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State and Local Laws Advancing Fair Work Schedules

Millions of people—mostly women—work in retail, food service, hospitality, and other industries in which jobs often pay low wages and lack benefits. In many of these jobs, employees increasingly face “just-in-time” scheduling practices, including being given very little notice of their work schedules, being sent home early when work is slow without being paid for their scheduled shifts, and being assigned to “on-call” shifts that require them to call their employer (or wait to be called) to find out whether they will be required to report to work. Many employees have very little ability to make adjustments to their work schedules without penalty.¹ And more than one in six people who are currently working part time would like to be working full time.²

Unstable and unpredictable work hours yield unstable and unpredictable incomes and make it extremely challenging for working people to manage responsibilities like caregiving, pursuing higher education, or holding down a second job. It can be particularly hard for parents with difficult work schedules to afford and access the high-quality child care that would provide needed stability for their children and help prepare them for school. And research shows that the stress caused by inadequate income and constantly fluctuating work hours is not only bad for workers, but also can undermine their children’s well-being.³

There is growing movement to improve workplace scheduling practices so that working people and their families can better plan their lives. This report provides an overview of the public policy solutions that have been adopted at the state and local levels to promote fair work schedules in the United States.

*Note that all of the laws and regulations summarized below incorporate administrative enforcement mechanisms and bar retaliation by employers against employees who assert the rights they provide; some also may be enforced through a private right of action. Consult **Appendix A** for information regarding private rights of action, as well as an overview of the protections provided in each state and locality that regulates work scheduling practices, and see **Appendix B** for a quick-reference glossary defining each type of provision described in the report.*

Promoting Employee Input into Work Schedules

Many workers in low-wage jobs have few opportunities for meaningful input into the timing of the hours that they work, and are unable to make even minor adjustments to their work schedules or place limitations on their available hours without fear of retribution by their employers.⁴ Survey research routinely shows that close to half of people working in low-wage jobs lack control over the timing of their work hours.⁵ Early-career employees of color in hourly jobs report less control over their work hours than do their white counterparts.⁶ And 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.⁷

RIGHT TO REQUEST laws 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 by their employers.

State & local laws regarding right to request

CHICAGO, IL: Under Chicago's Fair Workweek ordinance, passed in July 2019, a covered employee has the right to request a modified work schedule, including additional shifts or hours; changes in days of work or shift start and end times; permission to exchange shifts with other employees; limitations on availability; job sharing arrangements; reduction or change in work duties; or part-time or part-year employment. The employer must respond to requests in writing.⁸

- **Who is covered:** Employees (or workers for a temporary labor service agency who have been on assignment to an employer for at least 420 hours) who earn an annual salary of no more than \$50,000, or an hourly rate of no more than \$26, and perform the majority of their work in a covered industry—building services, health care, hotels, manufacturing, restaurants, retail, or warehouse services—for a covered employer. Employers are covered if they are primarily engaged in a covered industry and employ at least 100 employees globally (or at least 250 employees if the employer is a nonprofit corporation), at least 50 of whom are covered employees.

- **The ordinance is effective beginning July 1, 2020.** The wage/salary threshold for covered employees will be increased annually beginning July 1, 2021, to keep pace with inflation.

EMERYVILLE, CA: Emeryville's Fair Workweek ordinance, passed in 2016, grants employees the right to request additional shifts or hours, changes in days or times of work, a predictable work schedule, permission for shift-trading, limitations on availability, part-time employment, job sharing arrangements, changes in work duties, or part-year employment.⁹

- **Who is covered:** Nonexempt employees who work for retail firms with 56 or more employees globally, or fast food firms with 56 or more employees globally and 20 or more employees within Emeryville city limits.

NEW HAMPSHIRE: A state law passed in 2016 prohibits employers from retaliating against any employee solely because the employee requests a flexible work schedule.¹⁰

- **Who is covered:** All employees.

NEW YORK CITY, NY: An amendment to New York City's Fair Workweek ordinances enacted in 2018 requires employers to allow employees to take two temporary schedule changes per calendar year—such as using paid time off, working remotely, changing work hours or using unpaid leave—relating to a "personal event," defined as caregiving needs, the need to attend a legal proceeding or hearing for subsistence benefits, or any circumstance that would constitute a basis for permissible use of safe time or sick time. The ordinance also provides employees with a right to request other schedule changes, but an employer is not obligated to grant such requests.¹¹

- **Who is covered:** All employees, except for those who have worked for an employer for fewer than 120 days or are employed in the entertainment industry. (Entertainment industry employees who primarily perform office or non-manual work directly related to the management or general business operations of the employer or the employer's customers, or who primarily perform routine mental, manual, mechanical or physical work in connection with the care or maintenance of an existing building or location used by the employer, are covered by the law.)

OREGON: Oregon’s Fair Workweek law, passed in 2016, includes a provision granting covered employees the right to identify limitations in their work schedules or request not to be scheduled during certain times or at certain locations.¹²

- **Who is covered:** Hourly employees working at a retail, hospitality, or food service establishment with 500 or more employees worldwide.

PHILADELPHIA, PA: Under Philadelphia’s Fair Workweek Employment Standards Ordinance, passed in December 2018, eligible employees have the right to make work schedule requests at the time of hire and throughout their employment. This includes requests not to be scheduled during certain days or at certain locations; requests for certain hours, days, or locations; requests for more or fewer hours; or requests not to work on-call shifts.¹³

- **Who is covered:** Nonexempt employees who work at a retail, hospitality, or food service establishment with more than 250 employees and more than 30 locations worldwide.
- **The ordinance is effective beginning January 1, 2020.**

SAN FRANCISCO, CA: Under San Francisco’s Family Friendly Workplace Ordinance, passed in 2013, all eligible employees have the right to request a flexible or predictable work arrangement to assist with caregiving responsibilities. The law also prohibits discrimination on the basis of caregiver status. The requests must be made in writing and include an explanation of how the request relates to caregiving. Employers may deny requests for bona fide business reasons.¹⁴

- **Who is covered:** The law applies to employers with 20 or more employees and covers any employee caring for a child, a family member with a serious health condition, or a parent over the age of 65.

SEATTLE, WA: Under Seattle’s Secure Scheduling Ordinance, adopted in 2016, a covered employee has the right to request certain times or at certain locations and the right to identify preferences for the hours or location of work. Employers are required to engage in a timely, interactive process to discuss the request and must grant employee schedule requests related to a major life event—i.e., the employee’s serious health condition, education, caregiving responsibilities, second job responsibilities, or changes in the employee’s transportation or housing—

unless the employer has a bona fide business reason for denying the request. In the event of a denial of a request related to a major life event, the employer must state the reason for the denial in writing and the bona fide business reason for the decision.¹⁵

- **Who is covered:** Hourly employees in retail and fast food establishments with 500 or more employees worldwide, or in full-service restaurants with 500 or more employees and 40 or more full service locations worldwide.

VERMONT: A law enacted in 2014 grants any employee the right to request a flexible working arrangement. The employer shall consider the employee’s request in good faith and determine whether the request is consistent with current business operations.¹⁶

- **Who is covered:** All employees.

Requiring Advance Notice of Work Schedules

“Just-in-time scheduling” bases workers’ schedules on perceived consumer demand and often results in workers being given very little advance notice of their work schedules.¹⁷ Scheduling software is frequently used to schedule workers at the last minute, matching the number of workers as closely as possible to retail traffic or other indicators of consumer demand.¹⁸

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.¹⁹ 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).²⁰ Black and Latinx workers are more likely than white workers to receive no more than a week’s notice.²¹ A recent study of nearly 30,000 hourly workers in large U.S. retail and food service chains (known as the “Shift Project”) found that 63 percent received less than two weeks’ notice of their work schedules,²² and additional studies have found that workers in retail, restaurant, and hospitality jobs commonly receive just a few days’ notice of a scheduled shift.²³ And 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.²⁴

ADVANCE NOTICE provisions require employers to provide employees with a certain amount of advance notice of their schedules. Most provisions also require employers to provide good faith estimates of typical work schedules before an employee begins employment.

State & local laws regarding advance notice

CHICAGO, IL: Chicago's Fair Workweek ordinance requires employers to provide covered employees with a good faith estimate of their projected days and hours of work for the first 90 days of employment upon hiring, and to provide at least 14 days' notice of work schedules. (Only seven days' notice will be required during the initial implementation period between July 1, 2020 and June 30, 2022.) An employee has a right to decline any hours or shifts scheduled with less than the required notice.²⁵

- **Who is covered:** Employees (or workers for a temporary labor service agency who have been on assignment to an employer for at least 420 hours) who earn an annual salary of no more than \$50,000, or an hourly rate of no more than \$26, and perform the majority of their work in a covered industry—building services, health care, hotels, manufacturing, restaurants, retail, or warehouse services—for a covered employer. Employers are covered if they are primarily engaged in a covered industry and employ at least 100 employees globally (or at least 250 employees if the employer is a nonprofit corporation), at least 50 of whom are covered employees.
- **Exceptions:** Covered employees who self-schedule (i.e., self-select work shifts without employer pre-approval) or work in a venue that regularly hosts ticketed events, as defined by the ordinance, are exempt from the notice requirement. Employee consent is not required for shift changes with less than the requisite notice if the change is the result of: an employee request; voluntary shift-trading or other voluntary shift modifications by employees; a mutual agreement between the covered employee and employer that is confirmed in writing; a threat to employers, covered employees, or property, or when civil authorities recommend that work not begin or continue; failure of public utilities; acts of nature; war, civil unrest, strikes, threats to public safety, or pandemics; or a disciplinary action in which the employer subtracts hours for just cause and documents the incident leading

to the discipline in writing. Additional exceptions apply specifically to changed circumstances around banquet events, manufacturing, and health care.

- **The ordinance is effective beginning July 1, 2020.** The wage/salary threshold for covered employees will be increased annually beginning July 1, 2021, to keep pace with inflation.

EMERYVILLE, CA: The Fair Workweek ordinance requires a covered employer to provide an employee, upon hiring, with a good faith estimate of the employee's work schedule. It also requires employers to provide employees with at least 14 days' notice of their work schedules covering seven-day periods on a biweekly schedule. The ordinance prohibits employers from requiring an employee to work additional hours not included in the initial work schedule unless the employee consents.²⁶

- **Who is covered:** Nonexempt employees who work for retail firms with 56 or more employees globally, or fast food firms with 56 or more employees globally and 20 or more employees within Emeryville city limits..
- **Exceptions:** Employee consent is not required for shift changes with less than 14 days' notice if the change is the result of voluntary shift-trading by employees or other voluntary shift modifications by employees, or if employer operations are suspended due to threats to employees or property, failure of public utilities, or acts of nature, civil unrest, strikes, or other causes not within the employer's control.

NEW YORK CITY, NY: Two Fair Workweek ordinances enacted in 2017 require:

(1) *Fast food employers* to provide employees with a good faith estimate of their work schedules upon hiring, to provide at least 14 days' notice of work schedules, and to obtain written consent for shifts added with less than 14 days' notice; and

(2) *Retail employers* to provide at least 3 days' (72 hours) notice of work schedules, and to obtain written consent for shifts added with less than 3 days' notice.

Under the retail ordinance, retail employers also must not schedule employees for on-call shifts or cancel shifts with less than 3 days' notice.²⁷

- **Who is covered:** Employees working at (1) a fast food establishment with 30 or more restaurants nationwide, or (2) a retail store that primarily sells consumer goods and employs 20 or more workers in New York City.

- **Exceptions:** A retail employer may change an employee's schedule with less than 72 hours' notice due to a closure resulting from threats to worker safety or employer property; public utility failure; shutdown of public transportation; fire, flood, or other natural disaster; or a government-declared state of emergency. A retail employer may also grant an employee time off at the employee's request or allow the employee to trade shifts with another retail employee.

OREGON: The Fair Workweek law requires covered employers to provide employees with a good faith estimate of their work schedules upon hiring and to provide at least 14 days' notice of work schedules. (Only seven days' notice will be required during the initial implementation period between July 1, 2018 and June 30, 2020.) An employee has a right to decline any schedule change made with less than the required notice.²⁸

- **Who is covered:** Hourly employees working at a retail, hospitality, or food service establishment with 500 or more employees worldwide.

PHILADELPHIA, PA: Philadelphia's Fair Workweek Employment Standards Ordinance requires employers to provide all covered employees with a good faith estimate of their work schedules at the time of hire and to provide at least 14 days' notice of work schedules. (Only 10 days' notice will be required during the initial implementation period between January 1, 2020 and December 31, 2020.) Employees have a right to decline any hours or shifts not included on the original posted work schedule.²⁹

- **Who is covered:** Nonexempt employees who work at a retail, hospitality, or food service establishment with more than 250 employees and more than 30 locations worldwide.
- **Exceptions:** Employee consent is not required for schedule changes made with less than the requisite notice if: an employee requests a shift change in writing or, in response to a mass communication from the employer, volunteers to work additional hours because another employee is unable to work scheduled hours; an employee begins or ends work no more than 20 minutes after the scheduled start or end time of the shift; the schedule change results from a mutually agreed-upon shift trade between employees; operations are suspended because of threats to employees or property, failure of public utilities, natural disaster, a state of emergency, or severe weather conditions; the changes are made with 24 hours of posting the work schedule; hours are

subtracted due to termination or for disciplinary reasons related to a multi-day suspension; a ticketed event is cancelled, scheduled, rescheduled, or expanded due to circumstances outside an employer's control; or a hotel banquet event is scheduled, due to circumstances outside an employer's control, with less than the required notice.

- **The ordinance is effective beginning January 1, 2020.**

SAN FRANCISCO, CA: Under the San Francisco Retail Workers Bill of Rights, adopted in 2014, a covered employer must provide, prior to the start of employment, a good faith estimate of an employee's expected minimum number of scheduled shifts per month, excluding on-call shifts. Employers are required to post schedules of hourly workers 14 days in advance.³⁰

- **Who is covered:** Nonexempt employees working for "formula retail" employers with 20 or more employees that have at least 40 establishments worldwide and at least 20 employees in San Francisco, as well as their janitorial and security contractors. Formula retail establishments are defined to include retail and grocery stores, fast food businesses, restaurants, movie theaters, and banks.

SEATTLE, WA: The Secure Scheduling Ordinance requires employers to provide an employee, upon hiring and annually, with a good faith estimate of median number of hours and whether they will be expected to work on-call shifts. It also requires employers to provide employees their work schedules 14 days in advance. The ordinance prohibits employers from requiring employees to find a replacement to cover their shifts when they are unable to work due to an emergency or major life event or a reason covered by another local, state, or federal law that prohibits asking such questions or protects the absence from employee interference.³¹

- **Who is covered:** Hourly employees in retail and fast food establishments with 500 or more employees worldwide, or in full-service restaurants with 500 or more employees and 40 or more full service locations worldwide.

Providing Compensation for Last-Minute Work Schedule Changes

Unpredictable and unstable work schedules yield unpredictable and unstable income, making it difficult for families to budget and meet their expenses. Employees who report to work only to be sent home an hour later, who make transportation and child care arrangements to prepare for on-call shifts that never materialize, or who otherwise experience last-minute changes to scheduled shifts may end up incurring costs rather than being paid the wages they are counting on.³² Research increasingly shows that income volatility is as significant a source of poverty as low wages³³—and families with volatile incomes are far more likely to rely on payday loans, defer medical care, miss a housing payment, and experience food insecurity than families with equal but more stable income.³⁴

Predictability pay and reporting pay provisions can be used to promote more stable work schedules and incomes by discouraging last-minute schedule changes and compensating employees when such changes are made.

PREDICTABILITY PAY provisions require employers to pay employees a certain number of hours of compensation, in addition to payment for any time actually worked, when employers make last-minute changes to employees' shifts, including additions or reductions in hours and cancellations of regular or on-call shifts.

State & local laws regarding predictability pay

CHICAGO, IL: Chicago's Fair Workweek ordinance requires employers to pay one extra hour of pay at the employee's regular rate for each shift that is changed with less than 14 days' notice (less than seven days' notice during the initial implementation period between July 1, 2020 and June 30, 2022). For each shift that is cancelled or reduced with less than 24 hours' notice, employers are required to pay the employee at half the usual rate of pay for each scheduled hour not worked.³⁵

- **Who is covered:** Employees (or workers for a temporary labor service agency who have been on assignment to an employer for at least 420 hours) who earn an annual salary of no more than \$50,000, or an hourly rate of no more than \$26, and perform the majority of their work

in a covered industry—building services, health care, hotels, manufacturing, restaurants, retail, or warehouse services—for a covered employer. Employers are covered if they are primarily engaged in a covered industry and employ at least 100 employees globally (or at least 250 employees if the employer is a nonprofit corporation).

- **Exceptions:** Predictability pay is not required for shift changes that are the result of: an employee request; voluntary shift-trading or other voluntary shift modifications by employees; a mutual agreement between the covered employee and employer that is confirmed in writing; a threat to employees, covered employees, or property, or when civil authorities recommend that work not begin or continue; failure of public utilities; acts of nature; war, civil unrest, strikes, threats to public safety, or pandemics; or a disciplinary action in which the employer subtracts hours for just cause and documents the incident leading to the discipline in writing. Additional exceptions apply specifically to changed circumstances around banquet events, manufacturing, and health care.

- **The ordinance is effective beginning July 1, 2020.** The wage/salary threshold for covered employees will be increased annually beginning July 1, 2021, to keep pace with inflation.

EMERYVILLE, CA: The Fair Workweek ordinance requires employers to pay one extra hour of pay at the employee's regular rate for each shift that is changed with less than 14 days' notice. For each shift that is cancelled or reduced with less than 24 hours' notice, employers are required to pay the employee four hours or the number of hours in the scheduled shift, whichever is less, at the employee's regular rate of pay.³⁶

- **Who is covered:** Nonexempt employees who work for retail firms with 56 or more employees globally, or fast food firms with 56 or more employees globally and 20 or more employees within Emeryville city limits.
- **Exceptions:** Predictability pay is not required for shift changes with less than 14 days' notice if the change is the result of voluntary shift-trading by employees or other voluntary shift modifications by employees, or if employer operations are suspended due to threats to employees or property, failure of public utilities, or acts of nature, civil unrest, strikes, or other causes not within the employer's control.

NEW YORK CITY, NY: The Fair Workweek Law applicable to fast food establishments requires a premium to be paid to employees for schedule changes made by the employer with less than 14 days' notice to the employee. Changes to schedules include canceling, shortening, or moving shifts, adding hours to scheduled shifts, and adding shifts. The premium amount required ranges from \$10 to \$75 per schedule change, depending on the type of change and the length of advance notice given.³⁷

- **Who is covered:** Employees working at a fast food establishment with 30 or more restaurants nationwide.
- **Exceptions:** Predictability pay is not required for shift changes with less than 14 days' notice if the change is the result of an employee request or voluntary shift-trading by employees; if an employer must pay overtime for a changed shift; or if employer operations are suspended due to threats to worker safety or employer property, public utility failure, shutdown of public transportation, natural disaster, or government-declared state of emergency.

OREGON: The Fair Workweek Ordinance requires employers to compensate employees for employer-requested schedule changes made with less than 14 days' advance notice (less than seven days' notice during the initial implementation period between July 1, 2018 and June 30, 2020). An employer must pay an employee for one hour of time at the employee's regular rate, in addition to wages earned, when the employer adds more than 30 minutes of work to the employees' schedule, changes the start or end time of the employee's shift with no loss of hours, or schedules the employee for an additional on-call or regular shift. When the employer subtracts hours from an employee's work shift before or after the employee reports for duty; changes the date or start or end time of the employee's work shift, resulting in a loss of hours; cancels the employee's work shift; or does not have the employee work a scheduled on-call shift, the employer must pay the employee at half the usual rate for each scheduled hour not worked.³⁸

- **Who is covered:** Hourly employees working at a retail, hospitality, or food service establishment with 500 or more employees worldwide.
- **Exceptions:** Predictability pay is not required if: the schedule change is the result of an employee request or voluntary shift-trading by employees; an employee has agreed to be on an employer's voluntary standby list and accepts an offer of work; employer operations

are suspended due to threats to employees or property, recommendation of a public official, failure of public utilities, natural disasters, or other causes not within the employer's control; operation hours have shifted because of cancellation or rescheduling of a ticketed event; an employer subtracts hours from an employee for disciplinary reasons; or an employer asks an employee to work additional hours "to address unanticipated customer needs or unexpected employee absence," the employee agrees in writing to do so, the employer has already attempted unsuccessfully to use its standby list if it has one (contacting all employees on that list), and the employer has either used "group communication" to make the request of multiple employees or individually asked an employee working at the time of the need for coverage in person.

PHILADELPHIA, PA: Under Philadelphia's Fair Workweek Employment Standards Ordinance, employers must provide covered employees predictability pay if they make changes to a posted work schedule after the first 24 hours of the 14-day advance notice period (10 days during the initial implementation period between January 1, 2020 and December 31, 2020). If the employer adds time to a work shift, or changes the date, time, or location of a shift with no loss of hours, they must pay the employee for one hour of time at the employee's regular rate, in addition to wages earned. If the employer cancels or subtracts hours from a shift (including on-call shifts), they must pay the employee at half the usual rate for each scheduled hour not worked.³⁹

- **Who is covered:** Nonexempt employees who work at a retail, hospitality, or food service establishment with more than 250 employees and more than 30 locations worldwide.
- **Exceptions:** Predictability pay is not required if: an employee requests a shift change in writing or, in response to a mass communication from the employer, volunteers to work additional hours because another employee is unable to work scheduled hours; an employee begins or ends work no more than 20 minutes after the scheduled start or end time of the shift; the schedule change results from a mutually agreed-upon shift trade between employees; operations are suspended because of threats to employees or property, failure of public utilities, natural disaster, a state of emergency, or severe weather conditions; the changes are made with 24 hours of posting the work schedule; hours are subtracted due to termination or for disciplinary reasons related to a multi-day suspension; a ticketed event is

cancelled, scheduled, rescheduled, or expanded due to circumstances outside an employer's control; or a hotel banquet event is scheduled, due to circumstances outside an employer's control, with less than the required notice.

- **The ordinance is effective beginning January 1, 2020.**

SAN FRANCISCO, CA: Under the Retail Workers Bill of Rights, if an employer makes changes to the posted schedule with less than seven days' notice but more than 24 hours' notice, the employee receives one extra hour of pay for each shift that is changed, including on-call shifts. If the employer changes the schedule within 24 hours of the scheduled shift, the employee receives two hours of extra pay for each shift of four hours or less and four hours of additional pay for each shift of more than four hours that is changed, including unused on-call shifts.⁴⁰

- **Who is covered:** Nonexempt employees working for "formula retail" employers with 20 or more employees that have at least 40 establishments worldwide and at least 20 employees in San Francisco, as well as their janitorial and security contractors. Formula retail establishments are defined to include retail and grocery stores, fast food businesses, restaurants, movie theaters, and banks.
- **Exceptions:** The employer is not required to provide predictability pay to the employee for schedule changes that the employee requests (including employee-requested sick leave, shift trades, or additional shifts), or when the change is a result of another employee's inability to work that shift and the employer did not receive at least seven days' notice of the absence. Predictability pay also does not apply when operations cannot begin or continue due to threats to employees or property, a failure in the public utilities or sewer system, or a natural disaster or other causes not within the employer's control.

SEATTLE, WA: The Secure Scheduling Ordinance requires employers to pay one hour of extra pay for each employer-initiated schedule change after the schedule is posted that adds hours of work or changes the date or start or end time of a work shift with no loss of hours. If the employer cancels or reduces the hours in a scheduled work shift (including an on-call shift), or changes the date or start or end time resulting in a loss of hours, the employer must pay the employee at half the usual rate for any scheduled hours not worked.⁴¹

- **Who is covered:** Hourly employees in retail and fast food establishments with 500 or more employees worldwide, or in full-service restaurants with 500 or more employees

and 40 or more full service locations worldwide.

- **Exceptions:** Predictability pay is not required if the schedule change is the result of an employee request or voluntary shift-trading by employees; an employee's voluntary acceptance of additional hours in response to a) mass communication in writing from the employer about the availability of additional hours, or b) in-person group communication about additional hours that are due to unanticipated customer needs and are consecutive to the employee's current shift; employer operations are suspended due to threats to employees or property, recommendation of public official, failure of public utilities, natural disasters, or other causes not within the employer's control; or an employer subtracts hours from an employee for disciplinary reasons.

REPORTING PAY provisions require employers to pay employees for some portion of their originally scheduled shifts when employees report for work but are then told that their shifts have been cancelled or reduced. Laws and regulations requiring reporting pay typically predate, and are more limited than, those requiring predictability pay; predictability pay laws not only compensate employees who see their hours cut after reporting to work, but also recognize that employees deserve compensation for holding their time available for their employers in the wider range of scenarios described above.

State & local laws regarding reporting pay

CALIFORNIA: Under California labor regulations, if an employee reports to work but is not put to work or is given less than half of their usual or scheduled day's work, the employee must be paid for half the usual or scheduled day's work, but in no event for less than two hours or more than four hours at the employee's regular rate of pay.⁴²

- **Who is covered:** All non-exempt employees.
- **Exceptions:** An employer is exempt from the reporting time pay requirement if operations cannot commence or continue due to threats to employees or property, or when recommended by civil authorities; when public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities or sewer system; or the interruption

is caused by an Act of God or other cause not within the employer's control.

CONNECTICUT: By regulation, Connecticut requires reporting pay for employees in mercantile trades, restaurants and hotel restaurants. For those in mercantile trades, employees must be paid for four hours of work at their regular rate; for those in restaurants and hotel restaurants, two hours at the minimum wage.⁴³

- **Who is covered:** Mercantile trade and restaurant employees as defined in regulations.

DISTRICT OF COLUMBIA: D.C. regulations require an employer to pay an employee at least four hours for each day an employee reports to work but is given no work or less than four hours of work, unless the employee is regularly scheduled for less than four hours. In that case, the employee must be paid for the hours regularly scheduled. The rate of pay is the employee's regular rate for any hours worked, plus payment at the minimum wage for any hours not worked.⁴⁴

- **Who is covered:** Mercantile trade and restaurant employees as defined in regulations.

MASSACHUSETTS: When an employee is scheduled to work three or more hours and is not provided with those expected hours, Massachusetts regulations require the employer to pay the employee for at least three hours at no less than the minimum wage. For any time actually worked, the employee must be paid his or her regular wage.⁴⁵

- **Who is covered:** All nonexempt employees except those employed by charitable organizations (as defined by regulation).

NEW HAMPSHIRE: Under New Hampshire law, on any day an employee reports to work at an employer's request, he or she must be paid for at least two hours at the employee's regular rate of pay. Employers who make a good faith effort to notify an employee not to report to work are not liable under the section. If an employee reports to work after an employer's unsuccessful attempt to notify him or her, the employee shall perform whatever duties are assigned by the employer at the time the employee reports to work. An employer is prohibited from retaliating against the employee for filing a complaint or exercising their rights under the law.⁴⁶

- **Who is covered:** Any nonexempt employee, except for employees of counties or municipalities or ski and

snowboard instructors at ski resorts.

- **Exceptions:** The pay requirement does not apply if an employee requests to leave on the basis of illness, personal or family emergency; if an employee is notified in writing upon hire that the position will consistently require work of less than two hours per day; or to health care employees of community based outreach service providers in some circumstances as specified in regulation.⁴⁷

NEW JERSEY: Under New Jersey regulations, an employee who by request of the employer reports for work on any day shall be paid for at least one hour at the applicable wage rate. However, the provision does not apply to an employer that has made available to the employee the minimum number of hours of work agreed upon by the employer and the employee prior to commencement of work on the day involved.⁴⁸

- **Who is covered:** All non-exempt employees.

NEW YORK: Under New York regulations, an employee who, by request or permission of the employer, reports to work on any day must be paid no less than the minimum wage for at least four hours or the number of hours in the regularly scheduled shift, whichever is less.⁴⁹

- **Who is covered:** All non-exempt employees not covered by the separate wage orders applicable to the hospitality industry, building service industry, nonprofit institutions, or farm workers. Under the hospitality industry wage order (which covers all restaurants and hotels), any non-exempt employee who reports to work by the request or permission of the employer must be paid at least three hours of pay for one shift, at least six hours of pay for two shifts totaling six hours or less, or at least eight hours of pay for three shifts totaling eight hours or less (or, in each case, for the number of hours in the regularly scheduled shift(s), whichever is less).⁵⁰

RHODE ISLAND: Rhode Island law requires an employer to pay an employee a minimum of three hours at his or her regular rate when he or she reports to work, even if the scheduled shift is less than three hours.⁵¹

- **Who is covered:** All non-exempt employees.
- **Exceptions:** Reporting pay is not required if an employee is prevented from working a normal shift due to an Act of God or other events beyond the control of the employer.⁵²

Discouraging Split Shifts and “Clopening” Shifts

A split shift is a schedule of daily hours that is “split” by non-paid, non-working periods scheduled by the employer; for example, an employer may schedule an employee from 10 am to 2 pm and 4 pm to 8 pm within the same day. Employers use split shifts to cut labor costs by permitting workers to work only those periods in the day when business demand is high. These shifts harm workers who are often unable to make any meaningful use of time in between shifts.

“Clopening” refers to the practice of scheduling employees for a closing shift one night and opening shift the next morning.⁵³ These shifts not only leave workers physically exhausted, but they make it difficult to balance child care, school, or other obligations. Fully half of retail and food service employees in the Shift Project study reported that they had worked clopening shifts.⁵⁴

Laws requiring extra pay for split shifts and “right to rest” laws that require extra pay for clopening shifts recognize the toll these scheduling practices take on workers and their families, and require businesses to either avoid them or compensate their employees accordingly.

SPLIT-SHIFT PAY laws require employers to pay employees additional compensation for any day on which they are required to work shifts in which they have a gap between scheduled hours in the same day.

State & local laws regarding split-shift pay

CALIFORNIA: Under California regulations, when an employee works a split shift, the employer must pay the employee one hour’s pay at the minimum wage, except when the employee resides at the place of employment. (A shift with a bona fide break, such as a meal break, or a break at the employee’s request is not considered a split shift.)⁵⁵

- **Who is covered:** All non-exempt employees.

DISTRICT OF COLUMBIA: D.C. regulations require an employer to pay an employee for one additional hour at the minimum wage for each day during which the employee works a split shift, except when the employee resides at the place of employment. (A schedule in which the total time

out for meals does not exceed one hour is not considered a split shift.)⁵⁶

- **Who is covered:** All non-exempt employees.

NEW YORK: Under New York regulations, an employer must pay an employee for one additional hour at the minimum wage rate for any day in which the employee works a split shift or the “spread of hours” (i.e., the length of the interval between the beginning and end of an employee’s workday, including meal breaks and time off duty) exceeds 10 hours.⁵⁷

- **Who is covered:** All non-exempt employees not covered by the separate wage orders applicable to the hospitality industry, building service industry, nonprofit institutions, or farm workers. Under the hospitality industry wage order, any non-exempt employee in a restaurant or all-year hotel who works a spread of hours greater than 10 in a day must receive one extra hour of pay at the minimum wage rate.⁵⁸

RIGHT TO REST laws require employers to provide a minimum amount of rest time between shifts and to pay employees who consent to work without the rest time at a higher rate.

State & local laws regarding right to rest

CHICAGO, IL: The Fair Workweek ordinance prohibits employers from requiring employees to work within 10 hours of the end of the previous day’s shift; if an employee agrees to work a shift that begins less than 10 hours after the end of the last shift, the employer must pay the employee at one-and-a-quarter times the employee’s regular rate for that shift.⁵⁹

- **Who is covered:** Employees (or workers for a temporary labor service agency who have been on assignment to an employer for at least 420 hours) who earn an annual salary of no more than \$50,000, or an hourly rate of no more than \$26, and perform the majority of their work in a covered industry—building services, health care, hotels, manufacturing, restaurants, retail, or warehouse services—for a covered employer. Employers are covered if they are primarily engaged in a covered industry and employ at least 100 employees globally (or at least 250 employees if the employer is a nonprofit corporation).

- **The ordinance is effective beginning July 1, 2020.** The wage/salary threshold for covered employees will be increased annually beginning July 1, 2021, to keep pace with inflation.

EMERYVILLE, CA: The Fair Workweek ordinance prohibits employers from requiring employees to work within 11 hours of the end of the previous day's shift or a shift that spans two days; if an employee agrees to work during these times, any hours worked must be compensated at one-and-a-half times the employee's regular rate.⁶⁰

- **Who is covered:** Nonexempt employees who work for covered employers—i.e., retail firms with 56 or more employees globally and fast food firms with 56 or more employees globally and 20 or more employees within Emeryville city limits.

NEW YORK CITY, NY: Under the Fair Workweek ordinance applicable to the fast food industry, employers may not require employees to work back-to-back shifts when the first shift closes the establishment and the second shift opens it the next day, with fewer than 11 hours in between. An employer must pay an employee who agrees to work a "clopening" shift \$100 for each instance that the employee works such a shift.⁶¹

- **Who is covered:** Retail, hospitality, food service employees working at an establishment with 500 or more employees worldwide.

OREGON: The Fair Workweek law requires employers to allow 10 hours between work shifts for employees unless the employee consents to work with less time between shifts. An employer must pay an employee at 1.5 times the regular rate for each hour or portion of an hour an employee works during a rest period.⁶²

- **Who is covered:** Retail, hospitality, food service employees working at an establishment with 500 or more employees worldwide.

PHILADELPHIA, PA: Philadelphia's Fair Workweek Employment Standards Ordinance guarantees employees the right to decline, without penalty, any work hours that would occur less than nine hours after the end of their last shift. If an employee voluntarily agrees to work with less than nine hours between shifts, consent must be recorded in writing, and the employer must pay the employee \$40 for each instance the employee works such a shift.⁶³

- **Who is covered:** Nonexempt employees who work at a retail, hospitality, or food service establishment with more than 250 employees and more than 30 locations worldwide.

- **The ordinance is effective beginning July 1, 2020.**

SEATTLE, WA: The Secure Scheduling Ordinance prohibits employers from requiring employees to work within 10 hours of the end of the previous day's shift or the end of a shift that spans two days, and requires any hours worked during these times to be compensated at one-and-a-half times the employee's regular rate.⁶⁴

- **Who is covered:** Hourly employees in retail and fast food establishments with 500 or more employees worldwide, or in full-service restaurants with 500 or more employees and 40 or more full service locations worldwide.

Ensuring Fair Treatment and Adequate Hours for Part-Time Workers

Part-time workers are often disadvantaged by lower hourly wages relative to their full-time counterparts, as well as a lack of access to benefits.⁶⁵ In addition, part-time workers are often passed over for promotions and raises in favor of full-time workers.⁶⁶

Working people who want full-time employment but are only offered part-time hours—often described as the "underemployed"—struggle to support their families with fewer hours and less pay. More than one in six part-time employees work part time involuntarily and would prefer to find full-time work,⁶⁷ and involuntary part-time work is especially common in some low-wage sectors. In the Shift Project study, for example, roughly two-thirds of part-time retail and food service employees in jurisdictions across the country report that they would like to work more hours.⁶⁸ Among workers who work part time "voluntarily," 21 percent report working part time because of child care problems or other family or personal obligations⁶⁹—and women are especially likely to work part time for these reasons.⁷⁰ 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.

PART-TIME PARITY laws require employers to treat part-time and full-time employees equally with regard to wages, ability to accrue benefits, and eligibility for pay raises and promotions.

State & local laws regarding part-time parity

SAN FRANCISCO, CA: Under the Retail Workers Bill of Rights, employers must provide equal treatment to part-time employees, as compared to full-time employees at their same level, with respect to starting hourly wage, access to employer-provided paid time off and unpaid time off; and eligibility for promotions. Distinctions are permissible if they are based on something other than part-time status, such as seniority or a merit system. The ordinance also prohibits employers from requiring employees to have open availability to receive full-time status.⁷¹

- **Who is covered:** Nonexempt employees working for “formula retail” employers with 20 or more employees that have at least 40 establishments worldwide and at least 20 employees in San Francisco, as well as their janitorial and security contractors. Formula retail establishments are defined to include retail and grocery stores, fast food businesses, restaurants, movie theaters, and banks.

Laws promoting **ACCESS TO HOURS** require employers to offer additional available hours to their qualified existing employees before hiring any additional employees to work those hours.

State & local laws regarding access to hours

CHICAGO, IL: The Fair Workweek ordinance requires employers to offer additional available shifts to existing qualified employees before hiring additional employees or subcontractors. If offered shifts are not accepted by covered employees, the employer must offer them to temporary or seasonal workers who have worked on behalf of the employer for at least two weeks.⁷²

- **Who is covered:** Employees (or workers for a temporary labor service agency who have been on assignment to an employer for at least 420 hours) who earn an annual salary of no more than \$50,000, or an hourly rate of no more than \$26, and perform the majority of their work

in a covered industry—building services, health care, hotels, manufacturing, restaurants, retail, or warehouse services—for a covered employer. Employers are covered if they are primarily engaged in a covered industry and employ at least 100 employees globally (or at least 250 employees if the employer is a nonprofit corporation).

- **The ordinance is effective beginning July 1, 2020.** The wage/salary threshold for covered employees will be increased annually beginning July 1, 2021, to keep pace with inflation.

EMERYVILLE, CA: The Fair Workweek ordinance requires employers to offer additional available work hours to existing qualified employees before hiring additional employees or subcontractors. An employer is required to offer to a part-time employee only the number of hours necessary to give the employee up to 35 hours of work in a week. Before hiring additional employees or subcontractors, employers must give employees 72 hours to accept the additional hours if the additional work is expected to last more than two weeks and 24 hours to accept the hours if the additional work is expected to last two weeks or less.⁷³

- **Who is covered:** Full-time, part-time and temporary employees who work in retail firms with 56 or more employees globally and fast food firms with 56 or more employees globally and 20 or more employees within Emeryville city limits.

NEW YORK CITY, NY: The Fair Workweek ordinance applicable to the fast food industry requires employers to offer additional available work hours to existing qualified employees before hiring additional employees or subcontractors. The employer must post the additional hours in writing for three consecutive calendar days, unless shorter notice is required, as well as send notice to each employee electronically. An employee who wishes to accept the additional hours must do so in writing.⁷⁴

- **Who is covered:** Fast food employees working at an establishment with 30 or more restaurants nationwide.

PHILADELPHIA, PA: Philadelphia’s Fair Workweek Employment Standards Ordinance requires covered employers to offer work shifts to existing, qualified employees before hiring new workers (including subcontractors or temporary employees). Employers must provide a written notice of available shifts for at least 72 hours. If no existing employees (including employees at a location other than the location where the shift(s) will be

worked, if the employer regularly schedules employees across multiple locations) voluntarily accept the available shifts within 48 hours of posting, or if eligible employees confirm in writing that they are not interested, then the employer may hire new workers to fill the additional hours (or the subset of hours not accepted by existing employees).⁷⁵

- **Who is covered:** Nonexempt employees who work at a retail, hospitality, or food service establishment with more than 250 employees and more than 30 locations worldwide. The ordinance is effective beginning January 1, 2020.
- **Exceptions:** Employers do not have to offer existing employees work hours paid that would be paid at overtime rates or another premium rate under state or federal law. Employers may provide notice for less than 72 hours if necessary for the work to be timely performed.

SAN FRANCISCO, CA: Employers with additional available hours of work must offer those hours first to existing, qualified, part-time staff before hiring new employees. Employees have up to 72 hours to accept any additional hours offered to them by the employer; after 72 hours the employer may hire new employees to work the additional hours. The 72 hours begins when the employee receives written notice of the additional hours or whenever the employer posts the offer of additional hours, whichever is later. An employee who wishes to accept the additional hours must do so in writing.⁷⁶

- **Who is covered:** Nonexempt employees working for “formula retail” employers with 20 or more employees that have at least 40 establishments worldwide and at least 20 employees in San Francisco, as well as their janitorial and security contractors. Formula retail establishments are defined to include retail and grocery stores, fast food businesses, restaurants, movie theaters, and banks.

SAN JOSE, CA: The Opportunity to Work ordinance, adopted by ballot initiative in 2016, requires employers to offer additional available hours to existing, qualified part-time employees, and distribute such hours according to a transparent and nondiscriminatory process, before hiring additional employees, unless doing so would require paying overtime or another premium rate.⁷⁷

- **Who is covered:** Employees working for any employer with 36 or more employees.
- **Exceptions:** The ordinance allows 12-month exemptions for employers that have made a good faith attempt to comply, but for whom compliance would be impossible, impracticable, or futile.

SEATAC, WA: Under a ballot initiative adopted in 2014, hospitality and transportation employers must offer additional hours to qualified part-time employees before hiring additional employees or subcontractors.⁷⁸

- **Who is covered:** Nonmanagerial, nonsupervisory employees of (1) a hospitality employer who operates within the City any hotel with at least 100 guest rooms and at least 30 workers, or who operates an institutional food service or retail operation employing at least 10 nonmanagerial, nonsupervisory employees; or (2) a transportation employer who employs at least 25 nonmanagerial, nonsupervisory employees.

SEATTLE, WA: Employers with additional available hours of work must offer those hours first to existing, qualified part-time staff before hiring new employees or subcontractors. The employer shall post notice of the additional hours for three consecutive calendar days or send to employees electronically.⁷⁹

- **Who is covered:** Hourly employees in retail and fast food establishments with 500 or more employees worldwide, or in full-service restaurants with 500 or more employees and 40 or more full service locations worldwide.

APPENDIX A: SUMMARY OF FAIR WORK SCHEDULES LAWS

	Access to Hours	Advance Notice	Part-Time Parity	Predictability Pay	Private Right of Action	Reporting Pay	Right to Request	Right to Rest	Split-Shift Pay
California Cal. Code Regs. tit. 8, § 11040					X	X			X
Connecticut Conn. Agencies Regs. §§ 31-62-D2(d), E1					X	X			
Massachusetts 454 Mass. Code Regs. 2704					X	X			
New Hampshire N.H. Rev. Stat. Ann. § 275:37-b					X	X			
New Hampshire N.H. Rev. Stat. Ann. § 275:43-a							X		
New Jersey N.J. Admin Code § 12:56-5.5					X	X			
New York N.Y. Comp. R. & Regs. tit. 12 §§ 142-2.3, 2.4; 146-1.5, 1.6					X	X			X
Oregon S.B. 828, 2017 Leg., 79th Sess.		7 DAYS (AS OF 7/2018) 14 DAYS (AS OF 7/2020)		X	X		X	X	
Rhode Island 28 R.I. Gen. Laws § 28-12-3.2					X	X			
Vermont 21 Vt. St. Ann. § 309							X		
Washington, DC D.C. Mun. Reg. tit. 7 §§ 906, 907					X	X			X
Chicago, IL Chicago, Il., Mun. Code § 1-25	X	10 DAYS (AS OF 7/2020) 14 DAYS (AS OF 7/2022)		X	X		X	X	
Emeryville, CA Emeryville, Cal., Mun. Code §§ 5-39.01 - .12	X	14 DAYS		X	X		X	X	
New York City, NY N.Y.C., N.Y., Admin. Code §§ 20-1201 - 1212, 1221 - 1241 (fast food)	X	14 DAYS		X	X		X	X	
New York City, NY N.Y.C., N.Y., Admin. Code §§ 20-1201 - 1212, 1251 - 1252 (retail)		72 HOURS		X					
New York City, NY N.Y.C., N.Y., Admin. Code §§ 20-1261-1263							X		
Philadelphia, PA Philadelphia, Pa., Mun. Code § 9-4601	X	10 DAYS (AS OF 1/2020) 14 DAYS (AS OF 1/2021)		X	X		X	X	
San Francisco, CA S.F., Cal., Admin. Code §§ 12Z1 - .12							X		
San Francisco, CA S.F., Cal., Police Code art. 33F §§ 3300F1 - .18, art. 33G §§ 3300G.1 - .18	X	14 DAYS	X	X					
San Jose, CA San Jose, Cal., Mun. Code § 4.101.040	X				X				
SeaTac, WA SeaTac, Wash., Mun. Code § 7.45.030	X				X				
Seattle, WA Seattle, Wash., Mun. Code § 14.22.055 - .150	X	14 DAYS		X	X		X	X	

APPENDIX B: GLOSSARY OF FAIR WORK SCHEDULES PROVISIONS

ACCESS TO HOURS: Access to hours provisions require employers to offer additional available hours to their qualified existing employees before hiring any additional employees to work those hours.

ADVANCE NOTICE: Advance notice provisions require employers to provide employees with a certain amount of advance notice of their schedules. Some provisions also require employers to provide estimates of schedules and minimum hours before an employee begins employment.

PART-TIME PARITY: Part-time parity provisions require employers to treat part-time and full-time employees equally with regard to wages, ability to accrue benefits, and eligibility for pay raises and promotions.

PREDICTABILITY PAY: Predictability pay provisions require employers to pay employees a certain number of hours of compensation, in addition to payment for any time actually worked, when employers make last-minute changes to employees' shifts, including additions or reductions in hours and cancellations of regular or on-call shifts.

REPORTING PAY: Reporting pay provisions require employers to pay employees for some portion of their originally scheduled shifts when employees report for work but are then told that their shifts have been cancelled or reduced. Laws and regulations requiring reporting pay typically predate, and are more limited than, those requiring predictability pay.

RIGHT TO REQUEST: Right to request laws protect employees who want to request flexible working arrangements or other changes to their schedules by granting them the express right to do so free from retaliation by their employers.

RIGHT TO REST: Right to rest provisions require employers to provide a minimum amount of rest time between shifts and to pay employees who consent to work without the rest time at a higher rate.

SPLIT-SHIFT PAY: Split-shift pay provisions require employers to pay employees additional wages as compensation for any day on which they are required to work shifts in which they have a gap or gaps between scheduled hours in the same day.

- 1 See generally NAT'L WOMEN'S LAW CTR. (NWLC), COLLATERAL DAMAGE: SCHEDULING CHALLENGES FOR WORKERS IN LOW-WAGE JOBS AND THEIR CONSEQUENCES (2017), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/04/Collateral-Damage.pdf>.
- 2 NWLC calculations based on U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS (BLS), CURRENT POPULATION SURVEY (CPS), TABLE A-8: EMPLOYED PERSONS BY CLASS OF WORKER AND PART-TIME STATUS, <https://www.bls.gov/news.release/empst.t08.htm> (showing in seasonally adjusted data that over 4.3 million—16.8 percent—of those working part time in June 2019 did so “for economic reasons,” i.e., involuntarily).
- 3 See generally JULIE VOGTMAN & KAREN SCHULMAN, NWLC, SET UP TO FAIL: WHEN LOW-WAGE WORK JEOPARDIZES PARENTS' AND CHILDREN'S SUCCESS (2016), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2016/01/FINAL-Set-Up-To-Fail-When-Low-Wage-Work-Jeopardizes-Parents%E2%80%99-and-Children%E2%80%99s-Success.pdf>.
- 4 LIZ WATSON & JENNIFER E. SWANBERG, FLEXIBLE WORKPLACE SOLUTIONS FOR LOW-WAGE HOURLY WORKERS: A FRAMEWORK FOR A NATIONAL CONVERSATION 6 (2011), <http://workplaceflexibility2010.org/images/uploads/whatsnew/Flexible%20Workplace%20Solutions%20for%20Low-Wage%20Hourly%20Workers.pdf>. See also Robert C. Bird, *Precarious Work: The Need for Flextime Employment Rights and Proposals for Reform*, 37 BERKELEY J. EMP. & LAB. L. 1, 3 (2016).
- 5 See DANIEL SCHNEIDER & KRISTEN HARKNETT, SHIFT RESEARCH BRIEF: CONSEQUENCES OF ROUTINE WORK SCHEDULE INSTABILITY FOR WORKER HEALTH AND WELLBEING 6 (2019), <https://shift.berkeley.edu/files/2019/01/Consequences-of-Routine-Work-Schedule-Instability-for-Worker-Health-and-Wellbeing.pdf> [hereinafter SHIFT RESEARCH BRIEF] (finding 51 percent of workers surveyed from 80 largest national retail and food service chains in the U.S. have no input into their work schedules); WATSON & SWANBERG, *supra* note 4, at 19-20; LONNIE GOLDEN, ECON. POLICY INST., IRREGULAR WORK SCHEDULING AND ITS CONSEQUENCES, BRIEFING PAPER # 394 9 (2014), <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 (2014), 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”).
- 6 58 percent of Latinx 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 5, at 17.

- 7 White House Council of Economic Advisers, *Nine Facts about American Families and Work 4* (2014), http://www.whitehouse.gov/sites/default/files/docs/nine_facts_about_family_and_work_real_final.pdf.
- 8 Chicago, Ill. Ordinance No. 02019-3928 (Jul. 24, 2019), available at <https://chicago.legistar.com/LegislationDetail.aspx?ID=3964374&GUID=52BA6EC6-9561-4581-87E2-51C8F279DE2D&Options=Advanced&Search=>.
- 9 Emeryville, Cal. Ordinance No. 16-007 (Nov. 1, 2016), available at <http://www.ci.emeryville.ca.us/DocumentCenter/View/10190> (codified at EMERYVILLE, CAL., MUN. CODE § 5-39.01 to .12).
- 10 N.H. REV. STAT. ANN. § 275:37-b.
- 11 N.Y.C., N.Y., Int. No. 1399-2016 (Jan. 19, 2018), available at <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2900941&GUID=68DC01AE-C577-4B86-B3E5-B9D98836C1E2&Options=&Search> (codified at N.Y.C., N.Y., ADMIN. CODE § 20-1261 to -1263).
- 12 S.B. 828, 2017 Leg., 79th Sess. (Or. 2017), available at <https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/SB828>.
- 13 Philadelphia, Pa., Ordinance No. 180649-A (Jan. 20, 2018), available at <https://phila.legistar.com/LegislationDetail.aspx?ID=3529951&GUID=18AD5BAB-1BFE-4D7D-B1B2-53FOC06A7648>.
- 14 S.F., Cal., Ordinance No. 209-13 (Nov. 8, 2013), available at <http://sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances13/o0209-13.pdf> (codified at S.F., CAL., ADMIN. CODE § 12Z.1 - .12).
- 15 Seattle, Wash. Ordinance No. 125135 (Sept. 29, 2016), available at <http://seattle.legistar.com/View.ashx?M=F&ID=4706942&GUID=93513A97-92F2-4E76-A7E3-9A5F14761B6A> (codified at SEATTLE, WASH., MUN. CODE § 14.22.005 - .150).
- 16 21 VT. STAT. ANN. § 309.
- 17 See generally, e.g., NANCY C. CAUTHEN, DEMOS, *SCHEDULING HOURLY WORKERS: HOW LAST MINUTE, JUST-IN-TIME SCHEDULING PRACTICES ARE BAD FOR WORKERS, FAMILIES AND BUSINESS* (Mar. 2011), available at http://www.demos.org/sites/default/files/publications/Scheduling_Hourly_Workers_Demos.pdf.
- 18 See GOLDEN, *supra* note 5, at 4.
- 19 LAMBERT, FUGIEL, & HENLY, *supra* note 5, at 6. See also, e.g., GOLDEN, *supra* note 5, 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).
- 20 LAMBERT, FUGIEL, & HENLY, *supra* note 5, at 6.
- 21 *Id.* at 7.
- 22 DANIEL SCHNEIDER & KRISTEN HARKNETT, *SHIFT RESEARCH BRIEF*, *supra* note 5, at 2, 6.
- 23 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), 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); UCLA LABOR CTR. & LAANE, *HR CRISIS: UNSTABLE SCHEDULES IN THE LOS ANGELES RETAIL SECTOR* (2018), <https://www.labor.ucla.edu/publication/hourcrisisreport/> (finding 77 percent of L.A. retail workers receive a week or less notice of their schedules, and the majority face last-minute scheduling changes, including cancellation, after their hours have been posted).
- 24 See, e.g., CTR. FOR LAW & SOCIAL POLICY, RETAIL ACTION PROJECT, & WOMEN EMPLOYED, *TACKLING UNSTABLE AND UNPREDICTABLE WORK SCHEDULES* 11 (2014), <http://www.clasp.org/resources-and-publications/publication-1/Tackling-Unstableand-Unpredictable-Work-Schedules-3-7-2014-FINAL-1.pdf>; CTR. FOR POPULAR DEMOCRACY, *HR BY HOUR: WOMEN IN TODAY'S WORKWEEK* 5 (2015), available at http://populardemocracy.org/sites/default/files/HourbyHour_final.pdf. See also, e.g., LUCE & FUJITA, *supra* note 23, 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); SHIFT RESEARCH BRIEF, *supra* note 5, at 2, 6 (finding 26 percent of retail and food service workers surveyed have worked on-call shifts).
- 25 Chicago, Ill. Ordinance No. 02019-3928 (Jul. 24, 2019), available at <https://chicago.legistar.com/LegislationDetail.aspx?ID=3964374&GUID=52BA6EC6-9561-4581-87E2-51C8F279DE2D&Options=Advanced&Search=>.
- 26 Emeryville, Cal., Ordinance No. 16-007, *supra* note 9, and Emeryville, Cal., Ordinance No. 17-013 (Oct. 17, 2017), available at <http://www.ci.emeryville.ca.us/DocumentCenter/View/10181> (adding further exceptions to consent and predictability pay provisions) (codified as amended at EMERYVILLE, CAL., MUN. CODE § 5-39.01 to .12 (2018)).
- 27 New York City's Fair Workweek law applicable to fast food establishments consists of two ordinances, Int. No. 1388-2016 and 1395-2016. The law applicable only to retail establishments is Int. No. 1387-2016, and Int. No. 1396-2016 contains provisions applicable to both industries. All are codified at N.Y.C., N.Y., ADMIN. CODE § 20-1201 to 1263 (2018), available at [http://library.amlegal.com/nxt/gateway.dll/New%20York/admin/title20consumeraffairs/chapter12fairworkpractices?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:newyork_ny\\$nc=JD_T20C012](http://library.amlegal.com/nxt/gateway.dll/New%20York/admin/title20consumeraffairs/chapter12fairworkpractices?f=templates$fn=default.htm$3.0$vid=amlegal:newyork_ny$nc=JD_T20C012).
- 28 S.B. 828, 2017 Leg., 79th Sess. (Or. 2017), available at <https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/SB828>.
- 29 Philadelphia, Pa., Ord. No. 160649-A (Jan. 20, 2018), <https://phila.legistar.com/LegislationDetail.aspx?ID=3529951&GUID=18AD5BAB-1BFE-4D7D-B1B2-53FOC06A7648>.
- 30 The "Retail Workers Bill of Rights" consists of two ordinances, both enacted in 2014: S.F., Cal., Ordinance No. 236-14 (Nov. 25, 2014), available at <http://sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances14/o0236-14.pdf>, and S.F., Cal., Ordinance No. 241-14 (Nov. 25, 2014), available at <http://sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances14/o0241-14.pdf>. All are codified at S.F., CAL., POLICE CODE art. 33F § 3300F.1-.18, art. 33G § 3300G.1-18 (2018).
- 31 SEATTLE, WASH., MUN. CODE § 14.22.015, .040-.045.
- 32 See generally NWLC, *COLLATERAL DAMAGE*, *supra* note 1. See also, 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 23, at 1218 (finding in a study of low-skilled, non-production jobs in the hospitality, retail, transportation, and financial services industries that "[l]ast-minute adjustments to work schedules—adding or subtracting hours to the posted schedule a day or two in advance—were rampant in the jobs studied").
- 33 See ASPEN INST., *INCOME VOLATILITY: WHY IT DESTABILIZES FAMILIES AND HOW PHILANTHROPY CAN MAKE A DIFFERENCE* (Dec. 2017), <http://www.aspenepic.org/issue-brief-income-volatility-destabilizes-families-philanthropy-can-make-difference/>.
- 34 ASPEN INST., *RESPONSES TO AND REPERCUSSIONS FROM INCOME VOLATILITY IN LOW- AND MODERATE-INCOME HOUSEHOLDS: RESULTS FROM A NATIONAL SURVEY* (Dec. 2017), <http://www.aspenepic.org/responses-repercussions-income-volatility-low-moderate-income-households-results-national-survey/>.
- 35 Chicago, Ill. Ordinance No. 02019-3928 (Jul. 24, 2019), available at <https://chicago.legistar.com/LegislationDetail.aspx?ID=3964374&GUID=52BA6EC6-9561-4581-87E2-51C8F279DE2D&Options=Advanced&Search=>.
- 36 EMERYVILLE, CAL., MUN. CODE § 5-39.01 to .02, .04.
- 37 N.Y.C., N.Y., ADMIN. CODE § 20-1221 to 1222.
- 38 S.B. 828, 2017 Leg., 79th Sess. (Or. 2017) available at <https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/SB828>.

- 39 Philadelphia, Pa., Ord. No. 160649-A (Jan. 20, 2018), available at <https://phila.legistar.com/LegislationDetail.aspx?ID=3529951&GUID=18AD5BAB-1BFE-4D7D-B1B2-53FOC06A7648>.
- 40 S.F., CAL., POLICE CODE art. 33G § 3300G.4 (2018).
- 41 SEATTLE, WASH., MUN. CODE § 14.22.020, .050 (2018).
- 42 CAL. CODE REGS. tit. 8, § 11040.
- 43 CONN. AGENCIES REGS. § 31-62-D2(d) (mercantile trade); CONN. AGENCIES REGS. § 31-62-E1 (hotels, hotel restaurants), available at <https://eregulations.ct.gov/eRegsPortal/Browse/RCSA/%7B8A3AC716-2D6B-43BF-A261-7B2A1ED28592%7D>.
- 44 D.C. MUN. REG. tit. 7, § 907.
- 45 454 MASS. CODE REGS. 27.04.
- 46 N.H. REV. STAT. ANN. § 275:43-a.
- 47 N.H. CODE ADMIN. R. LAB § 803.03(f).
- 48 N.J. ADMIN. CODE § 12:56-5.5.
- 49 N.Y. COMP. R. & REGS. tit. 12, § 142-2.3. Note that New York has proposed amendments to its reporting pay regulations that would, *inter alia*, guarantee pay for shifts canceled with less than three days' notice and require 14 days' notice of work schedules. See N.Y. Dep't of Labor, Proposed Rule Making: Employee Scheduling (Call-In Pay), 39 N.Y. Reg. 8 (Nov. 22, 2017), <https://docs.dos.ny.gov/info/register/2017/nov22/pdf/rulemaking.pdf> (revising call-in pay requirements of the Minimum Wage Order for Miscellaneous Industries and Occupations, N.Y. COMP. R. & REGS. tit. 12, at §§ 142-2.3 & 3.3).
- 50 N.Y. COMP. R. & REGS. tit. 12, § 146-1.5. For hospitality industry employees, the wage rate for reporting pay is (1) payment for time of actual attendance calculated at the employee's regular or overtime rate of pay, whichever is applicable, minus any customary and usual tip credit; (2) payment for the balance of the period calculated at the minimum wage rate with no tip credit subtracted. The regulations define a "regularly scheduled shift" as a "fixed, repeating shift that an employee normally works on the same day of each week," and notes that "[i]f an employee's total hours worked or scheduled to work on a given day of the week change from week to week, there is no regularly scheduled shift."
- 51 8 R.I. GEN. LAWS § 28-12-3.2.
- 52 16 R.I. CODE R. § 020-007, available at http://www.dlt.ri.gov/lis/pdfs/PaymentWages_rr02.pdf.
- 53 See Steven Greenhouse, *In Service Sector, No Rest for the Working*, N.Y. TIMES (Feb. 21, 2015), https://www.nytimes.com/2015/02/22/business/late-to-bed-early-to-rise-and-working-tired.html?_r=2.
- 54 DANIEL SCHNEIDER & KRISTEN HARKNETT, SHIFT RESEARCH BRIEF, *supra* note 5, at 2, 6.
- 55 CAL. CODE REGS. tit. 8, § 11040.
- 56 D.C. MUN. REGS. tit. 7, § 906.
- 57 N.Y. COMP. R. & REGS. tit. 12, § 142-2.4.
- 58 N.Y. COMP. R. & REGS. tit. 12, § 146-1.6.
- 59 Chicago, Ill., Ordinance No. 02019-3928 (Jul. 24, 2019), available at <https://chicago.legistar.com/LegislationDetail.aspx?ID=3964374&GUID=52BA6EC6-9561-4581-87E2-51C8F279DE2D&Options=Advanced&Search=>.
- 60 EMERYVILLE, CAL., MUN. CODE § 5-39.06.
- 61 N.Y.C., N.Y., ADMIN. CODE § 20-1231 (2018), available at [http://library.amlegal.com/nxt/gateway.dll/New%20York/admin/title20consumeraffairs/chapter12fairworkpractices?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:newyork_ny\\$anc=JD_20-1231](http://library.amlegal.com/nxt/gateway.dll/New%20York/admin/title20consumeraffairs/chapter12fairworkpractices?f=templates$fn=default.htm$3.0$vid=amlegal:newyork_ny$anc=JD_20-1231).
- 62 S.B. 828, 2017 Leg., 79th Sess. (Or. 2017), available at <https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/SB828>.
- 63 Philadelphia, Pa., Ord. No. 160649-A (Jan. 20, 2018), available at <https://phila.legistar.com/LegislationDetail.aspx?ID=3529951&GUID=18AD5BAB-1BFE-4D7D-B1B2-53FOC06A7648>.
- 64 SEATTLE, WASH., MUN. CODE § 14.22.035 (2018).
- 65 See generally, e.g., ANNE MORRISON & KATE GALLAGHER ROBBINS, NWLC, PART-TIME WORKERS ARE PAID LESS, HAVE LESS ACCESS TO BENEFITS—AND TWO-THIRDS ARE WOMEN (2015), https://nwlc-ciw49tixgw51bab.stackpathdns.com/wp-content/uploads/2015/08/part-time_workers_fact_sheet_8.21.1513.pdf; LONNIE GOLDEN, ECON. POLICY INST., STILL FALLING SHORT ON HOURS AND PAY (2016), <http://www.epi.org/files/pdf/114028.pdf>; CTR. FOR POPULAR DEMOCRACY, JOB QUALITY AND ECONOMIC OPPORTUNITY IN RETAIL (2017), <https://populardemocracy.org/sites/default/files/DataReport-WebVersion-01-03-18.pdf>.
- 66 Nantiya Ruan & Nancy Reichman, *Hours Equity is the New Pay Equity*, 59 VILL. L. REV. 35, 39 (2014). See also CTR FOR POPULAR DEMOCRACY, *supra* note 65.
- 67 NWLC calculations based on U.S. DEP'T OF LABOR, BLS, CPS, *supra* note 2.
- 68 For example, in Boston, 68 percent of service sector workers want more stability and predictability in their work schedules and 53 percent (64 percent of those working fewer than 30 hours per week) report a desire for more hours. SHIFT PROJECT, WORKING IN THE SERVICE SECTOR IN BOSTON 2 (Jan. 2019), <https://shift.berkeley.edu/files/2019/01/Working-in-the-Service-Sector-in-Boston.pdf>. See also SHIFT PROJECT, WORKING IN THE SERVICE SECTOR IN WASHINGTON STATE 2 (Dec. 2018), <https://shift.berkeley.edu/files/2018/12/Working-in-the-Service-Sector-in-Washington-State.pdf>, and SHIFT PROJECT, WORKING IN THE SERVICE SECTOR IN PHILADELPHIA 2 (Feb. 2018), <https://shift.berkeley.edu/files/2018/01/Working-in-the-service-sector-in-Philadelphia.pdf> (showing similar findings among service sector workers in each jurisdiction).
- 69 NWLC calculations based on U.S. CENSUS BUREAU, BLS, CPS, TABLE A.25: 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 (June 2019), <https://www.bls.gov/web/empsit/cpseea25.pdf>.
- 70 See MORRISON & GALLAGHER ROBBINS, *supra* note 65, at 2-3.
- 71 S.F., CAL. POLICE CODE art. 33G § 3300G.5 (2018).
- 72 Chicago, Ill. Ordinance No. 02019-3928 (Jul. 24, 2019), available at <https://chicago.legistar.com/LegislationDetail.aspx?ID=3964374&GUID=52BA6EC6-9561-4581-87E2-51C8F279DE2D&Options=Advanced&Search=>.
- 73 EMERYVILLE, CAL., MUN. CODE § 5-39.05.
- 74 N.Y.C., N.Y., ADMIN. CODE § 20-1201 to -1241 (2018), available at [http://library.amlegal.com/nxt/gateway.dll/New%20York/admin/title20consumeraffairs/chapter12fairworkpractices?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:newyork_ny\\$anc=JD_20-1241](http://library.amlegal.com/nxt/gateway.dll/New%20York/admin/title20consumeraffairs/chapter12fairworkpractices?f=templates$fn=default.htm$3.0$vid=amlegal:newyork_ny$anc=JD_20-1241).
- 75 Philadelphia, Pa., Ord. No. 160649-A (Jan. 20, 2018), available at <https://phila.legistar.com/LegislationDetail.aspx?ID=3529951&GUID=18AD5BAB-1BFE-4D7D-B1B2-53FOC06A7648>.
- 76 S.F., CAL., POLICE CODE art. 33F § 3300F.3 (2018).
- 77 SAN JOSE, CAL., MUN. CODE § 4.101.040 (2018).
- 78 SEATAC, WASH., MUN. CODE § 7.45.030.
- 79 SEATTLE, WASH., MUN. CODE § 14.22.055 (2018).