



WORKPLACE JUSTICE

THE SCHEDULES THAT WORK ACT: GIVING WORKERS THE TOOLS THEY NEED TO SUCCEED

The demographics and needs of the U.S. workforce have changed. In most families with children, all parents work, and mothers are increasingly breadwinners for their families.¹ One in six people in the U.S. provides unpaid elder care to a relative or friend, and more than half of these caregivers are in the workforce.² Nearly one in two people lives with a chronic medical condition that requires regular care.³ But workplaces have not caught up with these realities—indeed, many are moving in the wrong direction, providing work schedules with less stability, predictability, and employee input.

Millions of people work in vital but low-paying jobs in retail, food service, hospitality, cleaning, warehousing, and other industries in which employers use “just-in-time” scheduling practices. These practices, enabled by modern workforce management systems, frequently use algorithms to base workers’ schedules on perceived consumer demand and maximize flexibility for the employer at the expense of the employee.⁴ As a result, employees often have little notice of their work schedules, experience last-minute shift cancellations that deprive them of vital income, and are assigned to “on-call” shifts that leave them in limbo, not knowing whether they will be required to report to work.

These scheduling practices make it extremely challenging for working people to meet their responsibilities outside of their jobs, including caregiving, pursuing higher education, managing a health condition or disability, or holding down a second job. Yet such practices are commonplace in large

sectors of our economy. For example, national survey data show that two-thirds of hourly workers in retail and food service jobs receive their work schedules with less than two weeks’ advance notice, and about one-third receive their schedules with less than one week’s notice; one-quarter experience on-call shifts, and half have been required to work the closing shift one night and the opening shift the next morning (a “clopening” shift).⁵ More than three-quarters report that they have little to no input into their work schedules.⁶

Many of the low-wage, hourly, service sector jobs in which just-in-time scheduling practices are most concentrated are jobs that women are especially likely to hold.⁷ Women also still shoulder the majority of caregiving responsibilities in families,⁸ which can make unpredictable work hours particularly problematic. Black and Latinx women are likely to be in the low-wage workforce⁹ and disproportionately to be breadwinners for their families¹⁰—and new research confirms that women of color face an especially high risk of experiencing just-in-time scheduling practices.¹¹

Research confirms, too, that unstable and unpredictable work hours have detrimental impacts on working people, their families, and their communities. Volatile work schedules, and the volatile incomes that result, undercut workers’ efforts to budget for expenses and increase economic hardship, including hunger and housing insecurity.¹² The stress that unstable and unpredictable work schedules produce can harm both workers and their families, undermining well-being for children and adults alike by disrupting routines and straining relationships.¹³ And these same workplace conditions can make maintaining stable, high-quality child care nearly impossible.¹⁴

The **Schedules That Work Act** would address the problems caused by unfair scheduling practices and promote the equity and stability that working people and their families need.



The Schedules That Work Act Provides Stability and Predictability for Working Families—and Employers, Too

The Schedules that Work Act will remedy many of the problems facing hourly workers in low-wage jobs by promoting employee input into work schedules and providing more predictability and stability.

Under the Act, employees across industries would be granted:

- **A right to request a schedule that works for them.**

Employers must consider scheduling requests from all employees and provide a response.¹⁵ For an employee who needs a schedule change to fulfill caregiving responsibilities, work a second job, pursue education and workforce training, or address his or her own serious health condition, employers must grant the requested schedule change, unless there is a bona fide business reason not to do so. This provision ensures that employees can have input in their work schedules without fear of employer retaliation.

- **A right to rest for an adequate period between shifts.**

The practice of “clopening”—requiring an employee to work the closing shift one night and the opening shift the next morning—is particularly disruptive to family routines, leaving workers without enough time to travel home and get sufficient rest before returning to work, which in turn can harm both their health and their productivity on the job.¹⁶ The Schedules That Work Act prohibits employers from requiring employees to work with less than 11 hours between shifts. If an employee agrees to work a clopening shift, the employer must pay time-and-a-half for the hours worked that are less than 11 hours after the employee’s prior shift.

For hourly workers in certain industries where abusive scheduling practices are especially well documented—retail, food service, hospitality, cleaning, and warehousing—the Schedules That Work Act provides additional protections. For nonexempt employees in these jobs, the bill requires:

- **Advance notice of work schedules.** When an employee is hired, an employer must provide an initial work schedule and an estimate of the number of hours the employee can expect to work each week. Thereafter, the employer must provide the employee with an updated work schedule two weeks in advance of the first shift on the schedule.
- **“Predictability pay” for last-minute changes and cancelled shifts.** If an employer changes an employee’s schedule within the two-week notice period, the employer must provide one additional hour of pay for each changed shift that doesn’t involve a loss of hours, or pay for half of hours not worked when the employer reduces or cancels a shift an employee is counting on (except when changes are due to employee requests, voluntary shift trades, or emergencies that suspend the employer’s operations).
- **Split-shift pay.** If an employee is required to work a shift with nonconsecutive hours with a break of more than one hour between work periods, the employer must pay a premium for that shift, equivalent to one hour of pay.

In addition, the Schedules That Work Act includes a provision authorizing the Department of Labor to evaluate the extent of unpredictable and unstable scheduling practices in other low-wage jobs and designate additional occupations to be covered by the predictability pay, split shift pay, and advance notice provisions. It also has a pay stub transparency provision, which requires an employer to specify in an employee’s pay stub the hours of additional pay owed the employee under the law.

Additional Protections for Part-Time Workers

Over 27 million employees—more than one in six—work part time, and nearly two-thirds of those part-time workers are women.¹⁷ For many, working part-time isn’t a choice; some employers, especially in low-wage service industries, rarely offer full-time positions,¹⁸ and some employees—especially women—have caregiving responsibilities, school, or other obligations that preclude full-time work.¹⁹

Part-time employees frequently make less per hour for the same work as full-time employees, lack access to important workplace benefits, and are denied promotion opportunities.²⁰ And because many employers view part-time jobs as a way to hold down labor costs and match staffing levels to demand—i.e., as a component of just-in-time scheduling practices—part-time workers typically experience considerably more variability in hours and even less advance notice of their schedules than workers in full-time jobs.²¹

Cities across the country—including Seattle, San Francisco, Chicago, New York City, and Philadelphia—have taken steps to address the challenges facing part-time workers by enacting “access to hours” laws, which require employers to offer available hours to current part-time employees before hiring new workers.²² At the federal level, the forthcoming Part-Time Worker Bill of Rights, championed by Representative Jan Schakowsky, seeks to expand workplace protections and access to benefits for part-time workers—making the bill an important complement to the Schedules That Work Act.



Scheduling practices that fail to take working people's needs into account result in higher rates of turnover and absenteeism, and lower employee engagement.²³ In contrast, schedules that work for individuals and their families lead to more productive and committed employees and lower workforce turnover.²⁴ More consistent hours and advance notice of schedules also make it easier for employees to secure stable child care and arrange transportation so

that they can consistently be and stay at work— which can minimize the damaging stress that so many working parents face while creating stability, predictability, and cost savings for businesses. The Schedules That Work Act will promote the health and well-being of America's working families and help build a sustainable economy.

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- 1 The share of mothers who are breadwinners or co-breadwinners increased from 27.5 percent in 1967 to 64.2 percent in 2017. SARAH JANE GLYNN, CTR. FOR AM. PROGRESS, BREADWINNING MOTHERS CONTINUE TO BE THE U.S. NORM (May 2019), <https://www.americanprogress.org/issues/women/reports/2019/05/10/469739/breadwinning-mothers-continue-u-s-norm/>.
 - 2 U.S. Dep't of Labor, Bureau of Labor Statistics (BLS), Unpaid Eldercare in the United States—2015-16 Data from the American Time Use Survey (Sept. 2017), <https://www.bls.gov/news.release/pdf/elcare.pdf>.
 - 3 See NAT'L P'SHIP FOR WOMEN & FAMILIES, FACT SHEET: PAID SICK DAYS ARE NECESSARY TO MANAGE CHRONIC ILLNESS 1 (Aug. 2012), <http://www.nationalpartnership.org/research-library/work-family/psd/paid-sick-days-are-necessary-to-manage-chronic-illness.pdf>.
 - 4 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), http://www.demos.org/sites/default/files/publicationsScheduling_Hourly_Workers_Demos.pdf; NAT'L WOMEN'S LAW CTR. (NWLC), COLLATERAL DAMAGE: SCHEDULING CHALLENGES FOR WORKERS IN LOW-WAGE JOBS AND THEIR CONSEQUENCES (Apr. 2017), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/04/Collateral-Damage.pdf>; Daniel Schneider & Kristen Harknett, *Consequences of Routine Work-Schedule Instability for Worker Health and Well-Being*, 84 Am. Soc. Rev. 82 (Feb. 2019).
 - 5 DANIEL SCHNEIDER & KRISTEN HARKNETT, SHIFT PROJECT, IT'S ABOUT TIME: HOW WORK SCHEDULE INSTABILITY MATTERS FOR WORKERS, FAMILIES, AND RACIAL INEQUALITY 1 (Oct. 2019), <https://shift.berkeley.edu/files/2019/10/Its-About-Time-How-Work-Schedule-Instability-Matters-for-Workers-Families-and-Racial-Inequality.pdf> [hereinafter SCHNEIDER & HARKNETT, IT'S ABOUT TIME].
 - 6 *Id.*
 - 7 See JULIE VOGTMAN & KAREN SCHULMAN, NWLC, SET UP TO FAIL: WHEN LOW-WAGE WORK JEOPARDIZES PARENTS' AND CHILDREN'S SUCCESS 4 (Jan. 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>.
 - 8 See U.S. Dep't of Labor, BLS, 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, 2018 annual averages (2019), <https://www.bls.gov/news.release/atus.t01.htm>.
 - 9 See, e.g., NWLC, Women and Men in the Low-Wage Workforce, <https://nwlc.org/resources/interactive-map-women-and-men-low-wage-workforce/> (last visited Oct. 16, 2019).
 - 10 See GLYNN, *supra* note 1.
 - 11 SCHNEIDER & HARKNETT, IT'S ABOUT TIME, *supra* note 5, at 2-3. See also Adam Storer, Daniel Schneider & Kristen Harknett, *What Explains Race/Ethnic Inequality in Job Quality in the Service Sector?* (Oct. 2019), <https://equitablegrowth.org/working-papers/what-explains-race-ethnic-inequality-in-job-quality-in-the-service-sector/>.
 - 12 See 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-moderateincome-households-results-national-survey/>; Daniel Schneider & Kristen Harknett, *Hard Times: Routine Schedule Unpredictability and Material Hardship among Service Sector Workers* (Oct. 2019), <https://equitablegrowth.org/working-papers/hard-times-routine-schedule-unpredictability-and-material-hardship-among-service-sector-workers/> (finding six in ten hourly retail and food service workers experience at least one material hardship—such as hunger, trouble paying bills or securing housing, or foregoing needed medical treatment—over the prior year).
 - 13 See *generally* SCHNEIDER & HARKNETT, IT'S ABOUT TIME, *supra* note 5, at 6-8; VOGTMAN & SCHULMAN, *supra* note 7; LEILA MORSY & RICHARD ROTHENSTEIN, ECON. POLICY INST., PARENTS' NON-STANDARD WORK SCHEDULES MAKE ADEQUATE CHILDHEARING DIFFICULT (Aug. 2015), <https://www.epi.org/files/pdf/88777.pdf>. See also Daniel Schneider & Kristen Harknett, *Parental Exposure to Routine Work Schedule Uncertainty and Child Behavior* (Oct. 2019), <https://equitablegrowth.org/working-papers/parental-exposure-to-routine-work-schedule-uncertainty-and-child-behavior/>.
 - 14 See VOGTMAN & SCHULMAN, *supra* note 7, and SCHNEIDER & HARKNETT, IT'S ABOUT TIME, *supra* note 5. See also Kristen Harknett, Daniel Schneider & Sigrid Luhr, *Who Cares if Parents Have Unpredictable Work Schedules?: The Association between Just-in-Time Work Schedules and Child Care Arrangements* (Oct. 2019), <https://equitablegrowth.org/working-papers/who-cares-if-parents-have-unpredictable-work-schedules-the-association-between-just-in-time-work-schedules-and-child-care-arrangements/>.



- 15 Covered employers under the Act are defined as persons employing 15 or more employees.
- 16 See HUMAN IMPACT PARTNERS & CTR. FOR POPULAR DEMOCRACY, SCHEDULING AWAY OUR HEALTH: HOW UNPREDICTABLE WORK HOURS AFFECT HEALTH AND WELL-BEING 7-8 (2016), https://humanimpact.org/wp-content/uploads/2018/10/Scheduling-Away-Our-Health_rev3.pdf.
- 17 NWLC calculations based on BLS, Current Population Survey, 2018 Annual Averages, Table 8: Employed and unemployed full- and part-time workers by age, sex, race, and Hispanic or Latino ethnicity, <http://www.bls.gov/cps/cpsaat08.htm> (last visited Oct 3, 2019).
- 18 See, e.g., LONNIE GOLDEN, ECON. POLICY INST., STILL FALLING SHORT ON HOURS AND PAY (Dec. 2016), <http://www.epi.org/files/pdf/114028.pdf>. See also SHIFT PROJECT, WORKING IN THE SERVICE SECTOR IN BOSTON (Jan. 2019), <https://shift.berkeley.edu/files/2019/01/Working-in-the-Service-Sector-in-Boston.pdf> (finding 64 percent of hourly workers in retail and food service jobs who are working fewer than 30 hours per week want to work more hours); 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).
- 19 See, e.g., MILLA SANES, CTR. FOR ECONOMIC & POLICY RESEARCH, “CHOOSING” TO WORK PART-TIME (Dec. 2012), <http://www.cepr.net/index.php/blogs/cepr-blog/choosing-to-work-part-time>; ANNE MORRISON & KATHERINE GALLAGHER ROBBINS, NWLC, PART-TIME WORKERS ARE PAID LESS, HAVE LESS ACCESS TO BENEFITS—AND TWO-THIRDS ARE WOMEN (Sept. 2015), http://www.nwlc.org/sites/default/files/pdfs/part-time_workers_fact_sheet_8.21.1513.pdf.
- 20 See GOLDEN, *supra* note 18; MORRISON & GALLAGHER ROBBINS, *supra* note 18; DAVID M. PONGRACE & ALAN P. ZILBERMAN, BLS, A COMPARISON OF HOURLY RATES FOR FULL-AND PART-TIME WORKERS BY OCCUPATION 2007 5 (July 2009), <https://www.bls.gov/opub/mlrcwc/a-comparison-of-hourly-wage-rates-for-fulland-part-time-workers-by-occupation-2007.pdf>.
- 21 See, e.g., GOLDEN, *supra* note 18, at 22; SUSAN J LAMBERT, PETER J. FUGIEL & JULIA R. HENLY, UNIV. OF CHICAGO, PRECARIOUS WORK SCHEDULES AMONG EARLY-CAREER EMPLOYEES IN THE US: A NATIONAL SNAPSHOT 12 (Aug. 2014), https://ssa.uchicago.edu/sites/default/files/uploads/lambert.fugiel.henly_precarious_work_schedules.august2014_0.pdf.
- 22 For more information regarding existing laws requiring access to hours, see NWLC, STATE AND LOCAL LAWS ADVANCING FAIR WORKS SCHEDULES (Oct. 2017), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2019/10/Fair-Schedules-Factsheet.pdf>.
- 23 A BETTER BALANCE, FACT SHEET: THE BUSINESS CASE FOR WORKPLACE FLEXIBILITY 2-4 (Nov. 2010), <https://www.abetterbalance.org/resources/business-case-workplace-flexibility-factsheet/>; Joshua Choper, Daniel Schneider & Kristen Harknett, *Uncertain Time: Precarious Schedules and Job Turnover in the U.S. Service Sector* (Oct. 2019), <https://equitablegrowth.org/working-papers/uncertain-time-precariou-schedules-and-job-turnover-in-the-u-s-service-sector/>.
- 24 A BETTER BALANCE, *supra* note 23. See also, e.g., FAIR WORKWEEK INITIATIVE & CTR. FOR POPULAR DEMOCRACY, A FAIR WORKWEEK: GOOD FOR BUSINESS AND WORKERS (March 2018), https://s.bsd.net/popular/main/page/file/aa3223bd54132cfd9_csm6bn8q7.pdf; JOAN WILLIAMS ET AL., STABLE SCHEDULING INCREASES PRODUCTIVITY AND SALES: THE STABLE SCHEDULING STUDY, <https://worklifelaw.org/publications/Stable-Scheduling-Study-Report.pdf> (last visited Apr. 8, 2019).

