ALBANY - (01/04/18, 10:00 a.m., Hearing Room A LOB0

The Senate Commerce, Economic Development and Small Business Committee met on Thursday morning in Albany to examine the state's proposed rule for employee scheduling. The hearing was led by committee Chair Phil Boyle and senators Chris Jacobs, Cathy Young, Tim Kennedy, Jim Tedisco, Fred Akshar, Rich Funke, Kathy Marchione and George Amedore were present.

Jacobs said that a group of senators requested a delay in the state's public comment period for the proposed rule. He noted that a new law requires public comment periods to be extended to 60 days and urged the state Department of Labor to extend the current period by 15 days.

Kennedy noted that organized labor representatives were not in attendance for the hearing.

Marchione, Tedisco, Young, Funke, Akshar and Amedore made comments that indicated they were opposed to the proposed rules. "It will hurt the workers it's supposed to help," said Funke, who acknowledged that some large companies could handle the changes and noted that Oregon's version of the law exempts small businesses.

The first panel of speakers featured Mike Durant, state director for NFIB, Frank Kerbein, of the Business Council, and Greg Biryla, executive director of Unshackle Upstate.

Durant said the proposed rules were not "sensible" and warned about governing via executive order. He said small businesses often lack internal human resources and don't have the flexibility to meet the new requirements.

Durant highlighted examples of on-call scheduling laws in other states that exempt small businesses. He listed scenarios that could cost small businesses extra money under the proposed regulations.

Durant said many industries require flexible scheduling and contended the issue to be addressed by the legislative process.

Kerbein described the proposed rules as a new burden for small businesses and argued that the flexibility in the rules were inadequate to address the realities that small businesses face. He added that the state's family paid leave law will make scheduling more difficult in 2018.

Kerbein said millenials desire flexible working hours and contended the proposed rules will lead to automation. He noted New York City has its own on-call scheduling law for retails and fast food employers.

Biryla said the proposed rules will be another burden for upstate's economy, which he said was struggling. He reiterated the need for flexible scheduling and stressed the recurring nature of weather problems in upstate New York.

Jacobs cited the DOL's position that their regulations won't affect employment in New York and Biryla said that calculation was wrong. In response to Jacobs, Biryla said the rules might not hurt upstate more than downstate, but suggested the New York City economy is more resilient.

In response to Amedore, Biryla noted that he spoke with the DOL about the weather related regulations in their proposed rules. Amedore hypothesized the rules will lead to new fees and fines for small businesses.

The next panel featured regional chambers, including Tom O'Connor, of the Capital Region Chamber, and Matthew Cohen, of the Long Island Association.

O'Connor said his organization was "100 percent opposed" to the regulations and rejected the idea that New York is open for business. He said "predictive scheduling" was not an appropriate description because it doesn't reflect reality and argued the proposal is punitive for small businesses. O'Connor added that employees like to have flexibility for scheduling.

O'Connor noted that the chambers are united in opposition to the regulations. He then cited comments from a member who wants to leave New York because of regulations like paid family leave and the proposed payroll tax reforms Gov. Andrew Cuomo hinted at during his State of the State Address.

O'Connor said the issue should be addressed by the legislature, but stressed an opposition to any similar type of scheduling actions.

Cohen highlighted some tweaks to the proposals that were suggested by the food industry alliance, including decreasing the 14-day notice period to seven days and allowing employers to add staff based on events that aren't within their control.

Boyle asked about the regulations affect on health care industries and O'Connor said, regardless of sector, they put a burden on an employer. In response to Tedisco, O'Connor said consumers expect businesses to be fully staffed and contended this will cost employers more money under the new rules.

The next panel featured DeltaSonic Car Wash President Ron Benderson, NYS Car Wash Association's Tom Hoffman and Elbers Landscaping President James Hornung.

Benderson said his company provides a unique customer experience and noted that a vast majority of his employees appreciate a flexible schedule. He added that most of his employees are not heads of households and are mostly in school.

Benderson warned the rules could eliminate 1200 jobs and prevent 2500 jobs from being created. If the state adopts the proposed rules, he said, "Our business model may no longer be sustainable."

He said more time is needed to understand the administrative ramifications of the proposed rules.

Hoffman, who is also the CEO of Hoffman Car Wash, said the car wash industry appreciate the efforts by republican senators to block the proposed regulations. He warned that the regulations will lead car washes to reduce jobs and adopt more automation.

He rejected the idea that protections are needed to protect immigrant workers, as he said the business model for upstate car washes is different than the model for car washes in New York City.

Hornung warned that there isn't a path forward for his members in New York if the proposed regulations are adopted. He said a recent snow storm in Buffalo would have cost an additional $3,000 in staff costs.

Hornung acknowledged that the regulations could work in his garden center business, but wouldn't be practical in his lawn service and plowing work.

Young shared her own experience as a young employee trading shifts and asked how the proposed regulations would affect those practices. Hoffman said flexibility is a "two-way street" and indicated that similar regulations in New York City are limiting potential job applicants. Benderson said young people love flexible scheduling.

In response to Young, Hornung said it's hard to forecast the weather more than seven days ahead of time and argued that it's only reliable 12 to 24 hours in advance. In response to Young, Hornung stressed that he can't afford to pay employees not to work.

The final panel included Doheny Oil Corp. President Steve Doheny, LeadingAge New York Executive Vice President Dan Heim, Consumer Directed Personal Assistance Association of NYS Executive Director Bryan O'Malley and a local child care business owner.

The child care business owner said that payroll costs have increased because of state regulations and warned that his company is becoming prohibitively expensive. He said the new proposed regulation could put him out of business.

Heim stressed that patient needs are unpredictable and shared anecdotal evidence of cases that would cost extra money. He noted that the proposed regulations allow for exceptions in cases of collective bargaining, but said that many long-term care providers don't have union workers.

If the regulations are adopted as currently proposed, Heim said long-term care providers will have to provide additional call-in pay. This could be a problem, he said, because many patients are in structured long term care payment plans.

He added that payroll structure will have to be changed too under the new proposals and warned that the eligibility for call-in pay could change week to week. Heim said that Medicaid should absorb these increased costs.

Heim suggested exempting health and human service providers from the rules.

O'Malley explained that in his field schedules are set by consumers and said the proposed rules require employees to get paid when they're not working. He argued that home care and his field should be exempted from the new regulations and said they can't provide enough flexibility to businesses to make them work.

O'Malley said the new regulations would impose a variety of new administrative costs.

Doheny said his business has 10 employees and shared hypothetical anecdotes about scheduling challenges if the regulations are adopted. He described the proposed regulation as unnecessary and overreaching.

In response to Young, Heim said state support hasn't kept up with the regulations they have imposed. Young asked what happens if they don't have adequate staffing and Heim said the choices aren't "very good."

In closing remarks, Amedore said the Cuomo administration is "out of touch with reality."

David Lombardo / New York StateWatch