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**National Women's Law Center
In Support of Assembly Bill 357
The Fair Scheduling Act of 2015**

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Labor and Employment
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Thank you for the opportunity to submit this testimony on behalf of the National Women's Law Center in Support of Assembly Bill 357, the Fair Scheduling Act. The National Women's Law Center has been working since 1972 to secure and defend women's legal rights, and to help women and families achieve economic security. The Fair Scheduling Act provides crucial protections from difficult scheduling practices that undermine workers' ability to provide for themselves and their families. These protections are particularly important to women, who make up nearly 62 percent of California's low-wage workforce, where difficult scheduling practices are most common.¹

The demographics and needs of the workforce have changed. In California, 57 percent of women over the age of 16 are in the labor force.² Nationwide, 82 percent of children live in households where all parents work.³ Working mothers are primary breadwinners in 41 percent of families with children, and they are co-breadwinners—bringing in between 25 percent and 50 percent of family earnings—in another 22 percent of these families.⁴ Twenty-two percent of family households in California are headed by single mothers—in these families, there is no other parent with whom to share caregiving responsibilities.⁵ And, nearly 40 percent of these female-headed families in California are living in poverty.⁶

Women's income is more critical than ever before to families' economic security. Yet, too many women workers are barely scraping by. Working women in California are 1.9 times more likely to have a low-wage job than a working man.⁷ Indeed, over 20 percent of women in California's workforce work in low-wage jobs, as compared to ten percent of men.⁸ Low wages make it hard for workers to support themselves and their families, but wages are not the only problem. Low-wage jobs are all too often marked by work scheduling policies and practices that pose particular problems for workers with responsibilities outside of their jobs, including caregiving, pursuing education and workforce training, or holding down a second job.⁹ For many, work schedules are unpredictable, unstable, and inflexible. Some require working evenings, weekends, or even overnight, and many offer only part-time work, despite many workers' desire and need for full-time hours.

With the law on your side, great things are possible.

With this bill, California becomes part of a nationwide movement to improve workplace scheduling practices so that workers and their families can better plan their lives. In July of 2014, Congress introduced the Schedules that Work Act.¹⁰ In December of 2015, the Retail Workers Bill of Rights, which provides scheduling protections for workers in certain types of jobs, was passed by the San Francisco Board of Supervisors on a unanimous 10-0 vote.¹¹ And Connecticut,¹² Maryland,¹³ Minnesota,¹⁴ Indiana,¹⁵ Illinois,¹⁶ Michigan,¹⁷ New York,¹⁸ and Oregon¹⁹ have all recently introduced legislation to curb abusive scheduling practices. Such legislation is essential given the rapid growth in just-in-time scheduling practices and in the low-wage jobs in which these practices are so widespread.

I. Work Scheduling Practices that Fail to Take Workers' Lives into Account Undermine Workers' Best Efforts to Provide for Themselves and Their Families

The fallout from scheduling practices that do not take workers' needs into account can be devastating.²⁰ Difficult scheduling practices undermine workers' efforts to fulfill their caregiving responsibilities and make maintaining stable child care nearly impossible. 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. 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. And workers managing serious medical conditions are often denied the control over their schedules that they need to manage their health.

A. Having Little Say in Their Schedules Makes it Nearly Impossible for Workers to Plan Their Lives

Nationwide, workers across the income spectrum 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.²¹ Overall, less than half of workers have flexibility in the scheduling of their work hours.²² More than a third of parents believe they have been "passed over" for a promotion, raise, or a new job due to a need for a flexible work schedule.²³

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.²⁴ 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 achieve full-time status.²⁵ 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.²⁶

B. Little Advance Notice of Schedules Means the Only Plans Workers Can Make Are Those They Can Break

Providing notice of work schedules a week or less in advance is common in many industries. According to research analyzing the work schedules of a representative sample of early-career adults (26-32 years old), over a third (38 percent) of early career employees overall knew their work schedule one week or less in advance.²⁷ And such short notice was significantly more common among hourly workers (41 percent) than others (33 percent), and among part-time (48 percent) than full-time workers (35 percent).²⁸ Another survey found that, among all low-wage workers, between 19 and 31 percent are often asked to work extra hours with little or no notice.²⁹ Another practice, especially common for retail workers, is to schedule workers for “call-in shifts,” which means they must call their employers to find out whether they need to report to work that same day.³⁰ 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.³¹ These practices undermine workers’ efforts to seek education or workforce training or arrange transportation to and from work, and make it extremely difficult for part-time workers who need to hold down more than one job in order to get enough hours to make ends meet.³²

Low-wage workers’ ability to access quality, affordable and stable child care is also often compromised by unpredictable work schedules.³³ With work schedules and incomes that fluctuate from week to week, many workers have no choice but to cobble together child care at the last minute.³⁴ Because many centers require caregivers to pay a weekly or monthly fee, regardless of how often the child attends, holding a spot in a child care center is often infeasible for workers who do not know when, or even if, they will work that week. Further, workers with unstable schedules may not qualify for child care subsidies due to fluctuations in income and work hours.³⁵ Relying on family, friends, and neighbors to provide child care – as most workers in low-wage jobs must do – is complicated by the fact that their child care providers may also be balancing an unpredictable part-time work schedule at their own jobs with providing child care. When workers are unable to find child care or child care falls through, sometimes workers must miss work and lose pay. In one study, 40 to 60 percent of workers who reported missing work due to child care problems also reported losing pay or benefits, or being penalized in some way.³⁶ Another common problem that some workers report is being required to stay past their scheduled shift. In a survey of restaurant workers, nearly a third of workers reported that they had been required to stay past the end of a scheduled shift and, as a result, paid fines to child care providers for picking their children up late.³⁷

C. When the Amount of Hours Workers are Assigned Varies, it is Difficult for Workers to Meet Expenses, or Even Budget

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.³⁸ For early-career adults, hours fluctuate substantially for both hourly and non-hourly workers; but for those hourly workers who need more hours, such fluctuations can make it extremely difficult to make ends meet.³⁹ And workers in low-wage jobs, primarily women, are more likely to experience schedule variations; for example, 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.⁴⁰ Between 20 and 30 percent of low-wage workers experience a reduction in hours or a layoff when work is slow.⁴¹ Workers also report being sent home early from their scheduled shifts.⁴²

In 2013, nearly one quarter (23 percent) of part-time workers worked part-time involuntarily,⁴³ because they could not obtain full-time work.⁴⁴ 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. 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).⁴⁵

The prevalence of part-time work was exacerbated by the recession, but levels of part-time work still remain high in the recovery, which supports the notion that the trend toward part-time work in low-wage jobs is part of a broader structural change in the way that employers hire and schedule workers.⁴⁶ Some 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.⁴⁷

Variable work hours can make it extremely difficult for workers to maintain eligibility for child care subsidies that are tied to work 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 in advance how much income they will be bringing home.

II. The Fair Scheduling Act Provides Workers in Large Food and Retail Establishments with more Schedule Predictability and a Say in When They Work

Workers need a say in their schedules and they also need predictable schedules that allow them to plan their lives. This bill takes a very thoughtful and sound approach to meeting both workers' needs to be able to make some changes to the posted schedule, and their need for a more predictable schedule: It ensures that employers set schedules in advance and minimize schedule changes. Yet it also provides some flexibility for both employers and employees to make some changes to the posted schedule, which is important given that there are times when employees will not be able to work the posted schedule due to child care or other responsibilities.

The Fair Scheduling Act achieves these goals in the following way: It requires large food and general retail establishment employers (those with 500 or more California employees) to provide hourly employees with their schedules a minimum of two weeks in advance. If an employer changes a shift, cancels a shift, or adds a shift to the schedule with less than seven days' but 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. If, within 24 hours of the start of a shift, the duration of which is four hours or less, 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 two hours of additional pay, in addition to any hours worked. If an employer makes changes to a shift of more than four hours with less than 24 hours' notice, the employer must pay the employee four hours of additional pay, in addition to any hours actually worked.

This structure appropriately disincentivizes the employer from making shift changes with little notice, while leaving room for the employer to make some changes that may be needed without incurring additional expenses – e.g., no extra compensation is required for changes made with more than seven days’ notice.

Likewise, 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. In addition, employers would 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, is unable to work due to illness, vacation, or employer-provided paid or unpaid time off.

These provisions appropriately take into account that employees often need to make changes to the posted schedule for a range of reasons, including caregiving responsibilities, and the employer should not be disincentivized from granting such requests for schedule changes. Importantly, this bill ensures that employers will not be disincentivized from granting employee A’s request for time off in order to avoid being required to provide extra compensation to employee B for a shift changed with less than 7 days’ notice.

This section of the bill could be further strengthened by making clear that when employees are assigned shifts with less than either 7 days’ or two weeks’ notice, the employer must seek volunteers first to work the shift, before requiring any individual employee to work a late-changed shift. A requirement to seek volunteers first would help ensure that additional shifts are distributed to employees who are glad to have them, rather than to employees for whom a last-minute shift imposes a significant burden (for example due to the need to find last-minute child care, etc.). The Act could also be further strengthened by the inclusion of protections from retaliation for employees who make scheduling requests and a requirement that employers engage in an interactive process with employees for determining whether they are able to accommodate employee requests for changes to the schedule.

The bill contains important protections for employees assigned to on-call shifts. If an hourly employee is scheduled for an on-call shift, that employee would receive two hours of pay at the employee’s regular hourly rate for each on-call shift of four hours or less, and four hours of pay at the employee’s regular hourly rate for each on-call shift of more than four hours. This is extremely important to ensuring that employees who are assigned on-call shifts receive some minimum compensation for their time, since they may have foregone other work for the day in order to remain available to work. And it should effectively deter employers from routinely engaging in the practice of scheduling workers for on-call shifts.

For some low-wage workers, the supplemental income and support provided through public benefits is a lifeline. In order to maintain eligibility for these benefits, individuals must reliably attend required appointments or risk having their benefits cut or terminated. These protections are crucial to ensuring that employees are able to attend these appointments, without having to fear job loss. The Fair Scheduling Act would permit employees of large food and general retail establishments (those with 500 or more California employees) to be absent without pay, for up to eight hours twice a year, to attend any required appointments at county human services agency, provided that the employee gives reasonable notice of the planned absence. It would also protect employees from discrimination based on their enrollment in CalWorks cash aid and food assistance.

This bill provides a very workable solution to the need for fair work schedules – and provides much needed predictability and certainty to both employers and employees.

III. Fair Scheduling Practices are Good for Employees, Businesses, And the Bottom Line

Scheduling practices that fail to take workers' needs into account result in higher rates of turnover and absenteeism and lower worker engagement.⁴⁸ In contrast, fair scheduling leads to more productive and committed employees and lower turnover.⁴⁹ In other words, when businesses provide flexible working arrangements, they benefit. Research shows that the benefits of implementing fair scheduling practices for lower-wage workers are comparable and even greater than the benefits of providing those arrangements to their higher-wage counterparts.⁵⁰ Among the benefits are reduced absenteeism, increased retention, reduced health care costs, and increased revenue.⁵¹

IV. Conclusion

When workers have schedules that work, everyone wins. This bill is an important step toward creating workplace policies that truly work for workers and their families. We urge your support for this important legislation.

¹ NWLC, *Women in the Low-Wage Workforce by State: Women are Overrepresented in the Low-Wage Workforce in Every State 1* (2014), available at http://www.nwlc.org/sites/default/files/pdfs/pv_fs_low_wage_state_tables.pdf (2014), available at http://www.nwlc.org/sites/default/files/pdfs/collateral_damage_scheduling_fact_sheet.pdf.

² NWLC calculations based on U.S. Census Bureau, American Community Survey 2013, available at http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_13_1YR_DP03&prodType=table.

³ NWLC, *THE SCHEDULES THAT WORK ACT: GIVING WORKERS THE TOOLS THEY NEED TO SUCCEED 1* (July 2014), available at <http://www.nwlc.org/resource/schedules-work-act-giving-workers-tools-they-need-succeed>.

⁴ The share of mothers who are breadwinners or co-breadwinners has increased from 27.5 percent in 1967 to 63.3 percent in 2012. SARAH JANE GLYNN, CENTER FOR AMERICAN PROGRESS, *BREADWINNING MOTHERS, THEN AND NOW 6* (June 2014), available at <http://cdn.americanprogress.org/wp-content/uploads/2014/06/Glynn-Breadwinners-report-FINAL.pdf>.

⁵ NWLC Calculations based on U.S. Census Bureau, American Community Survey 2013, available at http://factfinder.census.gov/faces/nav/jsf/pages/guided_search.xhtml.

⁶ NWLC, Interactive Map: Women and Poverty, State by State (Sept. 2014), available at <http://www.nwlc.org/resource/women-and-poverty-state-state>.

⁷ NWLC, Interactive Map: Women and Men in the Low-Wage Workforce (July 2014), available at <http://www.nwlc.org/resource/interactive-map-women-and-men-low-wage-workforce>.

⁸ *Id.*

⁹ See generally, COLLATERAL DAMAGE, *supra* note 1; RESTAURANT OPPORTUNITIES CENTER UNITED, *THE THIRD SHIFT: CHILD CARE NEEDS AND ACCESS FOR LOW-WAGE WORKING MOTHERS IN RESTAURANTS 1-2*, (July 2013), available at <http://www.scribd.com/doc/161943672/The-Third-Shift-Child-Care-Needs-and-Access-for-Working-Mothers-in-Restaurants>.

¹⁰ Schedules That Work Act, H.R. 5159, S. 2642, 113th Cong. (2014).

¹¹ San Francisco Ordinance No. 241-14 (Nov. 18, 2014), available at <http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances14/o0241-14.pdf>.

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- ¹²General 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>
- ¹³H.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>.
- ¹⁴Minnesota Fair Scheduling Act, HF 1139 (Feb. 23, 2015), *available at* https://www.revisor.mn.gov/bills/text.php?number=HF1139&session=ls89&version=list&session_number=0&session_year=2015.
- ¹⁵Indiana Senate Bill 416 (Jan 12., 2015), *available at* <https://iga.in.gov/legislative/2015/bills/senate/416#document-cd799e76>.
- ¹⁶House 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=>
- ¹⁷Michigan Senate Bill No. 1112, Employee Scheduling Accommodation Act (Oct. 2014), *available at* <http://www.legislature.mi.gov/documents/2013-2014/billintroduced/Senate/pdf/2014-SIB-1112.pdf>.
- ¹⁸S. 52 & A 261 (N.Y. 2015), *available at* http://assembly.state.ny.us/leg/?default_fld=&bn=S00052&term=2015&Summary=Y&Text=Y.
- ¹⁹H.R. 3377, S. 888, 78th Leg. Assembly (Or. 2015).
- ²⁰*See generally*, COLLATERAL DAMAGE, *supra* note 1.
- ²¹LIZ WATSON & JENNIFER SWANBERG, FLEXIBLE WORKPLACE SOLUTIONS FOR LOW-WAGE HOURLY WORKERS: A FRAMEWORK FOR A NATIONAL CONVERSATION 6 (Workplace Flexibility 2010, May, 2011), *available at* <http://workplaceflexibility2010.org/images/uploads/whatsnew/Flexible%20Workplace%20Solutions%20for%20Low-Wage%20Hourly%20Workers.pdf>.
- ²²White 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.
- ²³*Id.*
- ²⁴WATSON & SWANBERG, *supra* note 21, at 19-20.
- ²⁵*See* Jodi Kantor, *Starbucks to Revise Policies to End Irregular Schedules for Its 130,000 Baristas*, N.Y. TIMES, Aug. 14, 2014, *available at* http://www.nytimes.com/2014/08/15/us/starbucks-to-revise-work-scheduling-policies.html?_r=0.
- ²⁶*See, e.g.*, Retail Action Project, *What You Need to Know about Erratic Scheduling: 5 trends in unpredictable retail scheduling*, *available at* <http://retailactionproject.org/advocacy/policy/erratic-scheduling/>.
- ²⁷SUSAN J. LAMBERT, PETER J. FUGIEL, AND JULIA R. HENLY, PRECARIOUS WORK SCHEDULES AMONG EARLY-CAREER EMPLOYEES IN THE US: A NATIONAL SNAPSHOT 6 (Aug. 2014), *available at* http://ssascholars.uchicago.edu/work-scheduling-study/files/lambert.fugiel.henly_precarious_work_schedules.august2014.pdf.
- ²⁸*Id.*
- ²⁹WATSON & SWANBERG, *supra* note 21, at 21.
- ³⁰STEPHANIE LUCE & NAOKI FUJITA, DISCOUNTED JOBS: HOW RETAILERS SELL WORKERS SHORT 15 (Retail Action Project 2012), *available at* http://retailactionproject.org/wp-content/uploads/2012/03/7-75_RAP+cover_lowres.pdf.
- ³¹*Id.* at 13.
- ³²WATSON & SWANBERG, *supra* note 21, at 8-9.
- ³³*See generally*, LIZ BEN-ISHAH, HANNAH MATTHEWS, & JODIE LEVIN-EPSTEIN, SCRAMBLING FOR STABILITY: THE CHALLENGES OF JOB SCHEDULE VOLATILITY AND CHILD CARE (Ctr. For Law and Social Policy 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>.
- ³⁴*Id.*
- ³⁵*See generally*, Karen Schulman & Helen Blank, *Pivot Point: State Child Care Assistance Policies 2013* (NWLC 2013).
- ³⁶WATSON & SWANBERG, *supra* note 21, at 8.
- ³⁷ROC, *supra* note 9, at 9-10.
- ³⁸Jennifer Swanberg, et. al., *CitiSales Study: Jobs that Work for Hourly Employees* 4 (2009), *available at* <http://www.uky.edu/Centers/iwin/citisales/hourly-overview.html>.
- ³⁹LAMBERT, FUGIEL, HENLY, *supra* note 27, Table 7.

⁴⁰ See 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), *available at* <https://www.congress.gov/bill/113th-congress/house-bill/5159/text>.

⁴¹ WATSON & SWANBERG, *supra* note 21, at 22 (with the exception of full-time low-wage workers with standard hours, for whom less than 20 percent reported this problem.).

⁴² LUCE & FUJITA, *supra* note 30, at 15.

⁴³ 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.

⁴⁴ 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.

⁴⁵ *Id.*

⁴⁶ See SUSAN LAMBERT & JULIA HENLY, MANAGERS' STRATEGIES FOR BALANCING BUSINESS REQUIREMENTS WITH EMPLOYEES' NEEDS (2010), *available at* <http://news.uchicago.edu/article/2010/08/31/hourly-workforce-carries-burden-during-recession-study-finds>.

⁴⁷ LUCE & FUJITA, *supra* note 30, 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>.

⁴⁸ A BETTER BALANCE, FACT SHEET: THE BUSINESS CASE FOR WORKPLACE FLEXIBILITY 2-4 (Nov., 2010), *available at* http://www.abetterbalance.org/web/images/stories/Documents/fairness/factsheets/BC-2010-A_Better_Balance.pdf.

⁴⁹ *Id.*

⁵⁰ Anna Danziger & Shelley Waters Boots, *Lower-Wage Workers and Flexible Work Arrangements*, WORKPLACE FLEXIBILITY 2010 GEORGETOWN UNIVERSITY LAW CENTER 7 (2008), *available at* <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1000&context=lega.l>

⁵¹ A BETTER BALANCE, *supra* note 47.