



TESTIMONY BEFORE THE SELECT COMMITTEE ON WOMEN AND THE WORKPLACE
Predictive Scheduling

TO: Lorena Gonzales, Chair
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DATE: October 21, 2015
LOCATION: Hiram W. Johnson State Office Building, San Francisco

My name is Elizabeth Ben-Ishai. I am a senior policy analyst at the Center for Law and Social Policy (CLASP). CLASP is a national organization that works to improve the lives of low-income people by developing and advocating for federal, state, and local policies that strengthen families and create pathways to education and work. As a part of this broader agenda, we work on a range of job quality issues, including work scheduling and paid leave. CLASP often works with partners in California to provide technical assistance and support advocacy and policy efforts to improve the lives of lower-wage workers in the state. We strongly believe in the need for legislative action to ensure that workers have fair and sustainable schedules. Such legislation is critical to the health, financial security, and well being of working women, men, and their families. Moreover, it is critical to the health and stability of our nation's economy; when workers do well, they not only boost productivity for their employers, they also contribute to their local economies as consumers.

Workers nation-wide are struggling with the effects of erratic and unsustainable job scheduling practices. Common scheduling challenges include: little advance notice of shifts; fluctuations in shifts from day to day or week to week; highly variable hours per week; being sent home from work early or called in at the last moment; split shifts (nonconsecutive hours); working late night closing shifts followed by early morning opening shifts (“clopening”); and inadequate hours. Workers across industries and wage levels experience these problems, but they are most prevalent among lower-wage, hourly workers.

Research demonstrates that volatile schedules are remarkably common. More than 40 percent of early career hourly workers (ages 26 to 32) receive one week or less advance notice of their job schedules. Half of these workers have no input into their schedules and three-quarters experience fluctuations in the number of hours they work, with hours varying by more than eight hours per week on average.¹ Parents of young children are among those most likely to experience volatile job schedules. Nearly 70 percent of mothers and 80 percent of fathers of children 12 or younger who work in hourly jobs receive hours that fluctuate by up to 40 percent.² According to a study of workers of all ages, about 17 percent of the workforce experiences unstable work shift schedules, which includes irregular, on-call, split, and rotating shifts.³

Erratic schedules have severe effects on workers' lives, and on their families' well being. Workers struggle to arrange child care, transportation, medical appointments, and higher education; they experience fatigue and stress that affects family life and health outcomes; and they struggle to stay afloat financially.⁴ Ironically, as discussed in a recent publication from CLASP, when these workers seek out assistance from the social safety net meant to help them in difficult times, they often find that it is ill equipped to support workers with erratic schedules.⁵ As a result of out-of-date rules and shortsighted practices, some workers find that they are ineligible for critical benefits like Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), and Child Care Assistance because their hours are unstable, insufficient, or because they cannot produce the documentation these programs require. Moreover, program requirements, such as meetings with caseworkers and job training classes, are often hard to meet when workers' have unstable schedules, leaving workers to face sanctions or loss of benefits for failure to comply. Workers who lose their jobs or must quit their jobs because of erratic job scheduling often find themselves ineligible for unemployment insurance (UI) benefits. Many states, including California, have not adapted their UI rules to meet the needs of today's labor force – a labor force that is often affected by insufficient and unstable hours.⁶ There is considerable interest in the pressing issue of access to benefits for workers with unstable schedules; last month, a CLASP national audio conference call on the topic featured experts from California and drew an audience of hundreds of advocates and researchers from across the country.

To curb the devastating effects of erratic job schedules, a growing movement of workers and advocates across the country is fighting to pass new labor standards that would require employers to improve scheduling practices. At the federal level, Senators Elizabeth Warren (D-MA), Chris Murphy (D-CT), and Patty Murray (D-WA) and Representatives Rosa DeLauro (D-CT) and Bobby Scott (D-VA) have introduced the Schedules that Work Act (SWA) (S. 1772/H.R. 3071), which would give all employees at firms with more than 15 people the right to request scheduling accommodations. It would also provide employees in certain categories with a right to *receive* those accommodations unless employers have *bona fide* business reasons to refuse. For workers at firms with more than 15 people in the retail, restaurant, and building cleaning industries, the bill includes additional provisions that require advance notice of schedules and compensation for last-minute changes, on-call work, and split shifts, as well as minimum pay for showing up to work (even if they are sent home early).⁷ SWA currently has 18 sponsors in the Senate and 71 sponsors in the House. Sixteen Members of Congress from California have cosponsored SWA. More than 70 organizations, including groups representing women, children, workers, health groups, consumer groups, and more, have signed on in support of SWA and are actively working in coalitions around the country to advance scheduling protections.⁸

California Assembly Bill 357, the Fair Scheduling Act, introduced last session, is part of a wave of state-level legislation that has been introduced to address scheduling volatility over the past couple of years. Nearly a dozen state legislatures and several local jurisdictions have considered or are considering bills to create more sustainable and fair job schedules for hourly workers. In 2015, San Francisco passed the Retail Workers Bill of Rights, which is beginning to improve scheduling for workers employed by large chain retailers in the City and County of San Francisco.⁹ Vermont passed a "right to request" law in 2014, which gives workers the right to ask for scheduling changes without fear of retaliation. In addition to the provisions in SWA, many of the state and local bills include language meant to ensure greater access to full-time work; guarantee the right to rest between shifts (ending clopening), protect workers from discrimination on the basis of hours worked, and more.

These scheduling provisions under consideration at the federal and state level are not only good for workers, they are also feasible for employers. Many employers already provide their workers with three weeks of advance notice of schedules, including Costco and Macy's. Moreover, research shows that

most employers are capable of predicting a high percentage of their labor needs, making much of today's scheduling variability unnecessary if employers implement effective labor management practices.¹⁰ Further, many employers are recognizing the importance of studying and implementing improved scheduling practices. For example, retailer The Gap is currently working with Hastings College of Law to set up pilot projects that will measure the effects of improving employees' schedules by providing more stability and access to hours.¹¹

Employers often rely on scheduling software to help them manage their workforce. Although scheduling software is often highlighted as contributing to the problem of just-in-time scheduling – a phenomenon whereby employers make last minute changes to the schedule based on minute shifts in demand reported by such software – it can also be used in ways that protect rather than harm workers. Workplace Systems, a company that sells scheduling software, explains in its recent compliance guide for San Francisco's new scheduling law. “[C]ompanies that comply with the regulations may [...] see increases in employee engagement, decrease turnover, and achieve more sales through better-served customers.” The company's Vice President, JD Miller, also noted in a recent webinar that, using technology, employers can easily comply with scheduling laws like the San Francisco's.¹² Harvard Business School Professor Ethan Bernstein has written in the *Harvard Business Review* and *Roll Call* about the false tradeoff between fair schedules and productivity, emphasizing that implementation of complex scheduling software can and should be done in a way that maximizes outcomes for both workers and employers.¹³

California workers – particularly women workers – need a range of labor protections in order to perform well in their jobs; contribute to the economy by boosting productivity and consuming local goods and services; and care for the families. The state's recently passed paid sick days laws, championed by Chairwoman Gonzales, is an important step forward – yet, it is just the beginning. The new law guarantees three days of sick time for most workers (more than many workers in the US receive, yet considerably fewer days than most jurisdictions that have passed sick days laws), and excludes a large swath of workers employed by the state as home health caregivers. In addition to broadening this law, legislators should continue efforts to expand job protection for family leave, improve paid family leave, and, as we have discussed today, guarantee workers' access to fair and sustainable job schedules.

Thank you for the opportunity to testify before this important committee.

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- ⁸ Supporters of the Schedules That Work Act, <http://democrats.edworkforce.house.gov/supporters-schedules-work-act>
- ⁹ “Retail Workers Bill of Rights”, Jobs for Justice San Francisco, <http://retailworkerrights.com/get-the-facts/>. For information on the movement and latest legislative developments, visit CLASP’s National Repository of Resources on Job Scheduling Policy: CLASP, “A National Repository of Resources on Job Scheduling Policy,” <http://www.clasp.org/issues/work-life-and-job-quality/scheduling-resources>.
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