

EMPLOYMENT

FACT SHEET

The Schedules That Work Act: Section-by-Section Summary S. 2642

September 2014

The Schedules That Work Act will ensure that workers have a voice in their work schedules, the predictability and stability they need to meet the dual demands of work and family, and a fair shot at achieving economic security for themselves and their families.

Section 1.SHORT TITLE; FINDINGS.

- Short title. Schedules That Work Act.
- Findings. This subsection describes workers' need for a voice in their work schedules, and more predictable and stable schedules. The vast majority of the workforce is juggling responsibilities at home and at work. Women are primary or co-breadwinners in 63 percent of American families, and 26 percent of families with children are headed by single mothers. Seventy percent of workers in the U.S. today report experiencing work-family conflict. Low-wage workers, who are most likely to be raising children on their own, have the least control over their work schedules and the most unpredictable schedules. For example, 20 to 30 percent of workers in low wage jobs struggle with being required to work extra hours with little or no notice, many workers in low-wage jobs receive their schedules with very little advance notice and their hours vary from week to week or month to month; and some workers are sent home without being paid for their shift. These unfair scheduling practices make it difficult to provide care for children and other family members, including arranging for care; pursue workforce training; get or keep a second job that is needed to make ends meet; or address one's own medical condition. Retail sales, food preparation and serving, and building cleaning occupations are among those most at risk for unpredictable and unstable schedules. According to data from the Bureau of Labor Statis-

tics, 66 percent of food service workers, 52 percent of retail workers, and 40 percent of janitors and housekeepers know their schedules only a week or less in advance. At the same time, employers that have implemented fair work scheduling policies that provide more worker-driven flexibility, predictability, and stability, have experienced significant benefits, including reductions in absenteeism and workforce turnover, and increased employee morale and engagement.

Section 2.DEFINITIONS.

The bill includes the following defined terms.

- Bona fide business reason. The reasons an employer can deny an employee's request for a schedule change include, but are not limited to, additional costs as a result of lost productivity, retraining or hiring employees, or transferring employees from one facility to another facility; a detrimental effect on the employer's ability to meet organizational need or customer demand; the inability of the employer, despite best efforts, to reorganize work among existing staff; insufficiency of work during the periods the employee proposes to work; the need to balance competing scheduling requests when it is not possible to grant all such requests without a significant detrimental effect on the employer's ability to meet organizational need; or such other reasons as may be specified by the Secretary of Labor.

- Career-related educational or training program. This term refers to those programs that provide academic education, career and technical education, or training, that is a program that leads to a recognized post-secondary credential and provide career awareness information.
- Caregiver. An employee is considered a caregiver if the employee provides significant, ongoing care for a child, a family member with a serious health condition, or a parent over the age of 65.
- Child or children. A biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis to that child, who is under 18 years of age or age 18 or older and incapable of self-care because of a mental or physical disability.
- Covered employer. Employers who employ 15 or more employees are covered by the Act. For the purposes of this Act, the number of employees includes full time, part time and temporary employees who are employed by an employer.
- Domestic partner. The person recognized as being in a relationship with an employee under any domestic partnership, civil union, or similar law of the State or political subdivision of a State in which the employee resides.
- Family relationship. This refers to an employee's relationship with a child, spouse, domestic partner, parent, grandchild, grandparent, sibling, or parent of a spouse or domestic partner.
- Grandchild. The child of an employee's child.
- Grandparent. The parent of an employee's parent.
- Parental relationship. An employee is in a parental relationship when the employee assumes the obligations of a parent before the child reached adulthood.
- Part-time employee. An individual who works fewer than 30 hours per week on average during any one-month period is considered part-time for purposes of this bill.
- Retail, food service, or cleaning employee. An individual employee who is employed in retail sales, food preparation and serving, and building cleaning occupations, as defined by the Bureau of Labor Statistics Standard Occupational Classification System.
- Sibling. An employee's brother or sister, regardless of whether they are related through half-blood, whole blood, adoption, or a step sibling.
- Split shift. A split shift is a schedule in which the hours worked are not consecutive, except that a schedule in which the total time out for meals does not exceed one hour shall not be treated as a split shift. And a shift with nonconsecutive hours is not a split shift if the employee requests the break in shift.
- Spouse. An employee's spouse is an individual to whom the employee is legally married, by the laws of any state.
- Two-week work period. The two-week work period is 14 continuous calendar days.
- Work schedule. An employee's work schedule is the days and times within a work period that the employee is required to work.
- Work schedule change. Any modification to an employee's schedule is a work schedule change.
- Work shift. An employee's shift is the specific hours of the day the employee works.
- Activity affecting commerce, commerce, employ, employee, employer, industry, parent, secretary, and serious health condition. These terms have the meanings given the terms in section 101 of the Family and Medical Leave Act of 1993.

Section 3. RIGHT TO REQUEST AND RECEIVE A FLEXIBLE, PREDICTABLE OR STABLE WORK SCHEDULE.

The Schedules That Work Act ensures that employees have meaningful input into their schedules.

- All employees who work for an employer with 15 or more employees have a right to request, free from retaliation, a change in the terms and conditions of employment as they relate to:
 - o The number of hours the employee is required to work or be on call for work;
 - o The times when the employee is required to work or be on call for work;
 - o The location where the employee is required to work;

- o The amount of notification the employee receives of work schedule assignments; and
- o Minimizing fluctuations in the number of hours an employee is scheduled to work on a daily, weekly, or monthly basis.
- After an employee makes a request, employers must engage in a timely, good faith interactive process with the employee, which includes a discussion of potential changes that would meet the employee's needs.
- The interactive process must result in the employer either granting or denying the request. In the event of a denial, the employer must tell the employee its reasons.
- If an employee makes a request because of a serious health condition of the employee, responsibilities as a caregiver, enrollment in education or workforce training, or if a part-time employee makes a request to accommodate a second job, the employer must grant the request unless the employer has a bona fide business reason for denying it.

Section 4. REQUIREMENTS FOR REPORTING TIME PAY, SPLIT SHIFT PAY, AND ADVANCE NOTICE OF WORK SCHEDULES.

The Schedules That Work Act will enhance schedule stability and predictability for retail, food service, and cleaning employees by requiring reporting time pay, split shift pay, and advance notice of work schedules.

Section 4(a). - Reporting Time Pay. An employer must pay a retail, food service, or cleaning employee for:

- At least 4 hours when the employee reports for work at the employer's instruction but is given less than four hours of work (unless the employee is scheduled for less than four hours, in which case the employee must be paid for the scheduled hours); or
- At least 1 hour when the employee must contact the employer or wait to be contacted by the employer less than 24 hours in advance of the start of a potential shift to determine whether the employee must report to work.

Section 4(b). - Split Shift Pay Requirements. An employer must pay a retail, food service, or cleaning employee for one hour of additional pay if:

- The employee is required to work a schedule in which the hours are not consecutive, except that a schedule where the total time out for meals does not exceed one hour is not a split shift.
- A shift with nonconsecutive hours is not a split shift if the employee requests the break in shift.

Section 4(c). ADVANCE NOTICE REQUIREMENTS. The Schedules That Work Act requires employers to provide the following forms of notice to a retail, food service, or cleaning employee:

- On or before an employee's first day of work, the employer must provide in writing to the employee the employee's work schedule and a statement of the minimum number of expected work hours that the employee will be assigned per month.
- If the employee's schedule or minimum number of expected hours changes, the employer must provide the employee with his or her new schedule or minimum number of hours (whichever is changing) at least 14 days before the change goes into effect.
- Employers can make changes to work schedules, including by offering additional hours, but if an employer changes a shift with less than 24 hours notice to the employee, the employer must provide one extra hour of pay. However, if the change is the result of the unforeseen availability of a different retail, food service, or cleaning employee previously assigned to that shift or is the result of voluntary employee shift trading, the employer is not required to provide the extra hour of pay.
- Notifications to employees regarding their schedules and any changes thereto must be in writing, and employers employing retail, food service, or cleaning employees must post schedules in a conspicuous location.

Section 5. PROHIBITED ACTS.

The bill includes strong anti-retaliation provisions to ensure that employees can exercise the rights provided by the Schedules That Work Act free from interference

and retaliation.

- Employers cannot discharge, threaten to discharge, demote suspend, reduce work hours, or take any other adverse employment action against an employee for exercising his or her rights.
- For purposes of the right to request, retaliation includes taking any adverse employment action against an employee based on eligibility or perceived eligibility to request or receive a change in the terms and conditions of employment because of the employee's serious health condition, caregiver status, enrollment in education or workforce training, or for a part-time employee, holding a second job.
- Employers cannot discriminate or retaliate against individuals who file a charge, institute or cause a proceeding to be instituted; give information related to an inquiry or proceeding; or testify in an inquiry or proceeding related to a right provided for by the Act.

Section 6. REMEDIES AND ENFORCEMENT.

The Act provides the following remedies and mechanisms for enforcement.

- The Schedules That Work Act will be enforced by the U.S. Secretary of Labor using the same investigative authority and subpoena powers as under the Fair Labor Standards Act. The Secretary may also bring action in court.
- The Board of Directors of the Office of Compliance, The President & Merit Systems Protection Board, OPM, the Librarian of Congress, and the Comptroller General also have investigative authority with respect to employees under their jurisdictions.
- Employees may bring a private right of action against any employer who retaliates against them for exercising their rights. A retail, food service, or cleaning employee may bring a private right of action against an employee who interferes with, restrains, or denies the employee's exercise or attempt to exercise their rights under Section 4. The court can award lost pay, interest, compensatory damages, liquidated damages, and equitable relief, including but not limited to, employment, reinstatement, and promotion. The court may also award attorneys' fees, reasonable expert witness fees, and costs.

Section 7. NOTICE AND POSTING.

Employers must post information regarding the pertinent provisions of the Act and how to file a complaint in a conspicuous location. Employers who willfully violate the notice requirements may be fined up to \$100 for each separate offense.

Section 8. REGULATIONS.

- The Secretary of Labor is directed to issue regulations implementing the Schedules That Work Act within 180 days of enactment.
- The Board of Directors of the Office of Compliance, the President & Merit Systems Protection Board, OPM, the Librarian of Congress, and the Comptroller General are directed to issue regulations with respect to employees under their jurisdictions. The Senate version requires that these entities must consider their existing FMLA enforcement and remedies requirements and that the regulations they issue under this Act be the same as the Department of Labor's, unless there is good cause that a modification would be more effective for implementing the Act's rights and protections.

Section 9. RESEARCH, EDUCATION, AND TECHNICAL ASSISTANCE PROGRAM.

The Schedules That Work Act provides for research, education, and technical assistance, including the following:

- Guidance issued by the Secretary of Labor regarding how employers can comply with the Schedules That Work Act and how to provide a flexible, predictable, or stable working environment through changes in employee terms and conditions of employment.
- Continuing research, education, and technical assistance by the Secretary of Labor, including by conducting pilot programs that implement fairer work schedules through various means; publishing findings of studies and other materials promoting compliance with the Act; sponsoring and assisting state and community programs; and providing technical assistance on compliance.

- A GAO study on the prevalence of challenging scheduling practices in occupations other than retail sales, food preparation and serving, or building cleaning, the impact on employees and employers.

Section 10. RIGHTS RETAINED BY EMPLOYEES.

The Act provides for minimum requirements, and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy or standard that provides for greater rights.

Section 11. EXEMPTION.

If there is a collective bargaining agreement that governs scheduling practices, that agreement controls.

Section 12. EFFECT ON OTHER LAW.

Nothing in the Act should be construed to create or impose any requirement in conflict with any Federal or State law, rule, or regulation, or to diminish or impair the rights of an employee under any valid collective bargaining agreement or any existing state or federal law.