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# The Schedules That Work Act

## SECTION-BY-SECTION SUMMARY H.R.5563 / S.2851

*Millions of people—disproportionately women and people of color—work in essential but low-paying jobs where they receive little notice of their work schedules, experience last-minute shift cancellations that deprive them of vital income, and work “clopening” shifts that leave little time to commute, let alone rest, between shifts. Employer practices that produce unstable and unpredictable work hours are problems that pre-date the COVID-19 pandemic—and employers have continued to use these “just-in-time” scheduling practices throughout the pandemic and its aftermath. The **Schedules That Work Act** will curb these harmful practices, granting people a voice in their work schedules and helping working people meet their obligations on the job and in the rest of their lives.*

### Section 1. Short Title; Findings.

- **SHORT TITLE.** Schedules That Work Act.
- **FINDINGS.** This subsection describes the prevalence and consequences of unstable and unpredictable work hours, which disproportionately harm women and people of color working in service sector jobs, including food service, retail, cleaning, hospitality, and warehouse occupations. For example, about two-thirds of hourly retail and food service workers receive their work schedules with less than two weeks’ advance notice, and about one third receive less than one week’s notice. Volatile work schedules make it difficult to provide or arrange for care for children and other family members; pursue workforce training; get or keep a second job to make ends meet; or manage one’s own medical condition. Such schedules also have significant detrimental impacts on workers’ well-being and are associated with negative health and behavioral outcomes for children. Policies that provide more worker-driven flexibility, predictability, and stability benefit not only working people and their families, but also their employers, due to reduced absenteeism and workforce turnover and increased employee morale and engagement.

## Section 2. Definitions.

- **BONA FIDE BUSINESS REASON.** This term defines the reasons for which an employer can deny certain employee requests for a schedule change under Section 3, which include, but are not limited to, additional costs as a result of lost productivity, retraining or hiring employees, or transferring employees from one facility to another facility; a detrimental effect on the employer's ability to meet organizational need or customer demand; the inability of the employer, despite best efforts, to reorganize work among existing staff; insufficiency of work during the periods the employee proposes to work; the need to balance competing scheduling requests when it is not possible to grant all such requests without a significant detrimental effect on the employer's ability to meet organizational need; or such other reasons as may be specified by the Secretary of Labor.
- **CAREER-RELATED EDUCATIONAL OR TRAINING PROGRAM.** This term describes a program that provides academic education, career and technical education, or training; leads to a recognized postsecondary credential; and provides career awareness information.
- **CAREGIVER.** An employee is considered a caregiver if the employee provides significant, ongoing care for a child, a family member with a serious health condition, or a parent who is age 65 or older.
- **CHILD OR CHILDREN.** A biological, adopted, or foster child, a stepchild, a child of a domestic partner, a legal ward, or a child of a person standing in loco parentis to that child, regardless of age.
- **COVERED EMPLOYER.** Employers who employ 15 or more employees are covered by the Act. For the purposes of this Act, the number of employees includes full time, part time and temporary employees who are employed by an employer. (Note, however, that some provisions of the Act only apply to covered employers of covered sector employees, as defined by the Act.)
- **COVERED SECTOR EMPLOYEE.** A nonexempt employee who is employed in a hospitality establishment or warehouse establishment, or in a retail sales, food preparation and service, or cleaning occupation, or a nonexempt employee who is employed in an occupation designated by the Secretary of Labor as appropriate for coverage under certain provisions of the Act.
- **FAMILY RELATIONSHIP.** This refers to an employee's relationship with a child, spouse, domestic partner, parent, grandchild, grandparent, sibling, or parent of a spouse or domestic partner or someone whose close association by blood or affinity is the equivalent of a family relationship.
- **HOSPITALITY ESTABLISHMENT.** A hotel, motel, inn, or similar transient lodging establishment.
- **MINIMUM NUMBER OF EXPECTED WORK HOURS.** This refers to the minimum number of hours an employee will be assigned to work on a weekly or monthly basis.
- **NONEXEMPT EMPLOYEE.** An employee who is not employed in a bona fide executive, administrative, or professional capacity, as defined for purposes of section 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(1)).
- **ON-CALL SHIFT.** An "on-call shift" describes any time during which an employer requires an employee to be available to work and either contact the employer or wait to be contacted by the employer to determine whether the employee is required to report to work at that time.
- **SPLIT SHIFT.** A split shift is a schedule in which the hours worked are not consecutive, except that a schedule in which the total time out for meals does not exceed one hour (or the break is requested by the employee) shall not be treated as a split shift.
- **WAREHOUSE ESTABLISHMENT.** Any business that engages primarily in the storage of goods, wares, or commodities for hire or compensation, and, in connection with such storage, may include the loading, packing, sorting, stacking, wrapping, distribution, or delivery of those goods, wares, or commodities.
- **WORK SCHEDULE.** An employee's work schedule is all of an employee's work shifts and on-call shifts, including specific start and end times for each shift, during a consecutive 7-day period.
- **WORK SCHEDULE CHANGE.** Any modification to an employee's schedule is a work schedule change.
- **WORK SHIFT.** An employee's work shift is the specific hours of the day the employee works.

### Section 3. Right to Request and Receive a Flexible, Predictable, or Stable Work Schedule.

The Schedules That Work Act ensures that employees have meaningful input into their work schedules.

- All employees who work for an employer with 15 or more employees have a right to request, free from retaliation, a change in the terms and conditions of employment as they relate to:
  - The number of hours the employee is required to work or be on call for work;
  - The times when the employee is required to work or be on call for work;
  - The location where the employee is required to work;
  - The amount of notification the employee receives of work schedule assignments; and
  - Minimizing fluctuations in the number of hours an employee is scheduled to work on a daily, weekly, or monthly basis.
- After an employee makes a request, employers must engage in a timely, good faith interactive process with the employee, which includes a discussion of potential changes that would meet the employee's needs.
- The interactive process must result in the employer either granting or denying the request. In the event of a denial, the employer must tell the employee its reasons.
- If an employee makes a request because of 1) a serious health condition of the employee; 2) the employee's responsibilities as a caregiver; 3) enrollment in education or workforce training; or 4) to accommodate a second job, the employer must grant the request unless the employer has a bona fide business reason for denying it.

### Section 4. Requirements for Advance Notice of Work Schedules, Predictability Pay, and Split Shift Pay for Covered Sector Employees.

The Schedules That Work Act will enhance schedule stability and predictability for employees in sectors in which unfair scheduling practices are most pervasive—i.e., retail, food service, cleaning, hospitality, warehousing, and potentially other sectors designated by the Secretary of Labor—by

requiring covered employers to provide employees in these occupations with advance notice of work schedules, predictability pay for schedule changes made without the required notice, and split shift pay.

#### SECTION 4(A) – ADVANCE NOTICE REQUIREMENT.

Employers must provide covered sector employees with a work schedule at least two weeks (14 days) before the first day of the work schedule.

- If an employer fails to provide two weeks' notice of the work schedule, they must compensate each affected employee \$75 per day that the work schedule was not provided in advance of the 14-day notice period.
- An employer may make changes to the employee's work schedule as long as 1) the change is made no less than 14 days prior to the day the change is to take effect, or 2) the employer provides predictability pay in accordance with subsection 4(b).
- An employer must provide an estimate of the minimum number of expected work hours the employee will be assigned to work per month for the following 12-month period. The minimum expected work hours must be updated at least once per year, or when there is a significant change to the minimum expected work hours.
- Notifications to employees regarding their schedules and any changes thereto must be in writing, and employers must post work schedules in a conspicuous location.

#### SECTION 4(B) – PREDICTABILITY PAY FOR WORK SCHEDULE CHANGES MADE WITH LESS THAN 14 DAYS' NOTICE.

For each work schedule change provided to a covered sector employee that occurs less than 14 days prior to the first day on which the change is to take effect, the employer must provide "predictability pay."

- When the schedule change results in 1) a new work shift or hours added to a work shift, or 2) a different date, time, or location of a work shift that does not reduce hours worked by the employee, the predictability pay owed by the employer is equal to one hour of pay at the employee's regular hourly rate of pay (in addition to pay for the hours worked during the shift).
- When the schedule change reduces or cancels a work shift, predictability pay owed by the employer is equal to one half of the employee's regular rate of pay per hour for any hour the employee was scheduled to work and does not work due to the employer reducing or canceling such scheduled hours of work.

- Employers are not required to provide predictability pay when:
  - An employee requests a shift change in writing, including through the use of sick leave, vacation leave, or any other leave offered by the employer;
  - The schedule change is the result of a mutually agreed upon shift trade or coverage arrangement between employees; or
  - The employer's operations cannot begin or continue due to threat to the property of an employee or the employer, failure of a public utility or the shutdown of public transportation, fire, flood, or other natural disaster; a state of emergency declared by the President of the United States or by the Governor of the State, or the mayor of the city, in which the operations are located, or a severe weather condition that poses a threat to employee safety.

**SECTION 4(C) – SPLIT SHIFT PAY REQUIREMENT.** An employer shall pay a covered sector employee for one additional hour at the employee's regular rate of pay for each day during which the employee works a split shift.

**SECTION 4(D) – PAY STUB TRANSPARENCY.** Pay provided to an employee under the Act's advance notice, predictability pay, or split shift pay requirements must be included in the employee's regular paycheck. The employer must identify the total number of hours of additional pay provided for the pay period involved and whether the additional pay was due to the requirements of the Act.

## Section 5. Right to Rest Between Work Shifts.

The Schedules That Work Act ensures that employees have adequate rest between work shifts by prohibiting back-to-back "clopening" shifts without employee consent and requiring all employers covered by the Act to compensate employees when they agree to work two shifts with less than an 11-hour break them.

- An employee may decline, without penalty, to work a shift that is scheduled less than 11 hours after the end of the previous shift, or during the 11 hours following the end of a work shift that spanned two days.
- If an employee consents to work a "clopening" shift, the employer must pay them 1.5 times their regular rate of pay for the hours worked that are within the 11-hour window.

## Section 6. Prohibited Acts.

The bill includes strong anti-retaliation provisions to ensure that employees can exercise the rights provided by the Schedules That Work Act free from interference and retaliation.

- Employers cannot interfere with, restrain, or deny an employee's exercise or attempt to exercise the rights provided under the Act.
- Employers cannot discharge, threaten to discharge, demote suspend, reduce work hours, or take any other adverse employment action against an employee for exercising their rights under the Act.
- For purposes of the right to request, retaliation includes taking any adverse employment action against an employee based on eligibility or perceived eligibility to request or receive a change in the terms and conditions of employment because of the employee's serious health condition, caregiver status, enrollment in education or workforce training, or holding a second job.
- Employers cannot discriminate or retaliate against individuals who file a charge, institute or cause a proceeding to be instituted; give information related to an inquiry or proceeding; or testify in an inquiry or proceeding related to a right provided for by the Act.

## Section 7. Remedies and Enforcement.

The Act provides the following remedies and mechanisms for enforcement.

- The Schedules That Work Act will be enforced by the U.S. Secretary of Labor using the same investigative authority and subpoena powers as under the Fair Labor Standards Act. The Secretary may also bring action in court.
- The Board of Directors of the Office of Compliance, the President & Merit Systems Protection Board, OPM, the Librarian of Congress, and the Comptroller General also have investigative authority with respect to employees under their jurisdictions.
- An employee may bring a private right of action against any employer who retaliates against them for exercising their rights under the Act. An employee may also bring a private right of action against an employer who interferes with, restrains, or denies the employee's exercise or attempt to exercise their rights under Section 5 of the Act, and a covered sector employee may bring a private right of action against an employer who similarly interferes with their rights under Section 4. The court can award

lost pay, interest, compensatory damages, liquidated damages, and equitable relief, including but not limited to employment, reinstatement, and promotion. The court may also award attorneys' fees, reasonable expert witness fees, and costs.

- An employer who willfully and repeatedly violates the Act will be subject to civil penalties as determined by the Secretary of Labor. The fine amount for such violations of Section 4 or 5 of the Act should not be less than \$500 nor exceed \$1,000 per violation. The fine amount for retaliating against employees for exercising their rights under the Act or interfering with an employee's exercise of their rights under the Act should not be less than \$1,100 nor exceed \$5,000 per violation. "Repeatedly" with respect to a violation means two (2) or more violations. "Willfully" with respect to a violation means that an employer knew the conduct was prohibited or showed reckless disregard for the requirements of the law.

## Section 8. Notice and Posting.

Employers must post information regarding the pertinent provisions of the Act and how to file a complaint in a conspicuous location. Employers who willfully violate the notice requirements may be fined up to \$100 for each separate offense.

## Section 9. Regulations.

- The Secretary of Labor is directed to issue regulations implementing the Schedules that Work Act within 180 days of enactment.
- The Secretary of Labor is also instructed to designate any additional occupations that are appropriate for coverage under Section 4 of the Act (advance notice, predictability pay, split shift pay). These occupations include those in which not less than 10 percent of employees in the industry either receive less than two weeks' advance notice of their work schedules or experience fluctuations in their daily, weekly, or monthly scheduled hours.
- The Board of Directors of the Office of Congressional Workplace Rights, the President & Merit Systems Protection Board, OPM, the Librarian of Congress, and the Comptroller General are directed to issue regulations with respect to employees under their jurisdictions. These entities must consider their existing FMLA enforcement and remedies requirements and that the regulations they issue under this Act be the same as the Department of Labor's, unless there is good cause that a modification would be more effective for implementing the Act's rights and protections.

## Section 10. Research, Education, and Technical Assistance Program and Surveys.

The Schedules That Work Act provides for research, education, and technical assistance, including the following:

- Guidance issued by the Secretary of Labor regarding how employers can comply with the Act and how to provide a flexible, predictable, or stable working environment through changes in employee terms and conditions of employment.
- Continuing research, education, and technical assistance by the Secretary of Labor, including by conducting pilot programs that implement fairer work schedules through various means; publishing findings of studies and other materials promoting compliance with the Act; sponsoring and assisting state and community programs; and providing technical assistance on compliance.
- Including in the Current Population Survey questions on the amount of fluctuation in the number of hours employees receive, the extent of advance notice an employee receives of their work schedule, the extent to which the employee has input into the employee's work schedule, and the number of hours that an employee would prefer to work relative to the number of hours the employee is currently working.

## Section 11. Rights Retained By Employees.

The Schedules That Work Act provides for minimum requirements, and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy or standard that provides for greater rights.

## Section 12. Exemption.

If there is a collective bargaining agreement that governs scheduling practices, and the provisions of the Act are expressly waived, the collective bargaining agreement controls.

## Section 13. Effect on Other Law.

Nothing in the Act should be construed to create or impose any requirement in conflict with any federal or state law, rule, or regulation, or to diminish or impair the rights of an employee under any valid collective bargaining agreement or any existing state or federal law.