

EMPLOYMENT

FACT SHEET

The Schedules That Work Act: Giving Workers the Tools They Need to Succeed

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The demographics and needs of the American workforce have changed. Today, 82 percent of children live in households where all parents work.¹ And one-third of families with children are headed by single parents, three-quarters of whom work.² Americans are also working and living longer.³ Sixteen percent of the population is providing elder care to a relative or friend; and more than half of these caregivers are in the labor force.⁴ Nearly one in two people in the United States have a chronic medical condition that requires regular care.⁵ But most workplaces have not caught up with these realities.

Workers across the income spectrum report very little ability to make even minor adjustments to their schedules in order to meet their responsibilities outside of work. And for the nearly 20 million workers in low-wage jobs (paying \$10.10 per hour or less) scheduling challenges are especially acute.⁶ Unpredictable and unstable work schedules have been particularly well-documented in retail sales, food preparation and serving, and building cleaning occupations.

The fallout from scheduling practices that do not take workers' needs into account can be devastating.⁷ Difficult scheduling practices undermine workers' efforts to fulfill their caregiving responsibilities and make maintaining stable child care nearly impossible.⁸ They also make it tougher to pursue education or training while holding down a job, as many workers want to do to make a better life for themselves and their families.⁹ For workers who need a second part-time job to make ends meet because they cannot get enough hours at their primary job, unpredictable scheduling practices can make juggling two jobs very difficult.¹⁰ And workers managing serious medical conditions are often denied the control over their schedules that they need to both manage their conditions and hold down their jobs.¹¹

Often Difficult, and Sometimes Abusive, Scheduling Practices Are Common

Little Say in Work Schedules

Workers report having very few opportunities for meaningful input into the timing of the hours that they work, and some are unable to request even minor changes to their work schedules without suffering a penalty.¹² Overall, less than half of workers have flexibility in the scheduling of their work hours.¹³ More than a third of parents believe they've been "passed over" for a promotion, raise, or a new job due to a need for a flexible work schedule.¹⁴ Workers in low-wage jobs often have the least say in their work schedules. About half of low-wage workers report having limited control over the timing of their work hours and between two-thirds and three quarters of full-time, low-wage workers report that they are unable to alter when their work day starts and ends.¹⁵ Some employers have policies requiring employees to have completely open availability in order to qualify for full-time hours, making it extremely difficult for workers with significant responsibilities outside of work to get full-time hours.¹⁶ And workers who request a schedule that allows them to attend school, take a child to a regular medical appointment, or address their own health needs too often find that their employers retaliate by cutting their hours sharply.¹⁷

Unpredictable Schedules

Providing notice of work schedules a week or less in advance is common in many industries. Sixty-six percent of food service workers, 52 percent of retail workers, and 40 percent of janitors and housekeepers know their schedule only a week or less in advance.¹⁸ According to a survey of workers in the retail industry by the Retail Action Project, about a fifth of workers received their schedules only three days beforehand.¹⁹ And between 19 and 31 percent of low-wage workers are often asked to work extra hours with little or no notice.²⁰ Some retail workers are routinely required to work call-in shifts, which means they must call their employers to find out whether they need to report to work that same day.²¹ In a study of retail workers in New York City, 20 percent of workers surveyed reported that they always or often must be available for call-in shifts.²² When workers get schedules with very little notice it can be extremely difficult to arrange child care or transportation to get to work. These practices can also undermine workers' efforts to attend education and workforce training. Indeed, one of the most commonly cited challenges to completing a college degree is the inability to balance work and school.²³

Unstable Schedules

Many workers in low-wage jobs experience unstable schedules that vary from week to week or month to month, or periodic reductions in work hours when work is slow. For example, 59 percent of retail employees employed by one major retailer reported that either the shifts or the days they worked change each week.²⁴ The average variation in work hours in a single month is 70 percent for food service workers, 50 percent for retail workers, and 40 percent for janitors and housekeepers.²⁵ Between 20 and 30 percent of low-wage workers experience a reduction in hours or a layoff when work is slow.²⁶ Workers also report being sent home early from their scheduled shifts.²⁷

Work hours that vary can make it extremely difficult for workers to maintain eligibility for child care subsidies that are tied to work hours or simply to meet basic expenses, like food, rent, and utilities. And even in months when workers are scheduled for sufficient hours to meet their expenses, workers experience the incredible stress and uncertainty that comes with not knowing how much income they will be bringing home.

Involuntary Part-time Work

In 2013, nearly one quarter (23 percent) of part-time workers worked part-time involuntarily,²⁸ because they couldn't obtain full-time work.²⁹ These workers often need more than one job to make ends meet, but when workers have little say in their work schedules at their primary job, it can be difficult to impossible to arrange a schedule at a second job. And low-wage workers, who have the least say in their schedules, are also far more likely than the overall workforce to work part-time involuntarily (14 percent versus 6 percent).³⁰ All too often, workers are hired expecting full-time hours only to find that they are not put on the schedule at all for weeks and months at a time. This particular practice of hiring workers and then giving them very few or no hours of work is especially well-documented in the retail industry.³¹

The Domino Effect of Abusive Scheduling Practices

My name is Melody Pabon. I've been working at Zara, a women's clothing store in Manhattan as a cashier and on the sales floor for about four years. I also just started school to become a medical assistant. I used to be scheduled to close the store a lot. On those nights I got home to Brooklyn after Mason, my four-year old, was already asleep. I wanted to be able to spend time with him in the evening, so I asked for an earlier shift. But at my job, anyone who is not available 24/7 always seems to get their hours cut. And that is what happened to me. I went from working 35 hours to 25 over the course of a few weeks. That's almost a third of my paycheck. Mason was in a day care center that we both loved. He got so much attention from the teachers there. And he had friends. But with so few hours, I couldn't afford it any more. I had to pull him out. Right now I'm getting most of my shifts with only one or two days' notice – sometimes even the same day. And then I check with my family or my boyfriend to see who can watch Mason. My boyfriend wants to help out as much as he can, but his schedule is unpredictable too so that makes it hard. I'm sad for Mason that he's always bouncing around and that he doesn't get to be with his day care buddies and teachers any more. Mason deserves better and so do I.

Melanie Pabon is a member of the Retail Action Project (www.retailactionproject.org), which is an initiative of the Retail, Wholesale and Department Store Union (www.rwdsu.info).

Why Women Need Schedules That Work

Women still shoulder a disproportionate share of caregiving responsibilities, and they also play a critical role as breadwinners for their families. Women are primary breadwinners in 40 percent of families and contribute between one-quarter and one-half of the family income in another 23 percent of families.³² Given the importance of women's earnings to families' economic security, most parents have no choice other than to attempt to juggle both work and family responsibilities. Today one in five families with children is headed by a single working mother.³³ Challenging workplace scheduling practices make it extremely difficult for parents, and particularly for single parents, most of whom are women, to meet both their obligations to their employers and their obligations to their families.

The rapid growth in low-wage jobs that are predominantly held by women sharpens the need to address the scheduling challenges facing workers in these jobs. In fact, 35 percent of women's job gains in the recovery have been in the ten largest low-wage occupations.³⁴ Mothers with children under 18 make up 24 percent of workers in the ten largest low-wage occupations, compared to just 16 percent of the workforce overall.³⁵

Half of the workers in involuntary part-time jobs are women.³⁶ And women make up more than half of the workers in the retail, restaurant and fast food, and cleaning jobs to whom the baseline labor protections of advance notice, reporting time, and split shift pay apply.³⁷

When women have schedules that allow them to meet their family responsibilities, they are less likely to be absent due to caregiving responsibilities, and more likely to stay in their jobs.³⁸ Fair work schedules also make it possible for women to stay in degree or certificate programs that provide opportunities for advancement. And education is critically important for women – since women must be more educated than men to receive the same pay as they do.³⁹

The Schedules That Work Act Responds to Employees' Needs For:

A voice in their work schedules. By creating a right for all employees to make scheduling requests and protecting employees who make requests from retaliation, the Schedules That Work Act would give employees a say in their work schedules. Employers would be required to consider scheduling requests from all employees and provide a response. For employees who need a schedule change to fulfill caregiving responsibilities, (for part-time workers) to work a second job, to pursue education and workforce training, or for the employee's own serious health condition, the employer would be required to grant the requested schedule change, unless there is a bona fide business reason not to do so – i.e., an inability to reorganize work among existing staff or the insufficiency of work during the periods the employee proposes to work. Requests made for these reasons would be prioritized because fulfilling these obligations is especially critical to the financial, emotional and physical well-being of workers and their families. The right to request provision in the Schedules That Work Act is based on similar laws recently enacted in Vermont⁴⁰ and San Francisco,⁴¹ and which have been in place for more than a decade in the United Kingdom and elsewhere.

More predictable and stable schedules. For shift workers in certain jobs where abusive scheduling practices are especially well-documented – restaurant, retail, and building cleaning – the bill would provide additional baseline workplace protections. These jobs are among the lowest-paid and fastest-growing in the economy,⁴² accounting for 18 percent of the U.S. workforce, or 23.5 million workers.⁴³ To address the problems of unpredictable and unstable schedules that are characteristic of these jobs, the Schedules That Work Act would require employers to provide restaurant, retail, and building cleaning employees with reporting time pay, split shift pay and advance notification of work schedules.

- **Reporting time pay.** When an employee is sent home from work early without being permitted to work his or her scheduled shift, the bill would require the employee to be paid for a minimum of four hours of work or the hours in the scheduled shift, whichever is less. In addition, if an employee is required to call

in less than 24 hours before the start of a potential shift to learn whether he or she is scheduled to work, the bill would require the employee be paid a premium equivalent to one hour of pay. This provision is modeled on reporting time pay requirements in eight states and the District of Columbia.⁴⁴

- **Split shift pay.** If an employee is required to work a shift with nonconsecutive hours with a break of more than one hour between work periods, the bill would require the employer to pay a premium for that shift equivalent to one hour of pay. This provision is modeled on similar split shift requirements in the District of Columbia and California.⁴⁵
- **Advance notice of schedules.** When an employee is hired, the bill would require an employer to disclose the minimum number of hours an employee will be scheduled to work. If that minimum number changes, the bill would require the employer to give two weeks' notice of the new minimum hours before the change goes into effect. In addition, the bill would require an employer to provide an employee with his or her work schedule two weeks in advance. If an employer makes changes to this work schedule with notice of only 24 hours or less, the bill would require the employee to be paid a premium equivalent to one hour of pay.

The Schedules That Work Act Provides Predictability and Stability to Employers and Employees

Scheduling practices that fail to take workers' needs into account result in higher rates of turnover and absenteeism, and lower employee engagement.⁴⁶ In contrast, schedules that work for workers and their families lead to more productive and committed employees and lower workforce turnover.⁴⁷ It's not surprising that over half of Americans believe that they could do their jobs better if they were had a more flexible schedule.⁴⁸ The Schedules That Work Act will promote the health and well-being of America's working families and help build a sustainable economy.

- 1 WHITE HOUSE COUNCIL OF ECONOMIC ADVISERS, WORK-LIFE BALANCE AND THE ECONOMICS OF WORKPLACE FLEXIBILITY 5 (June 2014), available at http://www.whitehouse.gov/sites/default/files/docs/updated_workplace_flex_report_final_0.pdf.
- 2 NWLC calculations based on U.S. Census Bureau, Current Population Survey, 2013 Annual Social and Economic Supplement, Table POV15. Families With Related Children Under 18 by Householder's Work Experience and Family Structure, available at http://www.census.gov/hhes/www/cpstables/032013/pov/pov15_100.htm.
- 3 AARP, Workers 50+, AGE DISCRIMINATION, WHAT EMPLOYERS NEED TO KNOW, available at http://assets.aarp.org/www.aarp.org/_articles/money/employers/age_discrimination.pdf.
- 4 UNITED STATES DEP'T OF LABOR, FACTS OVER TIME: WOMEN IN THE LABOR FORCE (May 2013), available at http://www.dol.gov/wb/stats/facts_over_time.htm.
- 5 NAT'L P'SHIP FOR WOMEN & FAMILIES, FACT SHEET: PAID SICK DAYS ARE NECESSARY TO MANAGE CHRONIC ILLNESS 1 (Aug. 2012) (citing Anderson, G. (2012, February), *Chronic Care: Making the Case for Ongoing Care*. Robert Wood Johnson Foundation & Johns Hopkins Univ. publication.), available at <http://www.nationalpartnership.org/research-library/work-family/psd/paid-sick-days-are-necessary-to-manage-chronic-illness.pdf>.
- 6 NAT'L WOMEN'S LAW CTR. (NWLC) calculations based on Miriam King et. al., Integrated Public Use Microdata Series, CPS: Version 3.0 (PUMS-CPS) (Univ. of Minn. 2010). Data are for 2012. All figures are for employed workers. Median hourly wages: Bureau of Labor Statistics (BLS), Occupational Employment Statistics (OES), May 2013 National Occupational and Wage estimate, available at http://www.bls.gov/oes/current/oes_nat.htm.
- 7 See NWLC, COLLATERAL DAMAGE: SCHEDULING CHALLENGES FOR WORKERS IN LOW-WAGE JOBS AND THEIR CONSEQUENCES 4 (Apr. 2014), available at http://www.nwlc.org/sites/default/files/pdfs/collateral_damage_scheduling_fact_sheet.pdf (outlining common scheduling challenges and their consequences).
- 8 See generally RESTAURANT OPPORTUNITIES CENTER UNITED (ROC), THE THIRD SHIFT: CHILD CARE NEEDS AND ACCESS FOR LOW-WAGE WORKING MOTHERS IN RESTAURANTS (July 2013), available at <http://www.scribd.com/doc/161943672/The-Third-Shift-Child-Care-Needs-and-Access-for-Working-Mothers-in-Restaurants>; LIZ BEN-ISHAH, ET. AL., SCRAMBLING FOR STABILITY: THE CHALLENGES OF JOB SCHEDULE VOLATILITY AND CHILD CARE (Ctr. for Law and Policy (CLASP) Mar. 2014), available at <http://www.clasp.org/resources-and-publications/publication-1/2014-03-27-Scrambling-for-Stability-The-Challenges-of-Job-Schedule-Volat.pdf>.
- 9 See EXECUTIVE OFFICE OF THE PRESIDENT, COUNCIL OF ECONOMIC ADVISERS, WORK-LIFE BALANCE AND THE ECONOMICS OF WORKPLACE FLEXIBILITY 3 (Mar. 2010); OXFAM AM., HARD WORK, HARD LIVES: SURVEY EXPOSES HARSH REALITY FACED BY LOW-WAGE WORKERS 7 (Mar. 2013), available at <http://www.oxfamamerica.org/static/media/files/low-wage-worker-report-oxfam-america.pdf>.
- 10 See NWLC, LISTENING TO WORKERS: CHILD CARE CHALLENGES IN LOW-WAGE JOBS 6 (June 2014), available at http://www.nwlc.org/sites/default/files/pdfs/listening_to_workers_child_care_challenges_in_low-wage_jobs_6.24.14.pdf.
- 11 *Id.*
- 12 LIZ WATSON & JENNIFER E. SWANBERG, FLEXIBLE WORKPLACE SOLUTIONS FOR LOW-WAGE HOURLY WORKERS: A FRAMEWORK FOR A NATIONAL CONVERSATION 6 (Workplace Flexibility 2010 May, 2011).
- 13 WHITE HOUSE COUNCIL OF ECONOMIC ADVISERS, NONE FACTS ABOUT AMERICAN FAMILIES AND WORK 4 (June 2014), available at http://www.whitehouse.gov/sites/default/files/docs/nine_facts_about_family_and_work_real_final.pdf.
- 14 *Id.* at 14.
- 15 *Id.* at 19-20.
- 16 See, e.g., Liza Feathersone, *Starbucks Blues: Lean Times and Labor Pains are Tarnishing the Coffee Giant's Image* (Oct. 2014) (describing Starbucks' requirement that any worker who wants full-time hours be available 70 percent of the hours the store is open, or 80.5 hours per week), available at <http://www.thebigmoney.com/articles/saga/2008/10/29/starbucks-blues>.

- 17 See OXFAM, *supra* note 9, at 4.
- 18 Schedules That Work Act, H.R. 113th Cong. (2014) (from Sec. 1 Short Title & Findings, based on an analysis of the National Longitudinal Survey of Youth by Susan Lambert).
- 19 STEPHANIE LUCE & NAOKI FUJITA, DISCOUNTED JOBS: HOW RETAILERS SELL WORKERS SHORT 8 (Retail Action Project 2012), available at http://retailactionproject.org/wp-content/uploads/2012/01/FINAL_RAP.pdf.
- 20 WATSON & SWANBERG, *supra* note 12, at 21.
- 21 LUCE & FUJITA, *supra* note 19, at 13.
- 22 *Id.*
- 23 COUNCIL OF ECONOMIC ADVISERS, WORK-LIFE BALANCE AND THE ECONOMICS OF WORKPLACE FLEXIBILITY 3 (Mar. 2010); OXFAM AMERICA, *supra* note 9, at 4.
- 24 Jennifer Swanberg, et. al., CitiSales Study: Jobs that Work 4 (2009), available at <http://www.uky.edu/Centers/iwin/citisales/pdfs/IB1-HourlyWorkers.pdf>.
- 25 Schedules That Work Act, *supra* note 18.
- 26 WATSON & SWANBERG, *supra* note 12, at 22 (with the exception of full-time low-wage workers with standard hours, for whom less than 20 percent reported this problem).
- 27 LUCE & FUJITA, *supra* note 19, at 15.
- 28 NWLC calculations based on Bureau of Labor Statistics (BLS) Current Population Survey (CPS) Annual Table 20. Persons at work 1 to 34 hours in all and in non-agricultural industries by reason for working less than 35 hours and usual full or part-time status, 2007 through 2013, available at <http://www.bls.gov/cps/tables.htm#annual>. Figures are annual averages for those working part-time for economic reasons (also known as involuntarily part-time workers) across all industries.
- 29 NWLC calculations, *supra* note 4. Data are from the Current Population Survey, ASEC 2013, which refers to the reason for working part-time during the week prior to the reference week of the survey. Median hourly wages are from the BLS, OES, May 2013 National Occupational Employment and Wage Estimates (Low-wage occupations are defined here as those typically paying \$10.10 per hour or less), available at http://www.bls.gov/oes/current/oes_nat.htm.
- 30 *Id.*
- 31 LUCE & FUJITA, *supra* note 19, at 6, 13. See also Steven Greenhouse, *A Part-Time Life, as Hours Shrink and Shift*, N.Y. TIMES, Oct. 27, 2012, available at <http://www.nytimes.com/2012/10/28/business/a-part-time-life-as-hours-shrink-and-shift-for-american-workers.html?pagewanted=all&r=0>.
- 32 21 V.S.A. § 309.
- 33 Family Friendly Workplace Ordinance, No. 209-13 (Sept. 2013). The bill also draws heavily on a previous version of the right to request introduced in the United States, the Flexibility for Working Families Act.
- 34 NWLC & HALF IN TEN REPORT 2014- POVERTY AND OPPORTUNITY PROFILE: MOTHERS 2 (2014), available at <http://www.nwlc.org/sites/default/files/pdfs/mothers-poverty-opportunity-profile.pdf>.
- 35 NWLC calculations from the Bureau of Labor Statistics (BLS), Current Population Survey (CPS), Annual Social and Economic Supplement, 2013, available at <http://pewsocialtrends.org/2013/05/29/breadwinner-moms/>. 19.1 percent of families with children were headed by working single mothers.
- 36 *Id.*
- 37 NWLC, *supra* note 2.
- 38 NWLC calculations based on BLS Labor Force Statistics from the Current Population Survey, annual averages of persons at work in nonagricultural industries by age, sex, race, Hispanic or Latino ethnicity, marital status, and usual or full- or part-time status. Figures are for workers 16 and older. Part-time involuntary workers are those who are part-time for economic reasons, available at <http://www.bls.gov/cps/cpsaat22.htm> (2013).
- 39 Schedules That Work Act (2014) (bill number forthcoming).
- 40 A BETTER BALANCE (ABB), FACT SHEET: THE BUSINESS CASE FOR WORKPLACE FLEXIBILITY 2-3 (Nov. 2010), available at http://www.abetterbalance.org/web/images/stories/Documents/fairness/factsheets/BC-2010-A_Better_Balance.pdf.
- 41 NWLC, *Fifty Years and Counting: The Unfinished Business of Achieving Fair Pay* at 2, available at http://www.nwlc.org/sites/default/files/pdfs/final_nwlc_equal_pay_report.pdf.
- 42 NWLC, FACT SHEET: JOBS WITH LARGEST PROJECTED GROWTH 2012-2022: ALMOST HALF ARE LOW-WAGE, NEARLY TWO-THIRDS ARE FEMALE-DOMINATED (Dec. 2013), available at http://www.nwlc.org/sites/default/files/pdfs/v1_projectionsemploymentfactsheetmarch_2014_edits.pdf.
- 43 NWLC calculations of number and workers and median hourly wage based on OES Statistics May 2013, available at http://www.bls.gov/oes/current/oes_nat.htm.
- 44 See, e.g. 7 D.C. Mun. Reg. Tit. 7 § 907; 8 C.C.R. § 11040; 455 C.M.R. 2.03; Conn. Regs. 31-62; N.H. Rev. Stat. § 275:43; 12 NYCRR 142-2.3; N.J.A.C. 12:56-5.5; R.I. Gen. Laws Ann. § 28-12-3.2; Or. Admin. Reg. 839-021-0087.
- 45 See 8 C.C.R. § 11040; 7 D.C. Mun. Reg. Tit. 7 § 906.
- 46 ABB, *supra* note 40, at 2-4.
- 47 *Id.*
- 48 WHITE HOUSE, *supra* note 13, at 14 (citing Nielsen (2014). Harris Poll of 4,096 adults (aged 18+) conducted online May 27-30, 2014).