



## UNFAIR WORK SCHEDULES HURT MARYLAND FAMILIES SUPPORT THE FAIR SCHEDULING ACT

**For many of the nearly 350,000 Marylanders working in retail, fast food, and restaurant jobs,<sup>1</sup> low wages make it hard to support themselves and their families—but pay is not the only problem with these jobs.** Low-wage jobs, especially in these sectors, are often marked by work scheduling policies and practices that pose particular challenges for workers with significant responsibilities outside of work, including caregiving, pursuing education and workforce training, or holding down a second job to make ends meet.<sup>2</sup> The work schedules in these jobs are often unpredictable, unstable, and inflexible. And many offer only part-time work, despite many workers' need for full-time hours.

Women are disproportionately affected by this problem because women not only hold the majority of low-wage jobs but also still shoulder the majority of caregiving responsibilities.<sup>3</sup> In Maryland, women represent more than half (54.3 percent) of the workforce in retail, restaurant, and fast food jobs, and many are supporting families—often on their own.<sup>4</sup> For these workers, difficult scheduling practices all too often undermine their best efforts to provide for their families.

**The schedules associated with many low-wage jobs can wreak havoc in workers' lives—and especially constrain working parents' ability to care for their children.**

- Many people working in low-wage jobs in retail and food service have unstable, unpredictable, and often inadequate hours, scheduled with little regard for their needs or preferences. About half of low-wage workers report having little or no control over the timing of their work hours,<sup>5</sup> and “just-in-time” scheduling practices, often supported by scheduling software, can produce frequent, last-minute

changes to scheduled shifts as well as work hours—and paychecks—that vary wildly from week to week.

- Among those who work in hourly jobs, almost three-quarters of young adults (ages 26 to 32)—a group that is particularly likely to have young children at home—report that their work hours fluctuate each month.<sup>6</sup> Among retail and food service workers, close to nine in ten report variable hours.<sup>7</sup>
- Forty-one percent of young adults working in hourly jobs report learning their work schedule one week or less in advance.<sup>8</sup> In retail and restaurant jobs, workers commonly receive just a few days' notice of a scheduled shift.<sup>9</sup>
- Sometimes notice is even shorter: an employee scheduled for a “call-in” or “on-call” shift must be available to work, but will find out just hours before the shift whether she must actually report to work.<sup>10</sup> Workers generally are not paid for being on call,<sup>11</sup> but if they are unavailable when directed to report for work, they may be penalized.<sup>12</sup>
- Last-minute changes to scheduled shifts are also common in some jobs,<sup>13</sup> and shift length can be highly unpredictable as well; on a busy day, an employee may be told to extend her shift<sup>14</sup>—and if business is slow, she might be sent home soon after she arrives, with transportation and child care costs amounting to more than that day's pay.<sup>15</sup> 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>16</sup>
- Retail and restaurant workers may also find themselves scheduled to “clopen”—that is, to work the closing

shift one night and the opening shift the next morning. Clopening leaves workers without enough time to travel home and get sufficient rest before returning to work, and can be particularly disruptive for families with children.<sup>17</sup>

- The part-time hours that are common in retail and food service jobs can make workers especially vulnerable to unfair scheduling practices. Part-time workers typically experience more variability in hours and receive even less advance notice of their schedules than full-time workers,<sup>18</sup> and many are scheduled for inadequate hours at very low pay.
  - 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>19</sup> Part-time workers also tend to be paid significantly less per hour than their full-time counterparts.<sup>20</sup>
  - One in five part-time employees (7.2 million people) work part time involuntarily and would prefer to find full-time work.<sup>21</sup>
  - Among workers who work part time voluntarily, 25.5 percent report working part time because of child care problems or other family or personal obligations—especially women.<sup>22</sup> While some of these workers may prefer to work part time, for others the “choice” of part-time work is forced by high child care costs, low wages, or inflexible and unpredictable work schedules.<sup>23</sup>

**The challenging work schedules in many low-wage jobs can increase stress for workers—and for their families, which can impair behavioral and cognitive outcomes for children.**

When a low-wage worker never knows whether she will work 10 or 40 hours in a given week, and has no control over when those hours will be, it can be nearly impossible to budget for expenses, secure reliable child care, establish consistent routines at home, or spend the time she wants with her children. And research shows that features of low-wage work that increase parents’ stress—including inadequate pay and constantly fluctuating work hours—can also harm children’s development.<sup>24</sup> Nonstandard and volatile schedules also make it more challenging for parents to access high-quality early care and education programs that could help their children gain the early math, language, literacy, and other skills they need to enter school ready to succeed.<sup>25</sup>

**Maryland’s Fair Scheduling Act will provide more stable, predictable work schedules for food service and retail workers and greater economic security for Maryland families.**

The Fair Scheduling Act provides crucial protections from difficult scheduling practices that undermine workers’ ability to provide for themselves and their families. The Act’s protections are targeted to cover only large employers in retail and food service—employers that have been most likely to engage in abusive scheduling practices, who are also the most readily able to adopt fair scheduling practices given their size and resources. These protections include:

- **Advance notice of schedules.** Upon hiring a new employee, an employer must provide the employee with an estimate of the number of hours, days, and times she will be scheduled to work each week, as well as a schedule for her first three weeks of work. For all employees, the employer must provide work schedules three weeks in advance.
- **Compensation for certain schedule changes.** Employers must promptly notify employees of any change to their work schedules.
  - If an employer changes an employee’s schedule less than 21 days but more than 24 hours before the start of the shift, the employer must pay the employee one extra hour of pay at her regular wage rate (“predictability pay”).
  - If the employer makes a change within 24 hours of the start of the shift, the employer shall pay the employee two hours of predictability pay for each shift of four hours or less, or four hours of predictability pay for each shift of more than four hours.
  - The predictability pay requirements would not apply to schedule changes made at the employee’s request, as a result of a shift trade among employees, or to avoid a threat to the health or safety of the employees or the public. The advance notice and predictability pay requirements also would not apply when the employer’s operations are suspended due to events beyond the employer’s control.
- **Right to make scheduling requests.** The Act would protect employees who want to request changes to their schedules or flexible working arrangements by granting them the express right to do so free from retaliation. It would also require employers to grant requests for flexible working arrangements to employees who request them because of a serious health condition, education or career training, caregiving responsibilities, or to accommodate another job, unless the employer has a bona fide business reason for denying the request.



• **Opportunities and protections for part-time workers.**

Employers must offer current, qualified employees available hours before hiring new employees or subcontractors, and they may not pay employees less per hour based solely on the fact that they are part-time, or deny employees promotion opportunities or benefits based on their part-time status.

**The provisions in the Fair Scheduling Act will help ensure that working people can meet their responsibilities both on and off the job, with benefits for both employers and employees—as well as employees’ families.**

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.

San Francisco, San Jose, and Emeryville, CA; Seattle, WA; and New Hampshire have all recently enacted fair work week protections, and the District of Columbia and 13 states introduced bills to curb difficult scheduling practices in the 2015-2016 legislative sessions.<sup>26</sup>

- 1 NWLC calculations based on U.S. Census Bureau, American Community Survey (ACS) 2015 using IPUMS-USA, University of Minnesota, available at <https://usa.ipums.org/usa/>.
- 2 See generally JULIE VOGTMAN & KAREN SCHULMAN, NAT’L WOMEN’S LAW CTR. (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/>.
- 3 See *id.* at 3 and 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/news.release/atus.t01.htm>.
- 4 NWLC calculations, *supra* note 1. Among the 340,500 Maryland workers employed in retail, restaurant, and fast food jobs, 69,850 are parents. 60 percent of these parents are mothers, 52.1 percent of whom are raising children on their own (including married women whose spouses are absent as well as women who are separated, divorced, never married, or widowed). *Id.*
- 5 LIZ WATSON & JENNIFER E. SWANBERG, FLEXIBLE WORKPLACE SOLUTIONS FOR LOW-WAGE HOURLY WORKERS: A FRAMEWORK FOR A NATIONAL CONVERSATION 19-20 (2011), available at <http://workplaceflexibility2010.org/images/uploads/whatsnew/Flexible%20Workplace%20Solutions%20for%20Low-Wage%20Hourly%20Workers.pdf>. See also 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 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”).
- 6 LAMBERT, FUGIEL, & HENLY, *supra* note 5, at 11.
- 7 *Id.* at 17-18.
- 8 *Id.* at 6.
- 9 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, 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).
- 10 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, e.g., LUCE & FUJITA, *supra* note 9, at 8 (finding that 44 percent of retail employees working at large New York City retailers surveyed reported that they must be available for call-in shifts at least some of the time, including one-fifth who reported that they “always or often” must be available for such shifts).
- 11 See, e.g., CTR. FOR LAW & SOCIAL POLICY, RETAIL ACTION PROJECT, & WOMEN EMPLOYED, *supra* note 10, at 11; CTR. FOR POPULAR DEMOCRACY, *supra* note 10, at 5; Dante Ramos, On-Call Shifts String Retail Workers Along, BOSTON GLOBE (Apr. 19, 2015), <https://www.bostonglobe.com/opinion/editorials/2015/04/18/dante-ramos-call-shifts-string-workers-along/admOznKJNCM4YFuUced1QI/story.html>.
- 12 CTR. FOR POPULAR DEMOCRACY, *supra* note 10, at 5.
- 13 See, e.g., Julia R. Henly & Susan J. Lambert, *Unpredictable Work Timing in Retail Jobs*, 67 INDUS. & LAB. REL. REV. 986-1016, 1001 (2014) (finding in a study of retail employees that “the average employee experienced mismatch between scheduled and worked days equivalent to almost one-half day”); Lambert, *supra* note 9, at 1218.
- 14 See, e.g., WATSON & SWANBERG, *supra* note 5, at 21.
- 15 See, e.g., CTR. FOR POPULAR DEMOCRACY, *supra* note 10, at 5; LUCE & FUJITA, *supra* note 9, at 13. Eight states and the District of Columbia have enacted “reporting time pay” or “send-home pay” laws, which require employers to provide a minimum number of hours of pay to workers who appear for a scheduled shift but are sent home early. For more information, see NWLC, REPORTING TIME PAY LAWS: A KEY SOLUTION TO CURB



- UNPREDICTABLE AND UNSTABLE SCHEDULING PRACTICES (Oct. 2014), *available at* [http://www.nwlc.org/sites/default/files/pdfs/reporting\\_time\\_pay\\_fact\\_sheet.pdf](http://www.nwlc.org/sites/default/files/pdfs/reporting_time_pay_fact_sheet.pdf).
- 16 RESTAURANT OPPORTUNITIES CENTERS 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>.
- 17 See CTR. FOR POPULAR DEMOCRACY, *supra* note 10, at 5.
- 18 See LAMBERT, FUGIEL, & HENLY, *supra* note 5, at 17.
- 19 ANNE MORRISON & KATHERINE GALLAGHER ROBBINS, NWLC, PART-TIME WORKERS ARE PAID LESS, HAVE LESS ACCESS TO BENEFITS - AND TWO-THIRDS ARE WOMEN 1 (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). 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.*
- 20 *Id.* at 3.
- 21 *Id.* at 2.
- 22 *Id.* Women are seven times more likely than men to cite “child care problems” and nearly four times more likely than men to cite “other family/personal obligations” as reasons for working part time. *Id.*
- 23 *Id.* at 3.
- 24 See *generally* VOGTMAN & SCHULMAN, *supra* note 1, at 14-15.
- 25 See *generally id.* at 17-21.
- 26 See NWLC, RECENTLY ENACTED AND INTRODUCED STATE AND LOCAL FAIR SCHEDULING LEGISLATION (Jan. 2017), *available at* <http://nwlc.org/wp-content/uploads/2017/01/Fair-Scheduling-Report-1.30.17-1.pdf>.