FACT SHEET

Reporting Time Pay: A Key Solution to Curb Unpredictable and Unstable Scheduling Practices

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On-demand scheduling is becoming increasingly common in the American workplace, as some employers make frequent, short-notice adjustments to employee work schedules to closely track fluctuations in consumer demand.[1] Workers show up to work only to find that their shift has been cancelled, or are sent home early if customer traffic ebbs.[2] And some are routinely assigned "call-in" or "on-call" shifts, meaning that they must either call in to work or wait to be called to find out whether they have to report to work on a given day.[3] If workers assigned call-in shifts or on-call shifts are told to report to work but are unable to do so, they are often penalized.[4]

These practices, which are often described as "just-in-time" scheduling, shift the risk and the cost of slack business onto workers. Workers who are sent home early without working their scheduled shifts have already paid for transportation to and from work, paid for child care in many instances, and foregone any other plans they might have made for that day—such as working a shift at another job or going to school. Likewise, workers on call-in and on-call shifts are unable to make any other firm plans for the day, as they must report to work if told to do so, or suffer a penalty. The fluctuations in work hours that result from these scheduling practices lead to wild fluctuations in income, and all too often leave workers with no clue whether they will be able to meet their basic expenses from week to week or month to month.[5]

Reporting time pay laws in eight states, the District of Columbia, and Puerto Rico, help curb the abusive scheduling practice of sending workers home without paying them for the hours in their scheduled shifts. These laws provide an important model for federal and state legislation. And, reporting time pay is a key provision in the Schedules That Work Act (S. 2642, H.R. 5159), the federal bill to curb abusive scheduling practices in certain low-wage jobs.[6] Importantly, the federal bill extends reporting time pay protections to cover both employees who are sent home early without

My name is Mary Coleman. I work at Popeye's in Milwaukee, Wisconsin. I ride two buses to work and it takes me an hour each way. Sometimes I get to work only to be told they don't need me. They tell me to go home. And sometimes I work for an hour or two of my shift and then I'm told to go home because business is slow. It's hard to be treated this way. I work because I need the money to support myself and my grandkids. But when I get to work only to be sent home again, I don't make any money at all. Actually, I lose money—because I have to pay for the bus. And I have to give up on making any other plans for that day. I've got a lot of people counting on me. My daughter is sick so when I'm not at work, I'm usually taking care of my grandkids. It's really tough to juggle all of the demands on my time when Popeye's has no problem wasting it.

Mary Coleman is a member of Wisconsin Jobs NOW. She's fighting for a voice in when she works, and for more predictable and stable hours.

working the hours in their scheduled shift and employees who are assigned to work "on-call" or "call-in shifts."

What Are Reporting Time Pay Laws?

Reporting time pay laws require employers that send workers home before the conclusion of their scheduled shift to pay them for a minimum number of hours. These laws discourage employers from making last-minute adjustments in staffing by cancelling shifts after workers have already reported to work or sending workers home early when business is slow.

Who is Covered by the Reporting Time Pay Laws?

California, the District of Columbia, New Jersey, New York and Rhode Island require all non-exempt workers to receive reporting time pay. New Hampshire exempts employees of counties or municipalities, and Oregon requires reporting time pay only for minors. Connecticut and Puerto Rico's laws apply to particular industries only.

How Many Hours Must be Paid to Employees Under the Reporting Time Pay Laws?

Connecticut, New York, and the District of Columbia tie the amount of reporting time pay required to the number of hours in the scheduled shift—in those states, the employer must pay either a set number of hours or the number of hours in the regularly scheduled shift, whichever is less. Massachusetts, New Hampshire, New Jersey, and Puerto Rico require employers to pay for a set amount of hours—between one and four, regardless of how many hours employees are scheduled to work. California and Oregon require employers to compensate employees for half of their scheduled shift. For more detail see summary of state reporting time pay laws below.

Is Reporting Time Pay at an Employee's Regular Rate of Pay or at the Minimum Wage?

California, New Hampshire, New Jersey, Rhode Island, Oregon, and Puerto Rico require employers to pay the employee at the employee's regular rate of pay. Connecticut, Massachusetts, New York, and the District of Columbia require the employer to pay the employee the minimum wage for compensated hours not worked.

When are Employers Exempted from Reporting Time Pay Obligations?

California exempts employers when there are threats to employees or property or when recommended by civil authorities, when public utilities fail to provide services, or for interruptions caused by an Act of God or other cause not within the employer's control. Puerto Rico also exempts employers when the interruptions are caused by an Act of God. New Hampshire and Oregon exempt employers who make a good faith effort to notify employees before they report to work that their shift has been cancelled.

Reporting Time Pay in the Schedules That Work Act

The Schedules That Work Act provides a useful model for states and localities interested in enacting reporting time pay laws. It requires employers to pay employees for four hours, or the amount of hours in their regularly scheduled shift, at their regular rate of pay on those days when the employee reports to work but is given no work or less than four hours of work.[7] The Act also requires employers to pay employees for at least one hour for each day on which the employee is assigned to a call-in shift.

Summary of State Reporting Time Pay Laws

California. If an employee reports to work but is not put to work or is given less than half of the employee's usual or scheduled day's work, the employee must be paid for half the usual or scheduled day's work, but in no event for less than two hours or more than four hours, at the employee's regular rate of pay. Employers are exempt from the reporting time pay requirement if: (1) operations cannot commence or continue due to threats to employees or property, or when recommended by civil authorities; (2) when public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities or sewer system; or (3) the interruption is caused by an Act of God or other cause not within the employer's control.[9]

Connecticut. By regulation, Connecticut requires reporting time pay for employees in the mercantile trade and employees of restaurants and hotel restaurants. In the mercantile trade, employees must be paid for at least four hours, at the minimum wage. At restaurants and hotel restaurants, employees must be paid at least two hours at the minimum wage.[10]

District of Columbia. An employer must pay an employee at least four hours for each day an employee reports to work but is given no work or less than four hours work, unless the employee is regularly scheduled for less than four hours. In that case the employee must be paid for the hours regularly scheduled. The rate of pay is the employee's regular rate for the hours worked, plus payment at the minimum wage for any hours not worked.[11]

Massachusetts. When an employee is scheduled to work three or more hours and is not provided with those expected hours, the employee must be paid at least three hours at no less than the basic minimum wage. For any time actually worked, the employee must be paid his/her actual wage. This rule is also referred to as the "three-hour rule."[12]

New Hampshire. On any day an employee reports to work at an employer's request, the employee must be paid for at least two hours at his regular rate of pay. The statute does not apply, however, to employees of counties or municipalities, and no employer who makes a good faith effort to notify an employee not to report is liable. If an employee reports to work after an employer's unsuccessful attempt to notify him, the employee shall perform whatever duties are assigned by the employer at the time the employee reports to work.[13]

New Jersey. An employee who, by request of the employer, reports for work on any day shall be paid for at least one hour at the applicable wage rate. However, the protection does not apply to an employer that has made available to the employee the minimum number of hours of work agreed upon by the employer and the employee prior to the commencement of work on the day involved.[14]

New York. An employee, who by request or permission of the employer, reports to work on any day must be paid for at least four hours, or the number of hours in the regularly scheduled shift, whichever is less, at the basic minimum hourly wage.[15]

Oregon. Employees under the age of 18 must be paid for half of their scheduled shift or for one hour at their regular rate of pay, whichever is more. The employer is not obligated to pay if it has a policy describing how notice not to report to work will be given to minors, the policy is posted, the policy is communicated to the minor prior to the minor's first day of work, and the employer makes a good faith attempt to follow its policy so as to give the minor notice before the minor must leave home to travel to work, or when circumstances beyond the employer's control prevent the performance of the work the minor was to perform.[16]

Puerto Rico. Employees in the construction; quarrying; ice cream; lumber and wood products; metal furniture; doors and windows; straw, hair, and related products; laundry and dry cleaning; transportation; general agricultural activities; and stone, clay, glass, cement, and related products industries are guaranteed at least four hours of pay at the regular rate. However, the requirement does not apply where the employer notifies the employee before the end of her previous work shift not to report or acts of God prevent the performance of work.[17]

Rhode Island. An employer who requests or permits an employee to report for duty and does not furnish at least three hours' work must pay the employee for at least three hours at the regular hourly rate.[18]

Reporting Time Pay Laws Help Ensure Schedules That Work

Successful state reporting time pay laws in existence in eight states and the District of Columbia provide a model for this time-tested approach to curbing abusive scheduling practices. The federal government, states, and localities can enact similar laws to encourage employers to provide more predictable and stable schedules to their employees and ensure that employees who are sent home early from their shifts receive at least some compensation.

[1] *See generally* National Women's Law Center, 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] 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?_r=0.
[3] *See*, e.g., Stephanie Luce & Naoki Fujita, City University of New York & Retail Action Project, Discounted Jobs: How Retailers Sell Workers Short 8-9 (2012), *available at* http://retailactionproject.org/wp-content/uploads/2012/01/FINAL_RAP.pdf (over 40 percent of retail workers must be available sometimes, often, or always for "call-in" shifts).
[4] *See* Center for Law and Social Policy, Retail Action Project & Women Employed, Tackling Unstable and Unpredictable Work Schedules: A Policy Brief on Guaranteed Minimum Hours and Reporting Pay Policies 11 (Mar. 2014), *available at* http://www.clasp.org/resources-and-publications/publication-1/Tackling-Unstable-and-Unpredictable-Work-Schedules-3-7-2014-FINAL-1.pdf.
[5] *See* Susan J. Lambert & Julia R. Henley, The University of Chicago School of Social Work Administration, Work Scheduling Study: Managers' Strategies for Balancing Business Requirements with Employee Need – Manager Survey Results (May 2010), *available at* http://ssascholars.uchicago.edu/work-scheduling-study/files/univ_of_chicago_work_scheduling_manager_report_6_25.pdf.
[6] Schedules That Work Act, S. 2642, H.R.5159 Sec. 4(a)(1)-(2); *see also* National Women's Law Center & National Partnership for Women & Families, *Schedules That Work Act: Section by Section Summary* (July 2014), *available at* http://www.nwlc.org/sites/default/files/pdfs/section-by-section_fact_sheet_final.pdf.
[7] Schedules That Work Act, S. 2642, H.R.5159 Sec. 4(a)(1)-(2). *See also* National Women's Law Center, *The Schedules That Work Act: Giving Workers The Tools They Need To Succeed* (July 2014), *available at* http://www.nwlc.org/sites/default/files/pdfs/schedules_that_work_act_fact_sheet_7.21.2014.pdf.
[8] *Id.*
[9] Cal. Code Regs. tit. 8, § 11040.
[10] Conn. Agencies Regs. § 31-62-D2(d) (mercantile trade); Conn. Agencies Regs. § 31-62-E1 (hotels, hotel restaurants), *available at* http://www.sots.ct.gov/sots/lib/sots/regulations/title_31/060_062.pdf.
[11] D.C. Mun. Regs. tit. 7, § 907.1.
[12] 455 Mass. Code Regs. 2.03.
[13] N.H. Rev. Stat. § 275:43-a.
[14] N.J. Admin. Code § 12:56-5.5.
[15] N.Y. Comp. Codes R. & Regs. tit. 12, § 142-2.3.
[16] Or. Admin. R. 839-021-0087.
[17] Puerto Rico Minimum Wage Board Reg. No. 7; Mandatory Decrees 7, 11, 15, 20, 22, 23, 24, 25, 37, 38, 41, 44, 50, 57, 67.
[18] R.I. Gen. Laws § 28.12-3.2.

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