

**Testimony of  
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**In Support of Fair Work Week Legislation  
(Bill Nos. 1387, 1388, 1395, 1396, 1399)  
Before the  
New York City Council Committee on Civil Service and Labor**

**March 3, 2017**

Thank you for the opportunity to submit this testimony on behalf of the National Women's Law Center in support of the Fair Work Week Legislation. 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 Work Week Legislation provides crucial protections from scheduling practices that undermine workers' ability to provide for themselves and their families. These protections are particularly important to women, who are disproportionately affected by unfair scheduling practices.

Women's income is more critical than ever before to families' economic security. Nationally, in 2015, 42 percent of mothers were sole or primary breadwinners, and nearly another one-quarter of mothers were co-breadwinners—bringing in 25 percent to 49 percent of family earnings.<sup>1</sup> But unstable, unpredictable work schedules over which workers have little control too often undermine the ability of working women in New York City to provide for themselves and their families. Particularly in low-wage jobs, in sectors like fast food and retail, workers may regularly be required to be on call for shifts that never materialize, may have schedules—and thus incomes—that fluctuate unpredictably from week to week, or may never be assigned enough hours to obtain full-time work. These scheduling policies and practices pose particular problems for workers with responsibilities outside of their jobs, including caregiving, pursuing education and workforce training, or holding down a second job.<sup>2</sup>

In New York City, women make up nearly half of New York City's overall workforce, but 58 percent of the workforce in jobs that typically pay less than \$10.50 per hour.<sup>3</sup> Women of color are especially overrepresented among low-wage workers in New York City, representing 32 percent of the City's overall workforce but 48 percent of the low-wage workforce.<sup>4</sup> In addition to holding the majority of low-wage jobs, women still shoulder the majority of caregiving responsibilities in families;<sup>5</sup> consequently, difficult scheduling practices hit women especially hard. And for the single mothers who head nearly one in three families with children in New York City,<sup>6</sup> work scheduling challenges can be especially acute since there is often no one else with whom to share caregiving responsibilities.

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

## **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. Difficult scheduling practices undermine workers' efforts to fulfill their caregiving responsibilities and make maintaining stable child care nearly impossible—which can negatively affect their children. 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.<sup>7</sup> Overall, less than half of workers have flexibility in the scheduling of their work hours.<sup>8</sup> 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.<sup>9</sup>

Workers in low-wage jobs often have the least say in their work schedules. In a 2008 survey, about half of low-wage workers reported having little or no control over the timing of their work hours, and other surveys have similar findings.<sup>10</sup> Early-career employees of color in hourly jobs report less control over their work hours than do their white counterparts.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup>

### **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 know their work schedule one week or less in advance.<sup>14</sup> Such short notice is significantly more common among hourly workers (41 percent) than others (33 percent), and among part-time (48 percent) than full-time workers (35 percent).<sup>15</sup> African American and Latino workers are more likely than white workers to receive no more than a week's notice.<sup>16</sup> Additional studies find that workers in retail, restaurant, and hospitality jobs commonly receive just a few days' notice of a scheduled shift.<sup>17</sup>

Another practice, especially common for retail workers, is to schedule workers for “on-call shifts,” which means they must call their employers to find out whether they need to report to work that same day, and are not paid if they are not called into work, despite the need to keep that time

free.<sup>18</sup> 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 on-call shifts.<sup>19</sup> These practices undermine workers' efforts to seek education or workforce training<sup>20</sup> or arrange transportation to and from work,<sup>21</sup> 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.<sup>22</sup>

Last-minute scheduling practices can also be particularly challenging for parents, who often must scramble to find care for their children during their shifts. 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.<sup>23</sup> 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.<sup>24</sup>

### **C. When the Amount of Hours Workers are Assigned Varies, It is Difficult for Workers to Budget and Meet Expenses**

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. Among early-career adults, nearly three-quarters of those in hourly jobs report at least some fluctuations in the number of hours they worked in the previous month, with hours fluctuating, on average, by 50 percent.<sup>25</sup> Among retail and food service workers, close to nine in ten report variable hours.<sup>26</sup> Between 20 and 30 percent of low-wage workers experience a reduction in hours or a layoff when work is slow.<sup>27</sup> In the New York City retail workers survey, over one-third said they were sometimes, often, or always sent home early from their scheduled shifts.<sup>28</sup> For those hourly workers who need more hours, such fluctuations can make it extremely difficult to make ends meet.<sup>29</sup>

Variable work hours can also make it hard 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.

### **D. Many Part-Time Workers Want Full-Time Hours In Order to Make Ends Meet**

Nationally, one in five part-time employees works part time involuntarily and would prefer to find full-time work.<sup>30</sup> Half (50.9 percent) of employees who work part time involuntarily are women.<sup>31</sup> 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, a practice that is especially well-documented in the retail industry.<sup>32</sup>

Part-time workers are more than three times as likely as full-time workers to hold low-wage jobs that typically pay \$10.50 per hour or less, and nearly three-quarters of part-time workers in these low-wage jobs are women.<sup>33</sup> 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. Women who work part time involuntarily are

more than twice as likely to be poor as women who work part time for other reasons, and five times as likely to be poor as women who work full time.<sup>34</sup>

### **E. Unfair Scheduling Practices Harm Children, Too**

High-quality early care and education benefits children, particularly children from low-income families, helping them gain the early math, language, literacy, social, emotional, and learning skills they need to enter school ready to succeed. But low-wage workers' ability to access quality, affordable, and stable child care is often compromised by unpredictable work schedules.<sup>35</sup> 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.<sup>36</sup> 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.<sup>37</sup> As a result of these barriers, parents in low-wage jobs frequently rely on family, friends, and neighbors or seek out lower-cost—and often lower-quality—care for their young children.<sup>38</sup> While some families may have a reliable relative, neighbor, or friend available who can provide nurturing care for their children, other families may be forced to settle for options that do not offer the early learning experiences they want for their children because they have no other choice.

Moreover, the features of low-wage work that increase parents' stress—including nonstandard and constantly fluctuating work hours, rigid attendance policies, and a lack of any paid time off—can also adversely affect their children's development.<sup>39</sup> Studies have linked parents' nonstandard work to children's behavior problems,<sup>40</sup> with larger effects often observed in families in which the parents work in lower-wage jobs.<sup>41</sup> Children's cognitive development may also be affected: for example, parents' employment in nonstandard schedules early in their children's lives is associated with lower expressive language ability in early childhood,<sup>42</sup> and longer periods of nonstandard work are linked to lower reading and math performance in middle childhood and adolescence.<sup>43</sup> These associations may be due to the increased stress that challenging work schedules impose on parents, straining their relationships with their children<sup>44</sup> (and with one another<sup>45</sup>).

In addition, parents with unpredictable schedules may not be available for their children when they would like to be, such as for family meals, homework help, and other routines. Scheduling practices more common in low-wage jobs can also make it more difficult for parents to be engaged in their children's schooling; for example, in one survey, few professional workers but many low-wage workers reported not participating in children's school activities due to a lack of flexibility and paid time off.<sup>46</sup> A number of the low-wage workers surveyed reported being required to give one to two weeks' advance notice to their employers to take any time off—far more notice than their children's schools provided in advance of events.<sup>47</sup> While studies specifically examining unstable and unpredictable schedules are limited, researchers suggest that the extent to which workers can choose their schedules may influence outcomes for their children, with more positive outcomes linked to parents with more control over their work hours and the degree to which they vary.<sup>48</sup>

## **II. The Fair Work Week Legislation Provides Crucial Protections for NYC Workers**

### **A. Bill No. 1399 Provides All Workers in NYC with a Say in their Schedules**

Bill No. 1399 provides all employees in New York City the simple, but critical right to request a flexible work arrangement without fear of retaliation. This protection is incredibly important to putting an end to retaliation, in the form of reduced work hours or even termination, that employees who place some limits on their availability or request particular schedule modifications too often experience. An employee who asks her employer if she can have Tuesday nights off to attend night classes, or a schedule that allows her to see her children in the evenings, should not risk punishment just for making the request. Similar protections have been enacted over the last several years in Vermont, New Hampshire, Seattle, San Francisco, and Emeryville, California.<sup>49</sup>

Importantly, the bill also requires employers to grant employee requests for certain temporary scheduling adjustments to employees who request them because of a caregiving emergency, personal health emergency, or the employee or a family member having been the victim of a family offense matter, a sexual offense, or stalking. Employers are only required to grant such changes four times a year. In 2016, Seattle, Washington passed an ordinance providing for a similar right to receive requested schedule changes.<sup>50</sup>

### **B. Bill No. 1387 Provides Retail Workers with More Predictable and Stable Schedules**

Bill No. 1387 contains important provisions to be followed by retail employers to protect against last-minute changes to an employee's schedule. Specifically, the bill prohibits the harmful and unnecessary practice of on-call scheduling, along with other destructive last-minute scheduling practices—including canceling hours that an employee is scheduled to work within 72 hours of the start of those hours, and requiring an employee to contact the employer to confirm whether she should report to work fewer than 72 hours before her shift. Bill No. 1387 also requires employers to post work schedules at least 72 hours prior to the beginning of the shift and gives employees the right to decline to work hours requested by the employer with less than 72 hours' notice. Importantly, the bill would not prevent an employer from allowing a retail employee to request time off or from allowing two employees to swap shifts.

These protections are crucial because workers with on-call shifts are unable to make any other firm plans for the day—like working at a second job or attending a class—as they must report to work if told to do so, or suffer a penalty. They must forego other opportunities without the guarantee of bringing home any income. And arranging for child care becomes a potentially costly gamble—do you arrange and pay for child care but risk not being called in and not bringing home income, or do you risk having to scramble for child care at the last minute? The fluctuations in work hours that result from these last-minute scheduling practices can lead to wild fluctuations in income, leaving workers with no clue whether they will be able to meet their basic expenses from week to week or month to month.

On-call scheduling is not a necessary business practice. In fact, New York's Attorney General Eric Schneiderman, who has investigated on-call scheduling practices throughout the state, has said that "on-call shifts are not a business necessity."<sup>51</sup> One study of scheduling practices in the retail sector found that for almost two-thirds of the stores, more than 80 percent of hours actually

stayed the same week after week.<sup>52</sup> In other words, retailers have a lot of stability in hours already. Last-minute scheduling is often the result of managers' tendency to delay finalizing schedules until the last minute rather than a true need for sudden changes.<sup>53</sup> The fact that many of the retailers investigated by the New York Attorney General agreed to end on-call scheduling is testament to the fact that retailers do not need this practice to remain competitive and can implement more humane methods for addressing unanticipated employee absences or fluctuations in business.<sup>54</sup> Importantly, limiting employers' currently unlimited flexibility in setting and changing employee schedules does not mean that *employee* flexibility to attend to personal and family needs will also become more limited. To the contrary, when employers are required to give employees their schedules sufficiently in advance and prohibited from making last minute schedule changes, employees are better able to plan their personal obligations so that they can meet both their work and personal obligations.

There is growing movement nationwide to stop last-minute scheduling practices. Seattle and San Francisco have implemented specific protections against on-call scheduling and the District of Columbia and seven other states (California, Connecticut, Massachusetts, New Hampshire, New Jersey, New York, Oregon, and Rhode Island) have "reporting time pay" laws on the books providing for some minimum compensation for employees whose shifts are cancelled or reduced at the last minute.<sup>55</sup>

Bill No. 1387 also requires employers to provide employees with no less than 20 hours of work during any 14-day period. This protection is important to putting an end to the far too common retail industry practice of hiring large numbers of part-time employees and then scheduling them for a few hours a week, or none at all for long periods. These workers often don't get enough hours to support their families, but feel constrained from engaging in other employment opportunities because of potential obligations at their primary job. This provision is also important to prevent employers from responding to the ban on on-call scheduling by simply underscheduling employees. This minimum hour guarantee is not only good for retail employees, it is good for retailers: Costco, which has voluntarily adopted a policy of guaranteeing its part-time employees a minimum of 24 hours of work per week, has one of the lowest turnover rates in the retail industry due, in part, to this policy.<sup>56</sup>

### **C. Bill No. 1396 Provides Fast Food Workers with More Predictable and Stable Schedules**

Bill No. 1396 would require fast food employers to provide workers their schedules at least 14 days in advance of when an employee is scheduled to work. Requiring 14 days' notice—and not less—is essential. When fair scheduling advocates have spoken with workers across the country, the consensus has been that workers need at least two weeks' notice of their schedules in order to be able to plan their caregiving responsibilities, schooling, or a second job and meet their primary job responsibilities. A recent study of 3,000 workers conducted by Daniel Schneider of the University of California at Berkeley and Kristin Harknett at the University of Pennsylvania found that workers who receive less than two weeks' notice of their schedules report significantly higher rates of psychological distress than workers who receive at least two weeks' notice.<sup>57</sup> Requiring employers to provide anything less than two weeks' advance notice risks encouraging employers to set a lower standard when businesses, like Starbucks, are moving towards providing two to three weeks' notice.<sup>58</sup> Moreover, almost every bill that has been introduced across the country in recent years to promote fair scheduling practices has provided for two to three weeks' advance notice of

schedules.<sup>59</sup> And the three fair scheduling ordinances that passed in Seattle, San Francisco, and Emeryville all provide for at least two weeks' advance notice. As a leader in the fight for working families, New York City should ensure no less for fast food workers.

Bill No. 1396 also provides that if the employer subsequently adds hours to an employee's schedule, the employer must compensate the employee \$15 for each shift to which the additional hours are added. And if the employer cancels or reduces the hours in a shift, the bill requires the employer to pay the employee an additional \$45 for each change made with between 14 days and 24 hours' notice and \$75 if the change is made with less than 24 hours' notice. This additional pay helps compensate employees for the cost of shifting schedules—whether it be the cost of rearranging child care or not being able to pay a bill as expected, costs that so many workers are not in a position to absorb. It also plays the important role of incentivizing employers to plan ahead and make schedule changes only when really necessary. This is not a penalty on employers, but a means of balancing incentives and costs between employers and their employees. Fast food employees are currently bearing the costs of last-minute schedule changes but are least able to absorb them. The fair scheduling ordinances that were enacted in Emeryville and San Francisco, California, and Seattle, Washington all included similar additional compensation for changes to employee schedules after they have been posted.

These protections are especially crucial to frontline fast food workers in New York City—64 percent of whom are women—because they are more likely than the overall city workforce to have children (56 percent compared to 37 percent) and significantly more likely to be attending school (24 percent compared to 9 percent).<sup>60</sup> And, again, when employers have to give employees their work schedules two weeks in advance and are limited in making changes to those schedules, employees will not, in turn, be limited in their ability to attend to their personal and family obligations; instead, employees can better plan their lives so their personal obligations do not conflict with work. It is thus not surprising that a June 2015 poll showed that seven in ten Americans support requiring chain stores and fast-food outlets to give workers at least two weeks' notice of any changes in their work schedules.<sup>61</sup>

#### **D. Bill No. 1388 Ensures that Fast Food Workers Have the Right to Rest Between Shifts**

Bill No. 1388 will help ensure that fast food workers also have adequate time to travel and rest between shifts by prohibiting employers from requiring employees to work less than 11 hours after the end of the immediately preceding shift, or within the 11 hour period immediately following the end of a shift that spanned two days. If an employee consents to work such shifts, the bill requires the employer to pay the employee \$100 for each instance that an employee works such shifts. This bill disincentivizes the harmful practice of “clopening,” where fast food workers are forced to work the closing shift and return a few hours later to work the opening shift the next morning. In 2016, both Seattle, Washington and Emeryville, California passed similar protections.<sup>62</sup>

#### **E. Bill No. 1395 Provides Important Protections to Ensure Fast Food Workers to Get Enough Hours to Make Ends Meet**

Finally, Bill No. 1395 would help fast food workers, especially those who are involuntarily working part-time hours, make ends meet by promoting full-time work opportunities. Specifically, the bill would require employers to offer available hours to current employees before hiring new

employees or subcontractors. New York City has been a leader in securing a \$15 minimum wage for fast food workers, but if these workers can't get enough work hours, the promise of a \$15 wage falls short. Seattle, Washington and San Francisco, San Jose, and Emeryville, California have all enacted similar requirements to help workers get the hours they need to support themselves and their families.<sup>63</sup> In San Jose where such a requirement was put to the voters as a 2016 ballot initiative, a resounding 64 percent of voters supported it.<sup>64</sup>

### **III. Fair Scheduling Practices Are Good for Employees and Their Families—and for Businesses and the Bottom Line**

When employers provide advance notice of work schedules, minimize disruptions to scheduled shifts (and provide additional compensation for last-minute schedule changes), give employees a voice in their work schedules, and treat part-time workers fairly, working parents are better able to plan their lives and secure stable child care along with the pay and benefits they need to support their families. This increased stability helps ameliorate parents' stress and the risks that exist for their children.

Moreover, while scheduling practices that fail to take workers' needs into account result in higher rates of turnover and absenteeism and lower worker engagement,<sup>65</sup> fair scheduling leads to more productive and committed employees and lower turnover.<sup>66</sup> In other words, businesses benefit when they provide working arrangements that are responsive to their employees' needs. 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.<sup>67</sup> Among the benefits are reduced absenteeism, increased retention, reduced health care costs, and increased revenue.<sup>68</sup> When workers have schedules that work, everyone wins.

Importantly, the Fair Work Week Legislation protections—similar to the protections that have recently passed in Seattle, Washington, and San Francisco and Emeryville, California—are tailored to affect primarily large employers in the food service and retail industries. Employers in these industries have been most likely to engage in abusive scheduling practices and are also the most readily able to adopt fair scheduling practices given their size and resources.

### **IV. New York City Should Join the Growing Chorus of Cities and States Taking the Lead in the National Movement for Fair Work Schedules**

With this legislation, New York City would join Seattle, Washington and San Francisco, Emeryville, and San Jose, California which have all enacted fair scheduling ordinances in the last two years, emerging as leaders in the national movement to create workplace policies that truly work for workers and their families. In the 2015-2016 state legislative sessions, 14 states—Arizona, California, Connecticut, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, North Carolina, and Rhode Island—the District of Columbia all considered legislation to curb abusive scheduling practices.<sup>69</sup> And already this year, at least a dozen states have introduced fair work week legislation, including Arizona, Connecticut, Illinois, Maryland, Massachusetts, Minnesota, New York, Ohio, Oklahoma, Oregon, Texas, and Washington.

We urge your support for this important legislation.



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<sup>1</sup> See CTR. FOR AM. PROGRESS, BREADWINNING MOTHERS ARE INCREASINGLY THE U.S. NORM (Dec. 2016), available at <https://www.americanprogress.org/issues/women/reports/2016/12/19/295203/breadwinning-mothers-areincreasingly-the-u-s-norm/>.

<sup>2</sup> See generally JULIE VOGTMAN & KAREN SCHULMAN, NWLC, SET UP TO FAIL: WHEN LOW-WAGE WORK JEOPARDIZES PARENTS' AND CHILDREN'S SUCCESS (Jan. 2016), available at <http://nwlc.org/resources/set-up-to-fail-when-low-wage-work-jeopardizes-parents-and-childrens-success/>.

<sup>3</sup> NWLC calculations based on U.S. Census Bureau, ACS 2015 1-Year Estimates using IPUMS. While NWLC often defines “low-wage job” as one with a median hourly wage of \$10.50 or less, “low-wage jobs” or “low-wage workers” may be defined in a variety of ways, and the definition of “low-wage” varies throughout this testimony because it draws on multiple data sources. Please reference the individual sources cited for specific details.

<sup>4</sup> NWLC calculations based on U.S. Census Bureau, ACS 2015 1-Year Estimates using IPUMS.

<sup>5</sup> See Bureau of Labor Statistics, U.S. Dep’t of Labor, American Time Use Survey, Table A-1. Time spent in detailed primary activities and percent of the civilian population engaging in each activity, averages per day by sex, 2015 annual averages (2016), available at [https://www.bls.gov/tus/tables/a1\\_2015.pdf](https://www.bls.gov/tus/tables/a1_2015.pdf).

<sup>6</sup> NWLC calculations based on U.S. Census Bureau, ACS 2015 1-Year Estimates, Table S1101, [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_15\\_1YR\\_S1101&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_15_1YR_S1101&prodType=table) (last visited Feb. 26, 2017).

<sup>7</sup> LIZ WATSON & JENNIFER SWANBERG, FLEXIBLE WORKPLACE SOLUTIONS FOR LOW-WAGE HOURLY WORKERS: A FRAMEWORK FOR A NATIONAL CONVERSATION 6 (May 2011), available at <http://workplaceflexibility2010.org/images/uploads/whatsnew/Flexible%20Workplace%20Solutions%20for%20Low-Wage%20Hourly%20Workers.pdf>.

<sup>8</sup> 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](http://www.whitehouse.gov/sites/default/files/docs/nine_facts_about_family_and_work_real_final.pdf).

<sup>9</sup> *Id.*

<sup>10</sup> See WATSON & SWANBERG, *supra* note 7, at 19-20; LONNIE GOLDEN, ECON. POLICY INST., IRREGULAR WORK SCHEDULING AND ITS CONSEQUENCES, BRIEFING PAPER # 394 9 (Apr. 2014), available at <http://s2.epi.org/files/pdf/82524.pdf> (finding in an analysis of International Social Survey Program data that 45 percent of workers surveyed said “their employer decides” their work schedule; only 15 percent reported they were “free to decide” their work schedule, while the remaining 40 percent felt they could “decide within limits”); SUSAN J. LAMBERT, PETER J. FUGIEL, & JULIA R. HENLY, PRECARIOUS WORK SCHEDULES AMONG EARLY-CAREER EMPLOYEES IN THE US: A NATIONAL SNAPSHOT 14 (Aug. 2014), available at [https://ssascholars.uchicago.edu/sites/default/files/work-scheduling-study/files/lambert.fugiel.henly\\_precarious\\_work\\_schedules.august2014\\_0.pdf](https://ssascholars.uchicago.edu/sites/default/files/work-scheduling-study/files/lambert.fugiel.henly_precarious_work_schedules.august2014_0.pdf) (finding in an analysis of NLSY data that among early career employees, “about 44 percent of workers overall and half of hourly workers say that they do not have any input into when they start and finish work”).

<sup>11</sup> 58 percent of Hispanic hourly workers, 55 percent of black hourly workers, and 47 percent of white hourly workers (age 26-32) report that their employer controls their work hours. LAMBERT, FUGIEL, & HENLY, *supra* note 10, at 17.

<sup>12</sup> 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](http://www.nytimes.com/2014/08/15/us/starbucks-to-revise-work-scheduling-policies.html?_r=0).

<sup>13</sup> See, e.g., RETAIL ACTION PROJECT, WHAT YOU NEED TO KNOW ABOUT ERRATIC SCHEDULING: 5 TRENDS IN UNPREDICTABLE RETAIL SCHEDULING, <http://retailactionproject.org/advocacy/policy/erratic-scheduling/> (last visited Feb. 25, 2017).

<sup>14</sup> LAMBERT, FUGIEL & HENLY, *supra* note 10, at 6; see also, e.g., GOLDEN, *supra* note 10, at 18 (noting that analysis of the General Social Survey shows 43 percent of workers reported receiving less than a week’s advance notice of their hours, including almost one in five who received their schedule “a day or less” in advance).

<sup>15</sup> LAMBERT, FUGIEL, & HENLY, *supra* note 10, at 6.

<sup>16</sup> *Id.* at 7.

<sup>17</sup> For example, in a study of low-skilled, non-production jobs at 22 sites in the hospitality, retail, transportation, and financial services industries, all but one hotel studied posted schedules the Thursday or Friday before the workweek that began on Sunday, and all but one retail firm posted schedules the Wednesday or Thursday before. Susan J. Lambert, *Passing the Buck: Labor Flexibility Practices that Transfer Risk onto Hourly Workers*, 61 J. HUMAN RELATIONS 1203,

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1217 (2008). *See also, e.g.*, STEPHANIE LUCE & NAOKI FUJITA, DISCOUNTED JOBS: HOW RETAILERS SELL WORKERS SHORT 8 (2012), available at [http://retailactionproject.org/wp-content/uploads/2012/03/7-75\\_RAP+cover\\_lowres.pdf](http://retailactionproject.org/wp-content/uploads/2012/03/7-75_RAP+cover_lowres.pdf) (observing that in a survey of retail industry workers in New York, about a fifth of respondents reported receiving their work schedules only three days in advance).

<sup>18</sup> *See, e.g.*, CTR. FOR LAW & SOCIAL POLICY, RETAIL ACTION PROJECT, & WOMEN EMPLOYED, TACKLING UNSTABLE AND UNPREDICTABLE WORK SCHEDULES 11 (2014), available at <http://www.clasp.org/resources-and-publications/publication-1/Tackling-Unstableand-Unpredictable-Work-Schedules-3-7-2014-FINAL-1.pdf>; CTR. FOR POPULAR DEMOCRACY, HOUR BY HOUR: WOMEN IN TODAY'S WORKWEEK 5 (2015), available at [http://populardemocracy.org/sites/default/files/HourbyHour\\_final.pdf](http://populardemocracy.org/sites/default/files/HourbyHour_final.pdf). *See also* LUCE & FUJITA, *supra* note 17, at 8.

<sup>19</sup> LUCE & FUJITA, *supra* note 17, at 13.

<sup>20</sup> *See* EXECUTIVE OFFICE OF THE PRESIDENT, COUNCIL OF ECONOMIC ADVISERS, WORK-LIFE BALANCE AND THE ECONOMICS OF WORKPLACE FLEXIBILITY 3 (2010); LISA MATUS-GROSSMAN & SUSAN GOODEN, MDRC, OPENING DOORS: STUDENTS' PERSPECTIVES ON JUGGLING WORK, FAMILY AND COLLEGE 65 (2002), available at [http://www.mdrc.org/sites/default/files/full\\_466.pdf](http://www.mdrc.org/sites/default/files/full_466.pdf).

<sup>21</sup> JOAN C. WILLIAMS & PENELOPE HUANG, CTR. FOR WORK LIFE LAW, IMPROVING WORK-LIFE FIT IN HOURLY JOBS: AN UNDERUTILIZED COST-CUTTING STRATEGY IN A GLOBALIZED WORLD 13, 15, 57 (2011); NANCY C. CAUTHEN, DEMOS, SCHEDULING HOURLY WORKERS: HOW LAST MINUTE JUST-IN-TIME SCHEDULING PRACTICES ARE BAD FOR WORKERS, FAMILIES AND BUSINESS 7 (2011), available at <http://www.demos.org/publication/scheduling-hourly-workers-how-last-minute-just-time-scheduling-practices-are-bad-workers>.

<sup>22</sup> WATSON & SWANBERG, *supra* note 7, at 8-9.

<sup>23</sup> *Id.* at 8.

<sup>24</sup> RESTAURANT OPPORTUNITIES CTR. UNITED, THE THIRD SHIFT: CHILD CARE NEEDS AND ACCESS FOR LOW-WAGE WORKING MOTHERS IN RESTAURANTS 9-10 (July 2013), available at <http://www.scribd.com/doc/161943672/The-Third-Shift-Child-Care-Needs-and-Access-for-Working-Mothers-in-Restaurants>.

<sup>25</sup> LAMBERT, FUGIEL, & HENLY, *supra* note 10, at 11.

<sup>26</sup> *Id.* at 17-18.

<sup>27</sup> WATSON & SWANBERG, *supra* note 7, at 22 (with the exception of full-time low-wage workers with standard hours, for whom less than 20 percent reported this problem).

<sup>28</sup> LUCE & FUJITA, *supra* note 17, at 13.

<sup>29</sup> LAMBERT, FUGIEL, & HENLY, *supra* note 10, Table 7.

<sup>30</sup> ANNE MORRISON & KATHERINE GALLAGHER ROBBINS, NWLC, PART-TIME WORKERS ARE PAID LESS, HAVE LESS ACCESS TO BENEFITS—AND TWO-THIRDS ARE WOMEN 2 (Sept. 2015), available at [http://www.nwlc.org/sites/default/files/pdfs/part-time\\_workers\\_fact\\_sheet\\_8.21.1513.pdf](http://www.nwlc.org/sites/default/files/pdfs/part-time_workers_fact_sheet_8.21.1513.pdf).

<sup>31</sup> *Id.*

<sup>32</sup> LUCE & FUJITA, *supra* note 17, 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>.

<sup>33</sup> MORRISON & GALLAGHER ROBBINS, *supra* note 30, at 1. 35.5 percent of part-time workers hold low-wage jobs that typically pay \$10.50 per hour or less, compared to 10.9 percent of full-time workers. 71.6 percent of part-time workers in low-wage jobs are women. *Id.*

<sup>34</sup> *Id.* at 2-3. 25.1 percent of women who work part time involuntarily are poor, compared to 11.1 percent of women who work part time for other reasons and 5.0 percent of women who work full time. *Id.*

<sup>35</sup> *See generally* VOGTMAN & SCHULMAN, *supra* note 2, at 17-21.

<sup>36</sup> *Id.* at 17-18.

<sup>37</sup> *Id.* at 20.

<sup>38</sup> *Id.* at 18.

<sup>39</sup> *See generally id.*

<sup>40</sup> *See, e.g.*, Stephanie S. Daniel et al., *Nonstandard Maternal Work Schedules During Infancy: Implications for Children's Early Behavior Problems*, 32 INFANT BEHAV. & DEV. 195, 203-04 (2009); E. Rosenbaum & C.R. Morett, *The Effect of Parents' Joint Work Schedules on Infants' Behavior Over the First Two Years of Life: Evidence from the ECSLB*, 13 MATERNAL & CHILD HEALTH J. 732, 732 (2009); Wen-Jui Han, *Shift Work and Child Behavioral Outcomes*,

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22 WORK, EMP. & SOC. 67 (2008); Wen-Jui Han, Daniel P. Miller, & Jane Waldfogel, *Parental Work Schedules and Adolescent Risky Behaviors*, 46 DEV. PSYCHOL. 1245, 1261 (2010). See also VOGTMAN & SCHULMAN, *supra* note 2, at 14-15 & 33 nn. 116-19.

<sup>41</sup> See Han, *supra* note 40 (finding that “children whose mothers worked non-day shifts and who had almost always . . . lived in single-mother families, in low-income families, in families where mothers worked in a cashier or service occupation, or in families where mothers worked full-time,” on average had a predicted Behavioral Problems Index score of 8.82, 70 percent higher than the predicted score (5.19) for other children); Han, Miller, & Waldfogel, *supra* note 40, at 1257 (finding that effects of parents’ nonstandard work schedules were “particularly pronounced for . . . children in poor families, and children whose mothers never worked as professionals.”).

<sup>42</sup> Erika C. Odom, Lynne Vernon-Feagans, & Ann C. Crouter, *Nonstandard Maternal Work Schedules: Implications for African American Children’s Early Language Outcomes*, 28 EARLY CHILD. RES. Q. 379 (2013); Wen-Jui Han, *Maternal Nonstandard Work Schedules and Child Cognitive Outcomes*, 76 CHILD DEV. 137, 137, 152 (2005).

<sup>43</sup> Wen-Jui Han & Liana E. Fox, *Parental Work Schedules and Children’s Cognitive Trajectories*, 73 J. OF MARRIAGE & FAM. 962, 962 (Oct. 2011).

<sup>44</sup> See, e.g., Odom, Vernon-Feagans, & Crouter, *supra* note 42; Anna Gassman-Pines, *Low-Income Mothers’ Nighttime and Weekend Work: Daily Associations with Child Behavior, Mother-Child Interactions, and Mood*, 60 FAM. REL. 15, 26 (2011); Pamela Joshi & Karen Bogen, *Nonstandard Schedules and Young Children’s Behavioral Outcomes Among Working Low-Income Families*, 69 J. OF MARRIAGE & FAM. 139, 139 (2007).

<sup>45</sup> For example, research has linked nonstandard hours to higher levels of divorce, less time together as a couple, and lower relationship satisfaction. Maureen Perry-Jenkins et al., *Shift Work, Role Overload, and the Transition to Parenthood*, 69 J. OF MARRIAGE & FAM. 123-38 (2007). See also Kelly D. Davis et al., *Nonstandard Work Schedules, Perceived Family Well-Being, and Daily Stressors*, 70 J. OF MARRIAGE & FAM. 991 (2008). Although some two-parent families in low-wage jobs cope with the child care problems outlined above by “tag teaming,”—working on opposite schedules so that one parent is available to provide child care—this results in even less time together as a couple.

HEATHER BOUSHEY, CTR. FOR ECON. & POLICY RESEARCH, TAG-TEAM PARENTING 3 (2005), available at [http://www.cepr.net/documents/work\\_schedules\\_2006\\_08.pdf](http://www.cepr.net/documents/work_schedules_2006_08.pdf).

<sup>46</sup> Anna Haley-Lock & Linn Posey-Maddox, *Fitting It All In: How Mothers’ Employment Shapes Their School Engagement* 14-22, J. COMMUNITY, WORK & FAMILY (Dec. 2014).

<sup>47</sup> *Id.* at 20-21.

<sup>48</sup> See Han & Fox, *supra* note 43, at 969, 972, 975, 978; Han, Miller, & Waldfogel, *supra* note 40, at 1249, 1257, 1259. Compare with Rucker C. Johnson, Ariel Kalil, & Rachel E. Dunifon, *Employment Patterns of Less-Skilled Workers: Links to Children’s Behavior and Academic Progress*, 47 DEMOGRAPHY (2012). For a detailed discussion of these studies and their findings, see VOGTMAN & SCHULMAN, *supra* note 2, at 15 & 34 nn. 127-34.

<sup>49</sup> NWLC, RECENTLY ENACTED AND INTRODUCED STATE AND LOCAL FAIR SCHEDULING LEGISLATION 3-5 (Jan. 2017), available at <http://nwlc.org/wp-content/uploads/2017/01/Fair-Scheduling-Report-1.30.17-1.pdf>; NWLC, OVERVIEW OF SELECTED STATE AND LOCAL SCHEDULING PROTECTIONS (Jan. 2015), available at [https://nwlc.org/wp-content/uploads/2015/08/overview\\_of\\_selected\\_state\\_and\\_local\\_scheduling\\_protections\\_jan\\_2015.pdf](https://nwlc.org/wp-content/uploads/2015/08/overview_of_selected_state_and_local_scheduling_protections_jan_2015.pdf).

<sup>50</sup> NWLC, RECENTLY ENACTED AND INTRODUCED STATE AND LOCAL FAIR SCHEDULING LEGISLATION, *supra* note 49, at 4-5.

<sup>51</sup> April 2016 Letter from New York Attorney General Eric Schneiderman, available at <https://ag.ny.gov/press-release/ag-schneiderman-and-eight-other-state-attorneys-general-probe-retailers-over-use-call>.

<sup>52</sup> Susan Lambert and Julia R. Henley, *Managers’ strategies for balancing business requirements with employee needs: Maanager survey resultst.*” Working paper of The University of Chicago Work Scheduling Study (Chicago: University of Chicago, May 2010), [https://ssascholars.uchicago.edu/sites/default/files/work-scheduling-study/files/univ\\_of\\_chicago\\_work\\_scheduling\\_manager\\_report\\_6\\_25\\_0.pdf](https://ssascholars.uchicago.edu/sites/default/files/work-scheduling-study/files/univ_of_chicago_work_scheduling_manager_report_6_25_0.pdf).

<sup>53</sup> *Id.*

<sup>54</sup> A.G. Schneiderman Announces Agreements with Six Major Retailers To Stop On-Call Shift Scheduling (Dec. 20, 2016), available at <https://ag.ny.gov/press-release/ag-schneiderman-announces-agreements-six-major-retailers-stop-call-shift-scheduling>.

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<sup>55</sup> See NWLC, REPORTING TIME PAY: A KEY SOLUTION TO CURB UNPREDICTABLE AND UNSTABLE SCHEDULING PRACTICES (Jan. 2015), available at

[http://www.nwlc.org/sites/default/files/pdfs/reporting\\_time\\_pay\\_fact\\_sheet\\_jan\\_2015.pdf](http://www.nwlc.org/sites/default/files/pdfs/reporting_time_pay_fact_sheet_jan_2015.pdf).

<sup>56</sup> CTR. FOR LAW & SOCIAL POLICY ET AL., TACKLING UNSTABLE AND UNPREDICTABLE WORK SCHEDULES, *supra* note 18, at 8.

<sup>57</sup> Daniel Schneider & Kristin Harknett, *Schedule Instability and Unpredictability and Worker and Family Health and Wellbeing* 20-21 (Washington Ctr. for Equitable Growth Working Paper 2016-09, 2016),

<http://equitablegrowth.org/working-papers/schedule-instability-and-unpredictability/>.

<sup>58</sup> See Starbucks Approach to Staffing and Scheduling, <https://news.starbucks.com/views/starbucks-approach-to-staffing-and-scheduling> (last visited March 2, 2017).

<sup>59</sup> See generally NWLC, RECENTLY ENACTED AND INTRODUCED STATE AND LOCAL FAIR SCHEDULING LEGISLATION, *supra* note 50.

<sup>60</sup> James Parrott, DEMOGRAPHIC CHARACTERISTICS, INCLUDING PARENTAL, STUDENT AND POVERTY STATUS OF FRONTLINE NYC FAST-FOOD WORKERS, FISCAL POLICY INSTITUTE (Oct. 20, 2016).

<sup>61</sup> CBS/New York Times Poll (June 2015), available at <http://www.cbsnews.com/news/poll-who-can-get-ahead-in-the-u-s/>.

<sup>62</sup> NWLC, RECENTLY ENACTED AND INTRODUCED STATE AND LOCAL FAIR SCHEDULING LEGISLATION, *supra* note 50, at 3-5.

<sup>63</sup> *Id.*

<sup>64</sup> See Santa Clara County Registrar of Voters, November 8, 2016 Presidential General Election Results, [http://results.enr.clarityelections.com/CA/Santa\\_Clara/64404/184659/Web01/en/summary.html](http://results.enr.clarityelections.com/CA/Santa_Clara/64404/184659/Web01/en/summary.html) (last visited Feb. 25, 2017).

<sup>65</sup> A BETTER BALANCE, 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](http://www.abetterbalance.org/web/images/stories/Documents/fairness/factsheets/BC-2010-A_Better_Balance.pdf).

<sup>66</sup> *Id.*

<sup>67</sup> ANNA DANZIGER & SHELLEY WATERS BOOTS, WORKPLACE FLEXIBILITY 2010 & URBAN INST., LOWER-WAGE WORKERS AND FLEXIBLE WORK ARRANGEMENTS 7 (2008), available at

<http://workplaceflexibility2010.org/images/uploads/Lower-Wage%20Workers%20and%20FWAs.pdf>.

<sup>68</sup> A BETTER BALANCE, *supra* note 65.

<sup>69</sup> NWLC, RECENTLY ENACTED AND INTRODUCED STATE AND LOCAL FAIR SCHEDULING LEGISLATION, *supra* note 50.