



Testimony of Liz Watson
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Before the House Committee on Education and the Workforce
Member Forum on the Impact of Irregular Schedules

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Ranking Member Scott and Congresswoman DeLauro, thank you for holding this forum to discuss the need for schedule fairness and for all of your work to address the difficult working conditions facing low-wage workers.

My name is Liz Watson and I am Senior Counsel and Director of Workplace Justice for Women at the National Women's Law Center. The Center is dedicated to removing barriers to opportunity for women, who make up two-thirds of low-wage workers.¹ For too long, some employers have used just-in-time scheduling to match workers' schedules as tightly as possible to variations in consumer demand. These employers provide work schedules only a day or two in advance, require on-call shifts where workers find out whether they have to report to work with only a couple of hours' notice, send workers home when work is slow without paying them for their scheduled shifts, and punish workers who put any limits on their availability.²

As the New York Times, the Washington Post, and several other major media outlets have reported recently, this wreaks havoc on workers' lives and on their families.³ This past year my colleague Elizabeth Johnston and I traveled to New York City, Atlanta, St. Louis, and Chicago to speak with workers about how these scheduling practices affect them and their families. We heard from a fast food worker in Chicago who arrived at her child care center to drop off her children at 6:15 a.m. and found it was unexpectedly closed due to snow. This meant there was no way she could report to work at 6:30 a.m., as scheduled. When she told her manager, she was written up and her hours were cut. We heard from a retail worker in New York who got hired only to be given no hours on the schedule at all for weeks at a time. She had a job but no paycheck. And we heard from another retail worker in Maryland who was repeatedly required to stay late at work with minimal notice, which meant she could not meet her four-year-old granddaughter at the school bus stop. Her entire pay for that extra work time went to paying for last-minute child care.

These workers are not alone. Roughly half of low-wage hourly workers report very little or no control over the timing of the hours they are scheduled to work.⁴ Forty-one percent of early career workers (ages 26-32) in hourly jobs report getting their schedules a week or less in advance.⁵ And three-quarters of early-career workers in hourly jobs report at least some fluctuations in the number of hours they worked in the previous month; for these workers, in a

typical month, the difference between the most and least hours worked weekly is more than an 8-hour day of work and pay.⁶

Workers who want full-time work but are only offered part-time hours—often described as the “underemployed”—struggle to support their families with fewer hours and less pay. In 2014, 27.6 million people usually worked part time⁷—nearly one in five workers.⁸ Nearly twice as many women usually work part-time as men (25.8 percent as compared to 12.7 percent).⁹ One in five part-time workers worked part-time involuntarily, because they could not find full-time work.¹⁰ Part-time workers also experience the highest levels of schedule instability.¹¹ Some of these workers want and need a second job to make ends meet, but unpredictable and unstable schedules at their first job make that all but impossible.

Difficult schedules are a particular problem for workers with caregiving responsibilities. And that means they are a particular problem for women, who still shoulder the lion’s share of obligations for caring for children and the elderly.¹² Today, three in ten women in the low-wage workforce are mothers.¹³ And as men assume a larger role in caring for their children, challenging work schedules harm men as caregivers as well.¹⁴ Among both men and women, 75 percent of low-wage workers reported having insufficient time for their children.¹⁵

Parental engagement in children’s school has been identified as one of the keys to academic success for students. But when workers have no control over or meaningful notice of their work schedules, this makes it difficult for workers to participate in their children’s school activities. Many low-wage workers report being required to give one or two weeks’ advance notice of their need for time off from work; yet, they say their children’s schools do not provide this much notice of parent-teacher conferences and similar events.¹⁶

Inflexible, unpredictable schedules also require workers to cobble together child care with little notice.¹⁷ This means parents are often left relying on an ad hoc network of family, friends and neighbors, which can sharply compromise the quality and stability of the care that children receive.

And these schedules undermine the best efforts of workers who are trying to get a leg up for themselves and their families by going to school. Today’s students are often juggling work and parenting, on top of their school responsibilities. On average, students enrolled in community college work 22 hours per week, and 26 percent of community college students at two-year public colleges worked 40 hours or more per week during the 2011-12 school year.¹⁸ At the same time, 30 percent of female community college students report spending 30 or more hours each week on family caregiving.¹⁹ Work schedules over which they have little to no control can make it all but impossible for these students to succeed. A survey of 22 to 30 year olds with some higher education found that 48 percent of those who had dropped out of school cited the inability to find classes that were compatible with their work schedules as an obstacle to returning.²⁰

Finally, for the millions of Americans suffering with chronic conditions, these schedules make it extremely difficult for them to earn a living, while taking care of their health.²¹

That's where the Schedules that Work Act comes in.²² The Schedules that Work Act was first introduced in the previous Congress by Representatives George Miller and Rosa DeLauro and Senators Tom Harkin and Elizabeth Warren, and will soon be reintroduced in this Congress. This legislation gives workers a say in their schedules and creates a clear route for employees to request changes to their schedules with protections from retaliation.²³ It requires employers to engage in good faith consideration of these requests. When an employee requests a schedule change to address the employee's most critical external obligations – caregiving, school, health, or a part-time worker's second job – the legislation creates a presumption that the employer will grant the employee's request for a schedule change unless there is a bona fide business reason to deny it.

The Schedules that Work Act also contains provisions aimed at curbing abuses in those jobs where they are especially well documented – restaurant, retail and cleaning jobs. It requires employers to tell employees when they are hired the minimum number of hours they can expect to work. It also requires employers to post work schedules at least two weeks in advance.²⁴ When an employer makes changes to work schedules with 24 hours' notice or less, the legislation requires an extra hour of pay to the employee whose schedule is changed—disincentivizing last minute employer changes and helping offset the difficulty the employee faces in scrambling to unwind other plans and, in many cases, find child care on a moment's notice.²⁵

The legislation also seeks to discourage particularly onerous scheduling practices by requiring reporting time, split shift and call-in shift pay.²⁶ Reporting time pay is show up pay. When workers show up to work for their scheduled shift, they should not leave empty handed, simply because the employer decides at the last minute they aren't needed that day. But all too often, they do. The reporting time pay provision requires employers to provide four hours of pay when an employee reports for her shift, or pay her for the number of hours in her scheduled shift, whichever is less. Eight states, D.C. and Puerto Rico already have reporting time pay laws.²⁷

The legislation requires one hour of extra pay for split shifts—that is, when employees are required to work a shift of nonconsecutive hours with a break of more than an hour.²⁸ Employees on these shifts often cannot do anything with the break in their shift other than wait for it to be over. D.C. and California already have split shift pay laws.²⁹ Likewise, the bill requires an extra hour of pay for employees assigned to on-call shifts – a particularly difficult scheduling practice that requires employees to call in to find out whether or not they have been scheduled to work that very day.³⁰ When employees are assigned to call-in shifts, the only plans they can make for the day are those they can break, since they might be required to come into work with as little as two hours' notice. The extra hour of pay for call-in shifts both dissuades the employer from assigning these shifts unless it is likely the employee will be needed and partially compensates employees for the uncertainty of not knowing whether they will be paid for the day.

The Schedules that Work Act that will be reintroduced in this Congress will contain a new paystub transparency provision that will require employers to make clear in employees' paychecks when they have been paid for the time that they are owed under the provisions of this bill. It will also contain a new provision asking the Department of Labor to examine other occupations to determine the extent of unpredictable and unstable schedules in other jobs, and

whether the worker protections provided to those in restaurant, retail, and cleaning jobs ought to be extended to hourly employees in other occupations as well.

The Schedules that Work Act is already making an impact. On the heels of its introduction in the last Congress, San Francisco passed the Retail Workers Bill of Rights, modeled after many of the Schedules that Work Act's provisions, to curb abusive scheduling practices among chain restaurant and retail employers.³¹ And in the past year, ten states have introduced bills to address this problem, many modeled closely on the federal legislation.³²

When employers were requiring workers to work around the clock with no regard for their health or ability to spend time with their families, Congress stepped in. It passed the Fair Labor Standards Act to set a floor for wages and curb overwork.³³ The time has come for Congress to step in again, by setting minimum work schedule standards and curbing the most abusive scheduling practices in low-wage jobs.

Thank you.

¹ National Women's Law Center (NWLC) calculations based on Miriam King et al., Integrated Public Use Microdata Series, CPS: Version3.0 (IPUMS-CPS). (Univ. of Minn. 2010). Data are for 2013. Median Hourly wages: Bureau of Labor Statistics (BLS), Occupational Employment Statistics (OES), May 2014 National Occupational Employment and Wage Estimates, available at http://www.bls.gov/oes/current/oes_nat.htm. This analysis uses \$10.50 or less per hour because \$10.50 in 2014 is roughly equivalent to \$12 in 2020 (see, David Cooper, John Schmitt, & Lawrence Mishel, Economic Policy Institute, We Can Afford a \$12.00 Federal Minimum Wage in 2020 (April 2015) available at <http://www.epi.org/publication/we-can-afford-a-12-00-federal-minimum-wage-in-2020/>), which is the proposed new federal minimum wage in the Raise the Wage Act pending in Congress (2015).

² See STEPHANIE LUCE & NAOKI FUJITA, DISCOUNTED JOBS: HOW RETAILERS SELL WORKERS SHORT 13 (Retail Action Project 2012), available at http://retailactionproject.org/wp-content/uploads/2012/03/7-75_RAP+cover_lowres.pdf. See generally, NANCY CAUTHEN, SCHEDULING HOURLY WORKERS: HOW LAST MINUTE, JUST-IN-TIME SCHEDULING PRACTICES ARE BAD FOR WORKERS, FAMILIES, AND BUSINESS (Demos 2011), available at http://www.demos.org/sites/default/files/publications/Scheduling_Hourly_Workers_Demos.pdf.

³ See, e.g., Lydia DePillis, *The Next Labor Fight is Over When You Work Not How Much You Make*, WASHINGTON POST, May 8, 2015, available at <http://www.washingtonpost.com/blogs/wonkblog/wp/2015/05/08/the-next-labor-fight-is-over-when-you-work-not-how-much-you-make/>; The Editorial Board, *What's my work schedule? Employees deserve an earlier answer*, L.A. TIMES, Apr. 21, 2015, available at <http://www.latimes.com/opinion/editorials/la-ed-work-schedules-two-weeks-notice-ab-357-20150421-story.htm>; Steven Greenhouse, *In Service Sector, No Rest for the Working*, N.Y. TIMES, Feb. 21, 2015, available at <http://www.nytimes.com/2015/02/22/business/late-to-bed-early-to-rise-and-working-tired.html>; Jodi Kantor, *Working Anything but 9 to 5: Scheduling Technology Leaves Low-Income Parents With Hours of Chaos*, N.Y. TIMES, Aug. 13, 2014, available at <http://www.nytimes.com/interactive/2014/08/13/us/starbucks-workers-scheduling-hours.html>.

⁴ LIZ WATSON & JENNIFER SWANBERG, FLEXIBLE WORKPLACE SOLUTIONS FOR LOW-WAGE HOURLY WORKERS (Georgetown University 2011), available at www.workplaceflexibility2010.org.

⁵ Susan J. Lambert, Peter J. Fugiel & Julia Henly, *Precarious Work Schedules among Early-Career Employees in the US: A National Snapshot* 18 (Univ. of Chicago 2014), available at https://ssascholars.uchicago.edu/sites/default/files/work-scheduling-study/files/lambert.fugiel.henly._precarious_work_schedules.august2014_0.pdf.

⁶ SUSAN J. LAMBERT, PETER J. FUGIEL, & JULIA R. HENLY, PRECARIOUS WORK SCHEDULES AMONG EARLY-CAREER EMPLOYEES IN THE US: A NATIONAL SNAPSHOT 10, available at https://ssascholars.uchicago.edu/sites/default/files/work-scheduling-study/files/lambert.fugiel.henly._precarious_work_schedules.august2014_0.pdf.

⁷ This figure is for workers who usually work part time. Data on involuntary part-time workers also includes workers who usually work full time but worked between 1-34 hours during the reference week of the survey. These

differences mean the numbers of voluntary and involuntary part-time workers do not add to the total. However, including data on those who usually work full time but are not working full time during the reference week for noneconomic reasons captures many people who are on vacation or otherwise missed a day of work.

⁸ NWLC calculations based on Bureau of Labor Statistics (BLS) Current Population Survey (CPS) Annual Table 8: Employed and unemployed full- and part-time workers by age, sex, race, and Hispanic or Latino ethnicity *available at* <http://www.bls.gov/cps/cpsaat08.htm> (Last visited May 28, 2015) and Annual Table 3: Employment status of the civilian noninstitutional population by age, sex, and race *available at* <http://www.bls.gov/cps/cpsaat03.htm> (Last visited May 28, 2015).

⁹ NWLC calculations based on Bureau of Labor Statistics (BLS) Current Population Survey (CPS) Annual Table 8: Employed and unemployed full- and part-time workers by age, sex, race, and Hispanic or Latino ethnicity *available at* <http://www.bls.gov/cps/cpsaat08.htm> (Last visited May 28, 2015) and Annual Table 3: Employment status of the civilian noninstitutional population by age, sex, and race *available at* <http://www.bls.gov/cps/cpsaat03.htm> (Last visited May 28, 2015).

¹⁰ 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 nonagricultural industries by reason for working less than 35 hours and usual full- or part-time status *available at* <http://www.bls.gov/cps/cpsaat20.htm> (Last visited May 28, 2015). Note that this figure is for people at work part time during the reference week, rather than those who usually work part time. The annual average for people at work 1 to 34 hours during the reference week was 34.9m, compared to the 27.6m who usually work part time (see Table 8). Data on involuntary part-time workers also includes workers who usually work full time but worked between 1-34 hours during the reference week of the survey. These differences mean the numbers of voluntary and involuntary part-time workers do not add to the total (which is reported here as people who usually work part time). However, including data on those who usually work full time but are not working full time during the reference week for noneconomic reasons captures many people who are on vacation or otherwise missed a day of work.

¹¹ SUSAN J. LAMBERT, PETER J. FUGIEL, & JULIA R. HENLY, PRECARIOUS WORK SCHEDULES AMONG EARLY-CAREER EMPLOYEES IN THE US: A NATIONAL SNAPSHOT 10, *available at* https://ssascholars.uchicago.edu/sites/default/files/work-scheduling-study/files/lambert.fugiel.henly_precarious_work_schedules.august2014_0.pdf.

¹² KENNETH MATOS & ELLEN GALINSKY, WHEN WORK WORKS: WORKPLACE FLEXIBILITY IN THE UNITED STATES, A STATUS REPORT 1 (Families and Work Institute 2011) (“Mothers spend the same number of weekday hours with their children (3.8) in 2008 as they did in 1977 and the majority of married/ partnered women report doing most of the cooking (70%) and cleaning (73%) in their households.”), *available at* <http://familiesandwork.org/downloads/WorkplaceFlexibilityinUS.pdf>; *see also* OXFAM AM., HARD WORK, HARD LIVES: SURVEY EXPOSES HARSH REALITY FACED BY LOW-WAGE WORKERS 7 (OXFAM AM. 2013), *available at* <http://www.oxfamamerica.org/static/oa4/low-wage-worker-report-oxfam-america.pdf>.

¹³ NWLC calculations *supra* note 1. Mothers are defined as having at least one child under 18 living at home.

¹⁴ Between 1977 and 2008, the average workday time fathers spent with their children increased from 2 to 3.1 hours per day. KENNETH MATOS & ELLEN GALINSKY, WHEN WORK WORKS: WORKPLACE FLEXIBILITY IN THE UNITED STATES, A STATUS REPORT 1 (Families and Work Institute 2011) (“Mothers spend the same number of weekday hours with their children (3.8) in 2008 as they did in 1977 and the majority of married/ partnered women report doing most of the cooking (70%) and cleaning (73%) in their households.”), *available at* <http://familiesandwork.org/downloads/WorkplaceFlexibilityinUS.pdf>.

¹⁵ KENNETH MATOS & ELLEN GALINSKY, WHEN WORK WORKS: WORKPLACE FLEXIBILITY IN THE UNITED STATES, A STATUS REPORT 13 (Families and Work Institute 2011) *available at* <http://familiesandwork.org/downloads/WorkplaceFlexibilityinUS.pdf>.

¹⁶ Anna Hayley-Lock & Linn Posey-Maddox, *Fitting It All In: How Mothers’ Employment Shapes Their School Engagement* 14-15, J. COMMUNITY, WORK & FAMILY (Dec. 2014).

¹⁷ *See generally* RESTAURANT OPPORTUNITIES CENTER UNITED, *supra* note 3. *See generally* LIZ BEN-ISHAI, HANNAH MATTHEWS, & JODIE LEVIN-EPSTEIN, SCRAMBLING FOR STABILITY: THE CHALLENGES OF JOB SCHEDULE VOLATILITY AND CHILD CARE (Ctr. for Law and Soc. 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>.

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- ¹⁸ INSTITUTE FOR WOMEN’S POLICY RESEARCH, FACT SHEET: COMMUNITY COLLEGE STUDENTS NEED FAIR JOB SCHEDULING PRACTICES (July 2014), *available at* <http://www.iwpr.org/publications/pubs/community-college-students-need-fair-job-scheduling-practices/>.
- ¹⁹ Adresse St. Rose, & Catherine Hill, AAUW, WOMEN IN COMMUNITY COLLEGES: ACCESS TO SUCCESS 23 (2013), *available at* <http://www.aauw.org/files/2013/05/women-in-community-colleges.pdf>.
- ²⁰ CENTER FOR LAW & SOCIAL POLICY (CLASP), JOB SCHEDULES THAT WORK FOR STUDENTS 1 (July 2014), *available at* http://www.clasp.org/resources-and-publications/publication-1/SchedulesthatWork_Students.pdf.
- ²¹ Urban Institute & Workplace Flexibility 2010, Lower-Wage Workers and Flexible Work Arrangements 3, *available at* <http://workplaceflexibility2010.org/images/uploads/Lower-Wage%20Workers%20and%20FWAs.pdf>.
- ²² Schedules That Work Act, H.R. 5159, 113th Cong. (2014); Schedules That Work Act, S. 2642, 113th Cong. (2014).
- ²³ H.R. 5159, 113th Cong. §§ 3, 5(b); S. 2642, 113th Cong. §§ 3, 5(b).
- ²⁴ H.R. 5159, 113th Cong. §§ 4(c)(2); S. 2642, 113th Cong. § 4(c)(2).
- ²⁵ H.R. 5159, 113th Cong. §§ 4(c)(3); S. 2642, 113th Cong. § 4(c)(3).
- ²⁶ H.R. 5159, 113th Cong. §§ 4(a)-(b); S. 2642, 113th Cong. § 4(a)-(b).
- ²⁷ Cal. Code. Regs. tit. 8 §11040, Conn. Agencies Regs. §31-62; D.C. Mun. Regs. tit. 7 § 907.1; 455 Mass. Code Regs. 2.03; N.H. Rev. Stat. § 275:43-a; N.Y. Comp. Codes R. & Regs. tit. 12, § 142-2.3; Or. Admin. R. 839-021-0087; Puerto Rico Min. Wage Board Reg. No. 7; R.I. Gen. Laws § 28:12-3.2.
- ²⁸ H.R. 5159, 113th Cong. §§ 4(b); S. 2642, 113th Cong. § 4(b).
- ²⁹ 7 D.C. Mun. Reg. Tit. 7 § 906; 8 C.C.R. § 11040.
- ³⁰ H.R. 5159, 113th Cong. §§ 4(a)(2); S. 2642, 113th Cong. § 4(a)(2).
- ³¹ San Francisco Ordinance No. 241-14 (Nov. 18, 2014), *available at* <http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances14/o0241-14.pdf>.
- ³² 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), New York Senate 2414 (Jan. 23, 2015), H.R. 2010, 78th Leg. Assembly (Or. 2015).
- ³³ The Fair Labor Standards Act of 1938, as amended, §201, 29 U.S.C. § 8 (2014).