

EMPLOYMENT

FACT SHEET

Recently Introduced and Enacted State and Local Fair Scheduling Legislation

April 2015

Employees increasingly face just-in-time scheduling practices, including being given very little notice of their work schedules, being sent home early when work is slow without being paid for their scheduled shifts, and being assigned to call-in shifts or on-call shifts that require them to call their employer or wait to be called by their employer, often within two hours of their potential shift, to find out whether they will be required to report to work.¹ In addition, many employees have very little ability to make adjustments to their work schedules without penalty. More than a third of parents say they have been “passed over” for a promotion, a raise, or a new job due to a need for a flexible work schedule.² Among low-wage workers, about half report having little flexibility in the hours that they work.³

There is a growing movement to improve workplace scheduling practices so that workers and their families can better plan their lives. In the past year, lawmakers have introduced legislation at the federal, state and local level to respond to these difficult scheduling practices. In 2014, San Francisco passed a Retail Workers’ Bill of Rights.⁴ The Ordinance provides scheduling protections for employees in certain types of jobs. Also in 2014, Michigan introduced a bill modeled after the federal scheduling legislation that was introduced earlier that same year, the Schedules That Work Act.⁵ And in 2015, California, Connecticut, Illinois, Indiana, Maryland, Massachusetts, Minnesota, New York and Oregon introduced bills to curb difficult scheduling practices.⁶ This fact sheet provides an overview of this recently enacted and proposed state and local legislation.

Enacted Scheduling Legislation

San Francisco

The San Francisco Retail Workers Bill of Rights was passed by the San Francisco Board of Supervisors on a unanimous 10-0 vote on December 5, 2014 and became effective on January 5, 2015.⁷ It applies to “formula retail” establishments, which are defined as retail stores, fast food businesses, restaurants, hotels and banks with 11 or more similar stores nationwide, which also have at least 20 employees in San Francisco.

The Ordinance provides:

- **Advance notice of schedules.** Employers are required to post schedules of hourly workers two weeks in advance and communicate any changes to their employees. If an employer makes changes to the posted schedule with less than seven days’ notice but more than 24 hours’ notice, the employee receives one extra hour of pay in addition to the hours worked for each shift that is changed. If the employer changes the schedule within 24 hours of the scheduled shift, the employee receives four hours of additional pay, in addition to the hours worked.
- **Promotion of full-time work.** Employers with additional hours of work must offer those hours first to existing, qualified, part-time staff before hiring new employees.
- **Limits on the use of on-call shifts.** The Ordinance requires formula retail employers to pay employees for at least 4 hours at an hourly employee’s regular

rate when an employer requires an employee to be “on-call” or schedules an employee to work fewer than four hours, regardless of the number of hours actually worked.

- **Part-time parity.** Formula retail employers are prohibited from discriminating against part-time employees with respect to rate of pay, ability to earn paid or unpaid time off, or access to promotion opportunities. It also prohibits employers from requiring employees to have open availability to receive full-time status.
- **Greater job security.** If a formula retail business is sold, the Ordinance requires that workers be retained for at least a 90-day trial period after the sale.
- **Exceptions.** The employer is not required to provide additional pay to the employee for schedule changes that the employee requests, such as employee-requested sick leave, time off, shift trades, or additional shifts, or when the change is a result of another employee’s inability to work that shift and the employer did not receive at least seven days’ notice of the absence. It also does not apply when operations cannot begin or continue due to threats to employees or property, a failure in the public utilities or sewer system, or an Act of God or other causes not within the employer’s control.

Introduced Scheduling Legislation

California

On February 17, 2015, the Fair Schedule and Pay Equity Act was introduced in California. It would apply to large food and general retail establishment employers (those with 500 or more California employees).⁸ The bill provides:

- **Advance notice of schedules.** The bill would require two weeks’ advance notice of schedules for workers. If the employee is not provided with at least two weeks’ notice, the employee would receive additional pay. The Labor Commissioner would be charged with promulgating rules and regulations regarding the amount of additional pay that would be required.
- **Exception.** The employer would not be required to provide additional pay for changes to an employee’s work schedule made at the request of the employee.
- **A say in work schedules.** The bill would require employers to allow employees to request to be absent from work without pay to attend any required

appointments at a county human services agency, provided that the employee gives reasonable notice of the planned absence from work prior to taking time off work.

- **Exceptions.** The employer would not be required to provide additional pay for schedule changes when operations could not begin or continue due to threats to employees or property, failure of the public utilities, or an act of God beyond the employer’s control or when the change is the result of a voluntary shift trade. Employers also do not have to provide additional pay to a worker whose schedule is changed because another employee previously scheduled to work does not report to work, or is unable to work due to illness, vacation, or employer-provided paid or unpaid time off.

Connecticut

On February 26, 2015, An Act Concerning Predictable Scheduling was introduced in Connecticut. It would apply to all employers.⁹ The bill provides:

- **Advance notice of schedules.** The bill would require employers to provide hourly employees with their work schedules a minimum of 21 days in advance. If an employer changes the schedule after it is posted, but with more than 24 hours’ notice, the employer would be required to pay the employee one hour of additional pay at the employee’s regular rate for each changed shift. Shifts may only be added after the schedule is posted with the employee’s written consent, and if an employee is unable to work a scheduled shift, the employer is prohibited from requiring the employee to search for a replacement employee. If an employer changes an employee’s shift with less than 24 hours’ notice, the employer would be required to pay the employee four hours of additional pay at the employee’s regular rate, in addition to pay for any hours worked. This would apply, for example, if an employer sent a worker home early without previous notice.
- **Limits on use of on-call shifts.** If an hourly employee is scheduled for an on-call shift, that employee would receive at least four hours of pay, even if the employee was not called in or worked fewer than four hours.
- **Limits on overwork.** The bill would permit hourly employees to refuse to work any shift occurring 11 hours or fewer after the end of a previous shift, or following the end of a shift that began prior to

midnight and ended after midnight on consecutive days. If an employee works such a shift, that employer would be required to pay the employee at the overtime rate.

Illinois

On March 27, 2015, House Bill 3554 was introduced in Illinois. It would apply to all employers.¹⁰ The bill provides:

- **A say in work schedules.** The bill would give employees the right to request changes in the terms and conditions of employment related to the number of hours the employee is required to work or be on call, the time and location of work hours, the prior notice the employee receives of work schedules and assignments, and the need to minimize changes in the number of hours the employee is scheduled to work on a daily, weekly, or monthly basis. It would require employers and employees to engage in a good faith interactive process to determine whether those requests could be granted. In the event of a denial of an employee's request, the employer would be required to state the reason for the denial and consider alternatives to the change proposed by the employee.

Indiana

On January 12, 2015, the Employee's Right to Scheduled Employment was introduced in Indiana. It would apply to all employers.¹¹ The bill provides:

- **Advance notice of schedules.** The bill would require an employer to post work schedules of hourly employees with at least 7 days' notice.
- **Reporting time pay.** If an hourly employee is sent home without working the hours in the employee's scheduled shift, the employer would be required to pay the employee for at least half of the hours in the shift that the employee was not permitted to work.

Maryland

On February 13, 2015, two scheduling bills were introduced in Maryland. The Fair Scheduling Act and the Right to Rest Act, respectively, provide workers with more predictable schedules and protections from overwork.¹² The bills would apply to all employers. Together, these bills provide:

- **A say in work schedules.** The Fair Scheduling Act would permit employees to request that the employer

change the employee's work schedule, honor employees' limitations on their availability to work, and consider employees' scheduling preferences.

- **Limits on overwork.** The Right to Rest Act would give employees who work extremely long hours a modicum of control over their schedules. Specifically, it would permit an employee to decline an employer's request to work: more than 6 consecutive days; more than 55 hours in a work week; during hours that occur less than 11 hours after the end of the preceding shift, or; during the 11 hour period immediately following the end of a shift that spanned two days. If the employee did work in the aforementioned conditions, the employer would be required to pay that employee at the overtime rate.
- **Advance notice of schedules.** The Fair Scheduling Act requires employers to provide schedules 21 days in advance and provide between one and four hours of additional pay at the employee's regular rate when workers are sent home early or if shifts are changed or cancelled after the three-week schedule is posted. If the employer changes a shift within 24 hours of that shift, the employer must pay the equivalent of four hours' wages in addition to the hours worked. Employers could add shifts only with the employee's consent, and employers could not require employees to find a replacement for scheduled shifts the employee is unable to work.
- **Exception.** The employer would not be required to provide additional pay for changes to an employee's work schedule made at the request of the employee.
- **Limits on use of on-call shifts.** If an employee is scheduled for an on-call shift, that employee would receive at least four hours' pay, even if the employee was not called in or worked fewer than four hours.
- **Reporting time pay.** If an employee reports to work, but is sent home early, the Fair Scheduling Act would require at least four hours' of pay at the employee's regular rate.

Massachusetts

Two bills to protect workers from difficult scheduling practices have been introduced in Massachusetts.

On January 15, 2015, the Massachusetts House introduced an act establishing just schedules for employees.¹³ The bill would apply to all employers, and provides:

- **Advance notice.** The bill requires employers to provide hourly employees with their schedules 21 days in advance. If the employer cancels or changes a shift less than 21 days but more than 24 hours before the first scheduled hour of the shift, the employer must provide one hour of additional pay at the employee's regular rate. If the employer changes a shift within 24 hours of that shift, the employer must pay the equivalent of four hours' wages in addition to the hours worked. Employers could add shifts only with the employee's consent, and employers could not require employees to find a replacement for scheduled shifts the employee is unable to work.
- **Exceptions.** The employer would not be required to provide additional pay for changes to an employee's work schedule made at the request of the employee.
- **Reporting time pay.** When an hourly employee is sent home from work early without being permitted to work his or her scheduled shift, or is notified within 24 hours of the start of any shift that the shift has been shortened or the employee is not required to report to work, the bill would require the employee to be paid at the employee's regular rate for a minimum of four hours of work or the hours in the scheduled shift, whichever is less.
- **A say in work schedules.** Hourly employees have the right to request changes their work schedules, to limit their availability to work particular hours, or otherwise provide input into their work schedules.
- **Limits on overwork.** Employees would be permitted to decline work hours that occur less than 11 hours after the end of the previous day's shift or during the 11 hours following the end of a shift that spans two days. If an employee works such a shift, the employer would be required to compensate that employee at one-and-a-half times the employee's regular hourly rate.

On January 16, 2015, the Massachusetts Senate introduced an act establishing fair scheduling for employees in the Commonwealth.¹⁴ The bill would apply to fast food restaurants and retail stores that individually or through franchisor or franchisee relationships employ more than 75 people, and instructs the Executive Office of Labor and Workforce Development to establish rules on:

- **Advance notice.** The bill directs the Executive Office of Labor and Workforce Development to create a rule

establishing a notification table that employers must use to notify employees of changes, cancellations, additions, and reductions in hours worked or days scheduled. The rule would also include a requirement that employers provide additional pay for any changes made within 14 days of a scheduled shift.

Michigan

On October 22, 2014, the Employee Scheduling Accommodation Act was introduced in Michigan.¹⁵ The bill is divided into two sections: the right to request would apply to all employers with at least 15 employees, while the remainder of the bill would cover only retail, restaurant, and building cleaning employees who work for an employer with at least 15 employees. The bill provides:

- **A say in work schedules.** Employers would be required to consider employee requests for schedule changes and provide a response, and would be prohibited from retaliating against workers for requesting schedule changes. For those employees who request a change to fulfill caregiving responsibilities; (for part-time workers) to work a second job; to pursue education and workforce training; or to address 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.

For shift workers in certain jobs where abusive scheduling practices are especially well-documented—restaurant, retail, and building cleaning—the bill would provide additional workplace protections.

- **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 at the employee's regular rate for a minimum of four hours of work or the hours in the scheduled shift, whichever is less.
- **Limits on the use of on-call shifts.** If an employee is required to call in less than 24 hours before the start of a potential shift to learn whether the employee is scheduled to work, the bill would require the employee to be paid one hour of pay at the employee's regular rate, in addition to pay for any hours actually worked.
- **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 provide an extra one hour of pay at the employee's regular rate.

- **Advance notice of schedules.** When an employee is hired, the bill would require the employer to disclose the minimum hours an employee will be scheduled to work. In addition, the bill would require an employer to provide an employee with his or her work schedule two weeks in advance. If changes are made to the 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 at the employee's regular rate.
- **Exceptions.** Employers are not required to provide additional pay for schedule changes during periods when regular operations of the employer are suspended due to events beyond the employer's control.

Minnesota

On February 23, 2015 the Fair Scheduling Act was introduced in the Minnesota House and Senate. The bills would apply to employers with at least 20 employees.¹⁶ The bills provide:

- **A say in work schedules.** The bills would give employees the right to request a flexible working arrangement, free from retaliation. They would require the employer to consider the request and engage in a good faith interactive process with the employee, and notify the employee of its decision. For those employees requesting a schedule change because of a serious health condition of the employee, the employee's responsibility as a caregiver, or the employee's enrollment in a career-related training program, or (for a part-time employee) for a reason related to a second job, the employer must grant the request.
- **Advance notice of schedules.** The bills would require employers to provide hourly employees with their schedules a minimum of 21 days in advance. If an employer changes the schedule after the schedule is posted, but with more than 24 hours' notice, the employer would be required to pay the employee one hour of additional pay at the employee's regular rate for each changed shift. Shifts could only be added with the employee's written consent. If an employee is unable to work a scheduled shift, the employer could not require the employee to find a replacement. If, within 24 hours of the start of a shift, the employer subtracts or adds hours from the shift, cancels the shift, or changes the shift's start or end time, the employer would be required to pay the employee at least four hours of additional pay, in addition to any hours worked.
- **Limits on use of on-call shifts.** If an hourly employee is scheduled for an on-call shift, that employee would receive at least four hours' of pay, even if the employee was not called in or worked fewer than four hours.
- **Limits on overwork.** The bills would permit hourly employees to decline an employer's request to work more than 6 consecutive days, more than 55 hours in a work week, during hours that occur less than 11 hours after the end of the preceding shift, or during the 11-hour period immediately following the end of a shift that spanned two days. If the employee consented to work and did work in the aforementioned conditions, the employer would be required to pay that employee at the overtime rate.
- **Part-time parity.** The bills prohibit employers from discriminating against part-time employees in terms of pay, eligibility for leave or time off, or eligibility for raises or promotion.
- **Promotion of full-time work.** If an employer has additional hours of work available, the bill would require employers to offer those hours to qualified, current part-time employees before hiring new employees.
- **Exceptions.** Employers changing a schedule with less than three weeks' notice would not be required to provide additional pay to an employee when the scheduling change was the result of the employee's request, the result of a mutually-agreed-upon shift trade between or among employees, or when the employer's operations are suspended due to threats to employees or property, when civil authorities have recommended closing, due to failure of public

New York

New York introduced two different pieces of scheduling legislation in 2015.

On January 21, 2015, the New York Assembly introduced A3055 and on January 23, 2015, the New York Senate introduced S2414.¹⁷ These identical bills would apply to all employers and provide:

- **A say in work schedules.** The bills would give employees the right to request a flexible working arrangement, free from retaliation. Flexible working arrangement is defined as intermediate or long-term changes in the employee's regular working arrangements, including, but not limited to, changes in the number of days or hours worked, changes in the time the employee arrives at or departs from work, work from home, or job-sharing. It does not include vacation, routine scheduling of shifts, or another form of employee leave. Upon receiving such a request, employers would be required to discuss the request with the employee, consider the request, determine whether it could be granted in a manner not inconsistent with business operations or its legal or contractual obligations, and notify the employee of the decision in a timely manner. There is no requirement that the employer accept the flexible working arrangement of the employee.

On January 7, 2015 the New York Assembly and New York Senate both introduced an act to amend the labor law, in relation to providing more predictable and stable schedules for employees in low-wage jobs.¹⁸ The bill, which has since been withdrawn, amends New York's reporting time pay law and provides:

- **Limits on the use of on-call shifts.** The bills would require employers to pay hourly employees at least four hours at the minimum wage for each day the employee is given specific instructions to contact the employee's employer, or wait to be contacted by the employer, less than twenty-four hours in advance of the start of the potential work shift to determine whether the employee must report to work for such shift.

Oregon

On January 16, 2015, House Bill 3377 and Senate Bill 888 were introduced in Oregon.¹⁹ An amended version, House Bill 3377, was subsequently introduced in the House, and an identical bill was introduced in the Senate.²⁰ The bills would apply to all employers, and

provide:

- **A say in work schedules.** The bills would permit employees to request flexible, predictable, or stable schedules from their employer, free from retaliation. They would require employers to engage in a timely, interactive process with the requesting employee. Requests made because of a serious health condition of the employee, caregiving responsibilities, a second job, or participation in a workforce training program would have to be granted, unless there was a bona fide business reason for denial. If an employee is unable to work a scheduled shift, the employer would not be permitted to require the employee to find a replacement employee to work that shift.
- **Advance notice.** The bills would require: three weeks' advance notice of work schedules; upon hire, disclosure of the number of hours an employee can expect to work; one hour of additional pay for each shift changed with less than 21 days' notice but more than 24 hours' prior notice; and four hours of additional pay for changes made with less than 24 hours' notice. The bills prohibit employers from requiring employees to work hours not included in the initial work schedule, unless the employee consents to the additional hours in writing, and prohibit employers from requiring an employee to find another employee to cover hours during which the employee is unable to work a scheduled shift.
- **Limits on the use of on-call shifts and split shifts.** Employers would be required to pay an employee for four hours at the employee's regular rate, in addition to the compensation owed to the employee for the hours actually worked if the employee is required to contact the employer or be available to be contacted by the employer at any time within 72 hours prior to the time the employee is expected to work to ascertain whether the employee is required to work that shift, or if the employee is required to work a split shift, defined as one or more shifts in one 24-hour period in which the hours worked are not consecutive. A work break of less than one hour is not a split shift.
- **Reporting time pay.** If an employee reports to work, but is sent home early, the bill would require that the employee be paid at the employee's regular rate for at least four hours of pay, or the number of hours of pay employee was scheduled to work, whichever is less, regardless of the hours worked. In the event

that an employee is unable to perform the work the employee was scheduled to perform, due to circumstances beyond the employer's control, the employer is not required to provide reporting time pay.

- **Exceptions.** An employer is not required to provide extra pay to the employee when an employer makes a scheduling change at the request of the employee (e.g., for leave or other purposes) or when the work shift change results from an employee working in place of a previously scheduled employee if both employees have agreed to the change.

¹ See generally, NATIONAL WOMEN'S LAW CENTER (NWLC), COLLATERAL DAMAGE: SCHEDULING CHALLENGES FOR WORKERS IN LOW-WAGE JOBS AND THEIR CONSEQUENCES (Apr. 2014), available at http://www.nwlc.org/sites/default/files/pdfs/collateral_damage_scheduling_fact_sheet.pdf.

² White House Council of Economic Advisers, *Nine 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.

³ LIZ WATSON & JENNIFER SWANBERG, FLEXIBLE WORKPLACE SOLUTIONS FOR LOW-WAGE HOURLY WORKERS: A FRAMEWORK FOR A NATIONAL CONVERSATION 19-20 (May 2011), available at <http://workplaceflexibility2010.org/images/uploads/whatsnew/Flexible%20Workplace%20Solutions%20for%20Low-Wage%20Hourly%20Workers.pdf>.

⁴ San Francisco Ordinance No. 241-14 (Nov. 18, 2014), available at <http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances14/o0241-14.pdf>.

⁵ S. Bill 1112, The Employee Scheduling Accommodation Act (Mich. 2014), available at <http://www.legislature.mi.gov/documents/2013-2014/billintroduced/Senate/pdf/2014-SIB-1112.pdf>; S.2642, H.R. 5159, available at <https://www.govtrack.us/congress/bills/113/hr5159>.

⁶ San Francisco Ordinance No. 241-14 (Nov. 8, 2014); S. Bill 1112, The Employee Scheduling Accommodation Act (Mich. 2014); Assembly Bill No. 357, Fair Schedule and Pay Act (Cal. Feb. 17, 2015); General Assembly Bill No. 6933, An Act Concerning Predictable Scheduling for Employees (Ct. Jan. 2015); Illinois House Bill 3554 (2015); Senate Bill No. 416, 119th General Assembly Employee's Right to Scheduled Employment (In. 2015); H.R. 969, S.B. 688, Fair Scheduling Act (Md. 2015); S.F. No. 1330, Fair Scheduling Act, State of Minnesota 89th Session (2015); New York Assembly A3055 (Jan. 21, 2015), available at http://assembly.state.ny.us/leg/?default_fld=&bn=A03055&term=2015&Summary=Y&Text=Y; New York Senate 2414 (Jan. 23, 2015), available at http://assembly.state.ny.us/leg/?default_fld=&bn=S02414&term=2015&Summary=Y&Text=Y; H.R. 2010, 78th Leg. Assembly (Or. 2015).

⁷ San Francisco Ordinance No. 241-14 (Nov. 18, 2014), available at <http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances14/o0241-14.pdf>.

⁸ Assembly Bill No. 357, Fair Schedule and Pay Act (Cal. Feb. 17, 2015), available at http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=20150160AB357&search_keywords=.

⁹ General Assembly Bill No. 6933, An Act Concerning Predictable Scheduling for Employees (Ct. Jan. 2015), available at <http://www.cga.ct.gov/2015/TOB/H/2015HB-06933-R00-HB.htm>.

¹⁰ House Bill 3554, 99th General Assembly (Il. 2015), available at <http://www.ilga.gov/legislation/fulltext.asp?DocName=09900HB3554ham001&GA=99&LegID=89743&SessionId=88&SpecSess=0&DocTypeId=HB&DocNum=3554&GAID=13&Session=>.

¹¹ Senate Bill No. 416, 119th General Assembly Employee's Right to Scheduled Employment (In. 2015), available at <https://iga.in.gov/legislative/2015/bills/senate/416#document-cd799e76>.

¹² H.R. 969, S.B. 688, Fair Scheduling Act (Md. 2015), available at <http://mgaleg.maryland.gov/2015RS/bills/hb/hb0969f.pdf>; see also H.R. 1027, Overwork Prohibition Act (Md. 2015), available at <http://mgaleg.maryland.gov/2015RS/bills/hb/hb1027f.pdf>.

¹³ H.D. No. 1708 (Mass. 2015), available at <file:///C:/Users/ejohnston/Downloads/BillH1708.pdf>.

¹⁴ S. Docket No. 1829 (Mass. 2015), available at <http://www.clasp.org/resources-and-publications/publication-1/SD1829-An-act-establishing-fair-scheduling-in-the-Commonwealth.pdf>.

¹⁵ S. Bill 1112, The Employee Scheduling Accommodation Act (Mich. 2014), available at <http://www.legislature.mi.gov/documents/2013-2014/billintroduced/Senate/pdf/2014-SIB-1112.pdf>.

¹⁶ S.F. No. 1330, Fair Scheduling Act, State of Minnesota 89th Session (2015), available at <https://legiscan.com/MN/text/SF1330/2015>.

¹⁷ H.R. 3377 & S. 888, 78th Leg. Assembly (Or. 2015), available at http://assembly.state.ny.us/leg/?default_fld=&bn=A03055&term=2015&Summary=Y&Text=Y; New York Senate 2414 (Jan. 23, 2015), available at http://assembly.state.ny.us/leg/?default_fld=&bn=S02414&term=2015&Summary=Y&Text=Y.

¹⁸ New York Assembly A261 (Jan. 7, 2015), available at <http://assembly.state.ny.us/leg/?term=2015&bn=A00261>; New York Senate S52 (Jan. 7, 2015), available at http://assembly.state.ny.us/leg/?default_fld=&bn=S00052&term=2015&Summary=Y&Text=Y.

¹⁹ H.R. 2010, 78th Leg. Assembly (Or. 2015), available at <https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureDocument/HB2010/Introduced>.

²⁰ H.R. 3377, S. 888, 78th Leg. Assembly (Or. 2015).