

To: Chair Holvey and
Members of the Oregon House Business and Labor Committee

From: Elizabeth Watson, Senior Counsel
& Elizabeth Johnston, Skadden Public Interest Law Fellow
National Women's Law Center

Date: April 3, 2015

Re: Testimony In Support of House Bill 3377

Thank you for the opportunity to submit this testimony on behalf of the National Women's Law Center in support of House Bill 3377. 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 Center urges your support for this bill which 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 65 percent of the 271,200 workers in Oregon's low-wage workforce, where difficult scheduling practices are most common.¹

The demographics and needs of the workforce have changed. In Oregon, nearly 58 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 Nearly 24 percent of family households in Oregon are headed by single mothers—in these families, there is no other parent with whom to share caregiving responsibilities.⁵ And 40.5 percent of these female-headed families in Oregon 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 Oregon are twice as likely to have a low-wage job as a working man.⁷ Indeed, 21 percent of women in the workforce in Oregon work in low-wage jobs, as compared to 10.5 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 this bill, Oregon 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 California,¹² Connecticut,¹³ Minnesota,¹⁴ Indiana,¹⁵ Illinois,¹⁶ Maryland,¹⁷ Michigan,¹⁸ and New York¹⁹ 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've 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. 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 2014, one in five (20.7 percent) part-time workers worked part-time involuntarily, because they could not obtain full-time work.⁴³ These workers may 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 (24 percent versus 6 percent).⁴⁴

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.⁴⁵ 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.⁴⁶

Variable work hours 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 in advance how much income they will be bringing home.

II. HB 3377 Provides Crucial Protections for Workers

A. HB 3377 Provides Workers with More Predictable and Stable Schedules, and More of a Say in When They Work

Workers need a say in their schedules in order to meet their responsibilities at work and in the rest of their lives. The bill would permit employees to request flexible, predictable, or stable schedules from their employer, free from retaliation. It 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.

The bill would also provide workers with more predictability and certainty in their schedules. It would require employers to provide: 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 bill prohibits 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 prohibits employers from requiring an employee to find another employee to cover hours during which the employee is unable to work a scheduled shift.

The bill also contains important provisions relating to the cancelling or shortening of shifts, which is a common problem for low-wage workers. All too often, employees report to work only to be sent home an hour or two after they arrive. 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 can leave workers with no clue whether they will be able to meet their basic expenses from week to week or month to month.

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 employer requires the employee to be available to work immediately upon notification from the employer; the employee is required to contact the employer within 72 hours prior to reporting to work for a scheduled shift to ascertain whether the employee is required to report to work that shift; or the employee is required to work a split shift, defined as one more work shifts in one 24-hour period in which the hours worked are not consecutive.

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. This does not apply if unforeseen circumstances not under the control of the employer prevent the employee from performing the work the employee was scheduled for. California, Connecticut, the District of Columbia, Massachusetts, New Hampshire, New Jersey, New York, Oregon, Puerto Rico, and Rhode Island have similar laws on the books, providing for some minimum compensation for employees who report to work only to be sent home without being paid for the hours in their scheduled shifts.⁴⁷

B. Minor Modifications to House Bill 3377 Would Further Strengthen Its Protections

To avoid the potential unintended consequence of constraining employees' ability to take time off, the bill could be modified to include some limitations on the consent requirement. If an employer can only replace a worker who takes time off when another employee agrees to work, it is possible the employer may be disincentivized from allowing employees to take time off. This includes time off for illness, school events, because a child care provider is unavailable or the myriad of other reasons employees need time off.

The consent provision in the bill could be modified as follows: an employer may not require an employee to work hours not included in the schedule the employer posts 21 days in advance, except where the employer has exhausted all good faith, reasonable attempts to obtain voluntary workers, and the schedule is being changed for one of the following reasons: (1) the unforeseen unavailability of an employee previously scheduled to work that shift; (2) an emergency which could not have been reasonably anticipated and that is not caused or aggravated by the employer's inattention or lack of reasonable contingency planning; or (3) to avoid a negative impact on the health or safety of the employees or the public.

It may also be advisable to consider some exceptions to predictability pay for shifts changed after the schedule is posted such as when the shift is changed to avoid a negative impact on the health and safety of the worker or the public, or due to an emergency.

III. Fair Scheduling Practices Are Good for Employees, Business 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 These

benefits include: 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 polices 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.

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

⁶ *Id.*

⁷ NWLC, *supra* note 1, at 1.

⁸ *Id.*

⁹ See, e.g., NWLC, *COLLATERAL DAMAGE: SCHEDULING CHALLENGES FOR WORKERS IN LOW-WAGE JOBS 3-4* (April 2014), available at http://www.nwlc.org/sites/default/files/pdfs/schedules_that_work_act_fact_sheet_7.22.14.pdf; 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>.

¹² California Assembly Bill No. 357, Fair Schedule and Pay Equity Act (Feb. 2, 2015), available at http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB357&search_keywords=.

¹³ 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>

¹⁴ Minnesota 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.

¹⁵ Indiana Senate Bill 416 (Jan 12., 2015), available at <https://iga.in.gov/legislative/2015/bills/senate/416#document-cd799e76>.

¹⁶ 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=>

¹⁷ 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 Protection Act, available at <http://mgaleg.maryland.gov/2015RS/bills/hb/hb1027f.pdf>.

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- ¹⁸ Michigan 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>.
- ¹⁹ S. 52 & A 261 (N.Y. 2015), *available at* http://assembly.state.ny.us/leg/?default_fld=&bn=S00052&term=2015&Summary=Y&Text=Y.
- ²⁰ *See generally*, COLLATERAL DAMAGE, *supra* note 9.
- ²¹ LIZ 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>.
- ²² 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.
- ²³ *Id.*
- ²⁴ *Id.* 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/>.
- ²⁷ SUSAN 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.*
- ²⁹ WATSON & SWANBERG, *supra* note 21, at 21.
- ³⁰ STEPHANIE 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.
- ³² WATSON & 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).
- ³⁶ WATSON & SWANBERG, *supra* note 21, at 8.
- ³⁷ ROC, *supra* note 9, at 9-10.
- ³⁸ Jennifer 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>.
- ³⁹ LAMBERT, 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 Current Population Survey 2014 Miriam King et. al., Integrated Public Use Microdata Series, CPS: Version 3.0 (IPUMS-CPS). Figures are for employed workers. Low-wage workers are defined as people working in occupations that typically pay \$10.10 per hour or less.

⁴⁵ 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>.

⁴⁶ 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>.

⁴⁷ See NWLC, *Reporting Time Pay: A Key Solution to Curb Unpredictable and Unstable Scheduling Practices* (Jan. 2015) (outlining state reporting time pay laws), available at http://www.nwlc.org/sites/default/files/pdfs/reporting_time_pay_fact_sheet_jan_2015.pdf

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 48.