal argument that Art. X, s. 24 of the Florida Constitution, raising the state minimum wage, made the statute unconstitutional. In 2018, the Florida Supreme Court agreed to take up the case.<sup>32</sup> However, in 2019, the Florida Supreme Court issued an order that

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<sup>25</sup> S. 218.077(2), F.S. *See* s. 18(a) of the federal Fair Labor Standards Act of 1938, as amended, 29 U.S.C. s. 218:

No provision of [the Fair Labor Standards Act] or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under [the federal act].

<sup>26</sup> “Political subdivision” is defined to mean a county, municipality, department, commission, district, board, or other public body, whether corporate or otherwise, created by or under state law. S. 218.077(1)(f), F.S.

<sup>27</sup> S. 218.077(3)(a), F.S.

<sup>28</sup> S. 218.077(3)(b), F.S.

<sup>29</sup> *See, e.g.*, 40 U.S.C. 3141 *et seq.* The Davis-Bacon Act is a federal law that regulates prevailing wage rates on public works projects. The Act provides that all laborers and mechanics working on construction projects which are funded by the federal government shall not be paid a wage less than prevailing wage, as specified by the U.S. Department of Labor, in the locality in which work is performed.

<sup>30</sup> S. 218.077(4), F.S.

<sup>31</sup> “Employment benefits” is defined to mean anything of value that an employee may receive from an employer in addition to wages and salary. The term includes, but is not limited to, health benefits; disability benefits; death benefits; group accidental death and dismemberment benefits; paid or unpaid days off for holidays, sick leave, vacation, and personal necessity; retirement benefits; and profit-sharing benefits. S. 218.077(1)(d), F.S.

<sup>32</sup> *City of Miami Beach v. Florida Retail Federation, Inc.*, 233 So.3d 1236 at 1238 (Fla. 3d DCA 2017) (declined for review February 5, 2019).

discharged jurisdiction over the case. As a result, the Third District's decision invalidating Miami Beach's local wage ordinance appears to currently stand.<sup>33</sup>

## Workplace Heat Exposure

The Occupational Safety and Health Act of 1970 (OSH Act) is the federal labor law governing occupational health and safety in the private sector and federal government.<sup>34</sup> Under the OSH Act, two federal agencies are responsible for promoting occupational safety and health in the United States. The National Institute for Occupational Safety and Health (NIOSH) conducts research and recommends occupational safety and health standards.<sup>35</sup> The Occupational Safety and Health Administration (OSHA)<sup>36</sup> is responsible for the promulgation and enforcement of standards.<sup>37</sup>

Currently, there are no specific laws in Florida that provide heat exposure protections for outdoor workers. NIOSH and OSHA provide certain recommendations that employers provide heat exposure protections.

In 2013, NIOSH published a document entitled "Preventing Heat-related Illness or Death of Outdoor Workers," which recommends that employers have a plan in place to prevent heat-related illness. The plan should include hydration (drinking plenty of water), acclimatization (getting used to weather conditions), and schedules that alternate work with rest. It recommends that employers should also train workers about the hazards of working in hot environments.<sup>38</sup>

OSHA does not currently have any specific heat exposure standards. In the absence of a specific standard, OSHA is authorized to enforce the "general duty clause" of the OSH Act, which requires each employer to provide a workplace that is free of "recognized hazards" causing or likely to cause "death or serious physical harm" to its employees.<sup>39</sup>

In 2011, OSHA launched a heat illness prevention campaign that includes guidance to employers and employees, a smartphone app that provides location-specific information on heat conditions and heat exposure prevention and first aid, and educational materials such as posters and pamphlets in English, Spanish, and other languages.<sup>40</sup>

On October 27, 2021, OSHA published an Advanced Notice of Proposed Rulemaking (ANPRM) for a potential standard on Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings.<sup>41</sup> OSHA solicited public comments on the ANPRM through January 26, 2022, and received over 1,000 comments on the ANPRM.

In March 2021, OSHA cited Valley Produce Harvesting and Hauling Company for a willful violation of the general duty clause by exposing sugar cane harvesting employees in Florida to "excessive heat, elevated temperature working conditions, direct sun radiation and thermal stress" while working outdoors in September 2020. OSHA assessed the maximum allowable civil monetary penalty of \$136,532 for this violation, which was later reduced through an informal settlement with the employer to \$81,919.20. The citation provides, "the employer did not furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or

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<sup>33</sup> JDSUPRA, *Can Cities Set a Local Minimum Wage? Florida Supreme Court Says No* (Feb. 14, 2019), <https://www.jdsupra.com/legalnews/can-cities-set-a-local-minimum-wage-67192/> (last visited Dec. 5, 2023).

<sup>34</sup> Occupational Safety and Health Act of 1970, Pub. L. No. 91-596, 84 STAT. 1590, 91st Cong. (Jan. 1, 2004).

<sup>35</sup> 29 U.S.C. § 671.

<sup>36</sup> See Occupational Safety and Health Administration, *About Osha*, <https://www.osha.gov/aboutosha> (last visited Dec. 5, 2023).

<sup>37</sup> 29 U.S.C. § 655.

<sup>38</sup> NIOSH 1986, 2008, 2010; OSHA-NIOSH 2011.

<sup>39</sup> 29 U.S.C. § 654.

<sup>40</sup> Occupational Safety and Health Administration, *Heat Illness Prevention*, <https://www.osha.gov/heat/> (last visited Dec. 5, 2023).

<sup>41</sup> 86 FR 59309.



serious physical harm to employees in that employees were exposed to excessive heat, elevated temperature working conditions, direct sun radiation and thermal stress.”<sup>42</sup>

In April 2022, OSHA began a National Emphasis Program (NEP) of enforcement of the general duty clause and compliance assistance to focus on indoor and outdoor heat exposure. The NEP expands on OSHA’s ongoing heat-related illness prevention initiative and campaign by creating a targeted enforcement component and reiterating its compliance assistance and outreach efforts. This approach is intended to encourage early interventions by employers to prevent illnesses and deaths among workers during high heat conditions, such as working outdoors in a local area experiencing a heat wave as announced by the National Weather Service. Early interventions include, but are not limited to, implementing water, rest, shade, training, and acclimatization procedures for new or returning employees.<sup>43</sup>

## Local Heat Regulation

On November 11, 2023, the Miami-Dade County Board of County Commissioners considered a proposal that would require construction and agriculture companies with five or more employees to guarantee workers access to water and give them 10-minute breaks in the shade every two hours on days when the heat index equals or exceeds 95 degrees Fahrenheit. The proposal would also require employers to train workers to recognize the signs of heat illness, administer first aid, and call for help in an emergency. Enforcement includes a warning, fines of up to \$2,000 per day per violation, and debarment of contractors from county work for certain repeated violations and unpaid penalties.<sup>44</sup> Consideration of the proposal has been deferred until March.<sup>45</sup> Some South Florida employers have expressed that they already provide such protections and Miami-Dade County would be the first local government in the nation to adopt such requirements.

## Workplace Scheduling and Predictive Scheduling

Predictive work schedule laws, also known as ‘Fair Workweek’ laws, have been implemented in various cities and states in the United States. These laws aim to promote fairer scheduling practices, provide employees with sufficient notice of work schedules, and enforce penalties for late schedule changes. These laws also seek to give employees the right of first refusal for additional work, and to avoid some employees from having back to back opening and closing shifts.<sup>46</sup>

Several cities and states have enacted predictive work schedule laws. In California, the cities of Berkeley, San Francisco, and Los Angeles have specific regulations related to predictive scheduling. Chicago and New York City have also strengthened their Fair Workweek legislation. Other states are considering similar laws, potentially creating compliance challenges for companies operating in multiple jurisdictions. States and cities have enacted one or more different types of scheduling laws. Some state and local scheduling laws require employers to pay a predictive scheduling penalty when the employer changes an employee’s schedule without a loss in hours but without the amount of advance notice required by the state or local scheduling law. These types of payments are made above and beyond the employee’s straight time or overtime earnings for the hours actually worked.<sup>47</sup>

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<sup>42</sup> Occupational Safety and Health Administration, *Violation Detail*, [https://www.osha.gov/ords/imis/establishment.violation\\_detail?id=1495595.015&citation\\_id=02001](https://www.osha.gov/ords/imis/establishment.violation_detail?id=1495595.015&citation_id=02001) (last visited Dec. 5, 2023).

<sup>43</sup> Occupational Safety and Health Administration, *OSHA Instruction*, [https://www.osha.gov/sites/default/files/enforcement/directives/CPL\\_03-00-024.pdf](https://www.osha.gov/sites/default/files/enforcement/directives/CPL_03-00-024.pdf) (last visited Dec. 5, 2023).

<sup>44</sup> Miami-Dade Legislative Item, File Number: 231773.

<sup>45</sup> Miami Herald, *After industry pressure, Miami-Dade puts heat protections for outdoor workers on ice*, <https://www.miamiherald.com/news/local/environment/article281487003.html> (last visited Dec. 6, 2023).

<sup>46</sup> Paycor, Empowering Leader, Workforce Management, Predictive Work Schedule: A City-By-City Guide, <https://www.paycor.com/resource-center/articles/predictive-work-schedule-laws-a-city-by-city-guide/> (last visited March 8, 2024).

<sup>47</sup> Some states and cities have enacted one or more different types of scheduling laws. The various types of local or state scheduling penalty payments do not need to be included in the calculation of the regular rate under the FLSA, if certain conditions are met. For more information on scheduling law penalty payments that may be excluded from the regular rate, see the WHD regulations at 29

## Preemption

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.<sup>48</sup> To expressly preempt a subject area, the Legislature must use clear statutory language stating its intention to do so.<sup>49</sup> Implied preemption occurs when the Legislature has demonstrated an intent to preempt an area, though not expressly. Florida courts find implied preemption when “the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature.”<sup>50</sup>

Where state preemption applies, a local government may not exercise authority in that area.<sup>51</sup> Whether a local government ordinance or other measure violates preemption is ultimately decided by a court. If a local government improperly enacts an ordinance or other measure on a matter preempted to the state, a person may challenge the ordinance by filing a lawsuit. A court ruling against the local government may declare the preempted ordinance void.<sup>52</sup>

## Effect of Proposed Changes

### Workplace Heat Exposure Requirements

The bill prohibits political subdivisions from:

- Establishing, mandating, or otherwise requiring an employer, including an employer contracting to provide goods or services to the political subdivision, to meet or provide heat exposure requirements not otherwise required under state or federal law.
- Giving preference in a competitive solicitation to an employer based on the employer's heat exposure requirements.
- Considering or seeking information in a competitive solicitation relating to the employer's heat exposure requirements.

The bill provides that it does not:

- Limit the authority of a political subdivision to establish or otherwise provide heat exposure requirements not otherwise required under state or federal law for direct employees of the political subdivision.
- Apply if it is determined that compliance with these provisions will prevent the distribution of federal funds to a political subdivision or otherwise be inconsistent with federal requirements pertaining to receiving federal funds, but only to the extent necessary to allow a political subdivision to receive federal funds or to eliminate inconsistency with federal requirements.

The bill provides the following definitions:

- “Competitive solicitation” means an invitation to bid, a request for proposals, or an invitation to negotiate.

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CFR §§ 778.220-.223. Note that any scheduling law penalty payment that is excludable from the regular rate cannot be credited toward statutory overtime compensation due to the employee. See Department of Labor, Fact Sheet 56b, <https://www.dol.gov/agencies/whd/fact-sheets/56b-scheduling-penalties-regular-rate> (last visited March 8, 2024).

<sup>48</sup> See *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005).

<sup>49</sup> *Mulligan*, 934 So. 2d at 1243.

<sup>50</sup> *Tallahassee Mem. Reg. Med. Ctr., Inc. v. Tallahassee Med. Ctr., Inc.*, 681 So. 2d 826, 831 (Fla. 1st DCA 1996).

<sup>51</sup> *D’Agastino v. City of Miami*, 220 So. 3d 410 (Fla. 2017); Judge James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).

<sup>52</sup> See, e.g., *Nat’l Rifle Ass’n of Am., Inc. v. City of S. Miami*, 812 So. 2d 504 (Fla. 3d DCA 2002).



- “Heat exposure requirement” means a standard to control an employee's exposure to heat or sun, or to otherwise address or moderate the effects of such exposure. The term includes, but is not limited to, standards relating to any of the following:
  - Employee monitoring and protection.
  - Water consumption.
  - Cooling measures.
  - Acclimation and recovery periods or practices.
  - Posting or distributing notices or materials that inform employees how to protect themselves from heat exposure.
  - Implementation and maintenance of heat exposure programs or training.
  - Appropriate first-aid measures or emergency responses related to heat exposure.
  - Protections for employees who report that they have experienced excessive heat exposure.
  - Reporting and recordkeeping requirements.
- “Political subdivision” means a county, municipality, department, commission, district, board, or other public body, whether corporate or otherwise, created by or under state law.

### **Wage and Employment Benefits**

Effective September 30, 2026, the bill amends Florida’s wage and employment benefits law by prohibiting political subdivisions from:

- Seeking to control or affect the wages or employment benefits provided by its vendors, contractors, service providers, or other parties doing business with the political subdivision through its purchasing or contracting procedures.
- Using evaluation factors, qualification of bidders, or otherwise awarding preferences on the basis of wages or employment benefits provided by its vendors, contractors, service providers, or other parties doing business with the political subdivision.

The bill removes the ability of local governments to require a minimum wage for certain employees under the terms of a contract.

The bill provides that these revisions to Florida’s wage and employment benefits law do not impair any contract entered into before September 30, 2026.

### **Preemption of Employee Scheduling Regulation**

The bill prohibits local governments from adopting or enforcing any ordinance, resolution, order, rule, policy, or contract requirement regulating scheduling, including predictive scheduling, by a private employer except:

- As expressly authorized or required by state or federal law, rule, or regulation; or
- Pursuant to federal grant requirements.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may have an indeterminate fiscal impact on the private sector to the extent that the preemptions supersede local ordinances. The bill may:

- Prevent businesses from losing local government contracts based on wages or employment benefits that they do not currently offer.
- Allow businesses that contract with local governments to pay their employees as they see fit.
- Prevent businesses from being required to provide costly terms and conditions of employment.
- Prevent businesses from being required to provide costly workplace heat exposure protections.
- Prevent workers from earning a wage that allows them to live in the area that they work.
- Create a negative fiscal impact for employers who provide workers' compensation insurance for their employees.

**D. FISCAL COMMENTS:**

None.