

TACKLING
UNSTABLE
— AND —
UNPREDICTABLE
WORK SCHEDULES

A Policy Brief on
Guaranteed Minimum Hours
and Reporting Pay Policies

by Center for Law and Social Policy, Retail Action Project, and Women Employed

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Introduction

Imagine if your work schedule changed from week to week or even from day to day, jumping from night shifts to day shifts. Imagine being scheduled to work 40 hours one week and 15 hours the next, with no expected pattern or warning of these fluctuations. Imagine paying for your children's daycare and trekking across the city, only to have your manager send you home without pay, claiming there aren't enough customers for you to work your shift. Imagine not knowing whether you'll earn enough to be able to pay your rent or utility bills. For many lower-wage workers, it doesn't take much imagination at all to conjure up these scenarios. Unpredictable and unstable work schedules leave them in a constant state of economic instability and personal turmoil. Unfortunately, for a growing number of employers, these scheduling practices are becoming business as usual.

While paying bills and taking care of family members are high on the list of challenges that workers in lower-wage jobs experience when they are subject to erratic scheduling practices, the harm they face does not stop there. Workers experience adverse health effects, have difficulty finding and keeping childcare arrangements, face transportation obstacles, have trouble going back to school to advance their education, and experience considerable overall stress and strain on family life.¹ Since their schedules fluctuate so much, they can't predict the size of their pay-



checks. Communities suffer, too, when workers can't afford to buy groceries or other goods from neighborhood businesses. Even the employers that adopt volatile scheduling practices that contribute to these problems may face negative repercussions, as they cope with the significant expenses associated with high rates of turnover and low morale.² Moreover, consumers are increasingly wary of spending their money at businesses that treat their workers poorly. The ripple effects of unstable and unpredictable scheduling are felt in the lives of individuals, in communities, and throughout the economy.

There are policy and employer practice solutions to this problem. Such policies and practices help workers have the time and economic security they need to care for their families, while also helping employers maximize the value their workers provide. This brief examines two strategies to improve unstable schedules for lower-wage workers: *guaranteed minimum hours* and *reporting pay*. Already, some forward-thinking workplaces employ these strategies, and numerous unions have negotiated them as part of collective bargaining agreements. In a small number of states, they are required by law. Under guaranteed minimum hours policies, employers commit to schedule employees for no less than a set number of hours each week, and in some cases, employees are compensated at their regular rate of pay even if they are later taken off the schedule. Under reporting pay policies and laws, employees are compensated for a minimum number of hours in instances when they are sent home, ensuring they receive the wages they depend on and can cover the costs they incurred (e.g., childcare, transportation) to enable them to show up at work. While these are

not the only policy solutions³ available to address scheduling challenges facing lower-wage workers, they are promising strategies worthy of closer examination.

Although researchers have documented the business case for these policies,⁴ recent analysis

by Susan Lambert suggests that employers may not be convinced by arguments about costs of turnover and the value of providing their employees with better working conditions. As a result, voluntary employer action is unlikely; public policy solutions are needed to address scheduling challenges on a broad scale.⁵

The Context for Unstable & Unpredictable Scheduling

Why have lower-wage workers been hit so hard by erratic scheduling? There are several reasons. With the rise of what is sometimes called “just-in-time scheduling,” managers are expected to carefully control the relationship between consumer demand and expenditures on wages. If customer traffic or sales seem to be lagging on a given day, the expectation is that immediate changes to workers’ hours should ensue.⁶ Just-in-time scheduling practices are part of larger trends in business practices – trends that are increasingly accepted as the norm in hourly-wage, service sector industries. These practices disproportionately affect low-income workers, who are already vulnerable financially. Just-in-time scheduling contributes to workers’ income instability, making it difficult to make ends meet; it may threaten their eligibility for government income supports; and because workers may not always be scheduled for enough hours to qualify, it may limit their eligibility to claim firm-provided benefits like health insurance and sick days.⁷ In their rush to cut costs, many corporations are adopting business practices that seriously compromise workers’ well-being.

While workers feel pressure on their pocketbooks and strain on their home lives, front-line managers are being pressured too. In the retail industry, managers are often evaluated on whether

they meet targets for payroll as a percentage of sales. With minimal control over sales, managers move quickly to decrease staffing levels when sales go down.⁸ In a study of low-level, non-production jobs at major US corporations in the retail, transportation, hospitality, and financial services industries, researchers found that managers at all firms experienced pressure and responded by “scheduling to demand.”⁹ Across industries, employers have adopted labor strategies that “shift risk from the corporation onto workers, bringing with it instability in hours and income.”¹⁰ For example, one study found that restaurant workers could be scheduled with a start time but no end time. Workers were instead scheduled as “12 BD.” This means that a worker would arrive at work at noon and then leave when “business declined” or BD. That could be anytime and at the discretion of the management.¹¹

Employers now also have technological tools to help manipulate workers’ schedules in response to changes in demand.¹² Recent news reports indicate an increasingly widespread use of software created by such companies as Kronos Inc. and Dayforce to “optimize schedules” by breaking them down into small increments of time and by tracking factors such as sales and (as in the case of Jamba Juice) weather patterns. In other words, the software creates schedules

that cut costs, but are highly unpredictable for workers. The *Wall Street Journal* referenced mega-employer Wal-Mart's use of such software in 2009.¹³ By 2011, the *New York Times* was pointing to the ubiquity of this software in the retail and restaurant industries, with other companies racing to compete with Wal-Mart's cost-cutting practices.¹⁴

In one recent news article, the district manager of a national chain, Jamba Juice, explained that weather had a significant effect on the store's business. According to a *New York Times* reporter who spoke with a manager at Jamba Juice, "If the mercury is going to hit 95 the next day, for

instance, the software will suggest scheduling more employees based on the historic increase in store traffic in hot weather." This software also allows managers to schedule in 15-minute increments: "If the lunchtime rush at a particular shop slows down at 1:45, the software may suggest cutting 15 minutes from the shift of an employee normally scheduled from 9 a.m. to 2 p.m."¹⁵ Although scheduling software can benefit both workers and businesses – if used to accommodate workers' preferences, set minimum shifts and weekly hours, and help employees switch schedules – the example of Jamba Juice points to such software's negative implications.

“Irregular schedules are a big issue for me. I'm given my schedule just a day or two ahead of time. Since I am in college, it's really important that I'm not scheduled during class. There's so much turnover, I don't know my coworkers' phone numbers in case I need to switch shifts. Everyone's hours fluctuate. I have been scheduled for as few as six hours in a week, and as many as 40, so my paycheck is always different. How is anyone – a student or parent – supposed to plan their budget with such erratic schedules?”

– Retail Sales Associate, New York City;
Member, Retail Action Project (RAP)¹⁶

Workers' Experiences of Scheduling Challenges

Workers face a variety of scheduling challenges. This paper discusses policies that address two in particular: unpredictable scheduling and unstable scheduling practices. Workers experience *unpredictable* scheduling when employers post schedules at the last minute, change these schedules in “real time” or with little or no notice, require them to work overtime or extra hours with no notice, or place them “on call.” Workers are affected by *unstable* scheduling practices when, in order to meet perceived economic demands, managers make use of fluctuating

schedules (differing shifts from week to week or from day to day), involuntary reductions of hours, and involuntary part-time scheduling of workers.¹⁷ Unstable scheduling practices lead to wide variation in the number of hours workers are assigned from week to week and month to month.¹⁸

These practices are not confined to a handful of workers in a few industries. Rather, they affect low-wage hourly workers in jobs with standard schedules (Monday to Friday, daytime schedules) and nonstandard schedules (all other schedules),

part-time workers and full-time workers, and workers in industries ranging from healthcare to manufacturing. While there is no national data on scheduling unpredictability, several studies demonstrate that it is ubiquitous in some industries. A study by Susan Lambert found that of 17 major U.S. corporations in the hospitality, airlines and package delivery, retail, and financial services industries, only three gave more than a week's notice of schedules.¹⁹ The CitiSales Study, which focused on one major U.S. retailer, found that 59 percent of full-time hourly workers experienced fluctuations in either the days or hours of their shifts from week to week.²⁰ In one study, which drew data from the 2008 National Study of the Changing Workforce, approximately 50 percent of low-wage hourly workers reported

having limited control over their work hours.²¹ Many workers also experience involuntary re-



duction of hours, and many who work part-time do so involuntarily. Nearly 8 million American workers are currently working part-time “for economic reasons” – because of slack

work or business conditions, or because they could only find part-time work.²²

Implications of Scheduling Challenges

Such scheduling practices are more than simply inconveniences for workers. They have serious effects on individuals and families, are linked to adverse business consequences, and result in broad economic costs. Unpredictable and unstable work schedules may contribute to work-family challenges and employee stress, as well as marital strife and poor school performance among these workers' children.²³ Workers with little control over their schedules and hours struggle to arrange childcare and transportation and may have difficulty scheduling doctor's appointments for themselves and their families, contributing to weaker health outcomes.²⁴

Because they are unable to count on a set number of hours per week, many workers simply cannot make ends meet. For these workers, despite having jobs that should ostensibly enable

them to pay the bills, public assistance often becomes necessary. Wal-Mart, a business at the forefront of just-in-time scheduling, is the largest private employer in the U.S., employing as many as 1.4 million workers across the country.²⁵ A 2004 study found that in California alone, where the company employed approximately 44,000 workers at the time, reliance by its employees on public assistance programs cost taxpayers \$86 million annually.²⁶ The study found that Wal-Mart employees were 38 percent more likely to use public assistance programs, such as food stamps and subsidized school lunches, than the average for families of employees of all large retail employers.²⁷ It is not just low wages that lead Wal-Mart workers to rely on public assistance (though this too is a major problem); it is also erratic schedules and involuntary part-time hours that contribute to these workers' poverty. Like the

failure to pay workers a living wage, unstable scheduling practices should be seen as a failure of corporate social responsibility. Meaningful change will require worker organizing, consumer advocacy, and public policy solutions.

While some businesses and business associations claim that scheduling challenges are inevitable in today's economic context, the evidence suggests that this is not the case. For example, in one study of a national women's clothing retailer, researchers found that despite the fluctuation in a relatively small portion of weekly store hours, 80 percent of store hours were stable over the course of the year.²⁸ While the fluctuating hours caused problems for those workers affected, the high percentage of stable hours suggests that businesses may not need to vary hours to the degree assumed.²⁹ Moreover, the findings suggest that policies requiring advance notification of schedules are feasible for employers.

the quality of customer service while lowering turnover costs.³²

Many businesses make better scheduling choices. As one researcher writes, some highly successful retail chains, such as QuikTrip, Trader Joe's, and Costco, "have demonstrated that, even in the lowest-price segment of retail, bad jobs are not a cost-driven necessity but a choice."³³ This statement is reinforced by an in-depth comparison of warehouse retailers Costco and Sam's Club. Researchers found that Costco, which guarantees minimum hours at higher rates of pay and better benefits, also enjoys lower turnover costs and has posted higher stock prices than Sam's Club.³⁴ Though employers like Costco may not take advantage of all the tools at their disposal to provide scheduling stability, they have taken steps in that direction. Research shows that retailers that under-invest in labor, including by instructing managers to manipulate staffing levels

“The union actually requires the company to pay if they bring you into work. If they make you work for three hours, they still have to pay you for four hours. If after four hours they want you to leave, they don't have to pay you, but they can't force you to leave if you are scheduled. They can ask you to leave and they won't pay you. So if you come in and work two hours then they say go home, they still have to pay you for four hours.”

– Certified Pharmacy Technician, Chicago³⁰

As the authors of the study note elsewhere, “By capitalizing on the stability in the business rather than on its instability, employers can implement scheduling practices that pass a greater proportion of the regularity in hours and staffing needs on to workers.”³¹ Another study points to the business case for allowing workers more input on scheduling. The CitiSales Study found (and managers believed) that offering workplace flexibility to hourly workers improves retention of talented employees. This in turn raises productivity and

in response to every dip in sales, may be hurting their own performance. Instead of automatically cutting labor in response to short-term pressures, “stores should strive to find the staffing level that maximizes profits on a sustained basis. In many cases, that will mean adding workers.”³⁵ By cross-training employees, eliminating waste in other areas, and empowering employees to make decisions,³⁶ managers can keep staffing levels stable in the face of fluctuations in demand while ultimately boosting their bottom line.

Although avoiding unstable and unpredictable work schedules is potentially profitable, there is also reason to believe that the business case may not sufficiently compel employers to adopt these policies. As Lambert notes, recent trends in business models and corporate strategies have made worker performance less relevant to firm profitability.³⁷ If firms have employed strategies to

minimize the costs of turnover and render workers easily replaceable, they may not be convinced that improving low-wage job quality is a worthwhile business goal. As the recommendations below suggest, this points to the importance of public policies to address scheduling challenges. Relying solely on voluntary employer action will not suffice.

Experiences with Minimum Hours and Reporting Pay

Despite the grim realities for many workers who experience scheduling challenges, other workers are reaping the benefits of more progressive policies that also benefit employers.

Guaranteed Minimum Hours Policies

Under guaranteed minimum hours policies, employers guarantee that workers will receive no less than a set number of hours each week at their usual rate of pay. An employee may

receive more hours than guaranteed.

Under some models of these policies, if an

employer is unable to provide the requisite number of hours, the worker will still be paid as though s/he worked the agreed minimum number of hours.

The home care staffing

agency Cooperative Home Care Associates illustrates this more robust model.

These policies restore stability to employees' lives. Knowing they can count on receiving at least a designated number of hours per week

means that they can adhere to a budget, anticipate their ability to pay bills, and meet their families' basic needs.

New York City-based home care staffing agency, Cooperative Home Care Associates (CHCA), has had a guaranteed hours program for over 20 years. The program was developed in part because wages for caregivers are relatively low. As Michael Elsas, President of CHCA, explains, "With these low wages... you need to work a certain number of hours in order to feed your family."³⁸ For CHCA, minimum hours are set at 30 hours per week. That means that for workers in the program, CHCA will guarantee at least 30 hours of pay, even if in a given week there are not 30 hours of work available. However, the program places certain conditions on workers who choose to participate (see box on CHCA's minimum hours program for more information). Elsas notes that the program requires careful management. The organization developed its own software and management system to effectively coordinate cases for the workers; this is particularly helpful because part-time client care is typically bundled together to get to 30 hours. The added effort, however, is worthwhile in an industry that sometimes struggles to



retain dedicated caregivers, who may leave the field to seek more reliable employment.³⁹ With careful management and planning, the program satisfies both the needs of the employer and employees' needs for sufficient hours and increased economic security.

Retailer Costco also offers many of its part-time workers a guaranteed minimum number of

hours—a policy the company has maintained for close to 30 years. At the store, which specializes in the sale of bulk goods, part-timers are guaranteed at least 24 hours per week. Significantly, Costco has low turnover rates, particularly in the context of an industry that is known for especially high rates of turnover. (See box on Costco core hours for further information.)

The Nuts and Bolts of Cooperative Home Care Associates' Minimum Hours Program

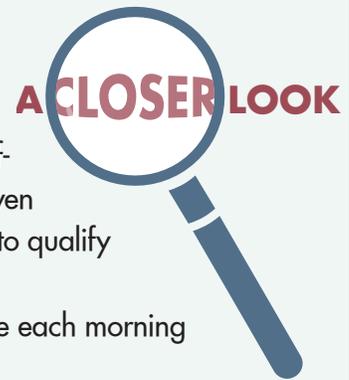
Home care staffing agency CHCA has a mix of longer-term, higher-hour cases and shorter-term, lower-hour cases. The company's guaranteed hours program aims to provide workers with sufficient hours to make ends meet, while also allowing the company to cover its caseload with appropriate staffing. CHCA's workers are guaranteed pay for 30 hours of work per week, even if 30 hours of work are not available. But they must meet certain conditions to qualify for the program each week. Workers must:

- Participate in a weekday on-call worker pool by phoning in to the office each morning and being prepared to leave for an assignment immediately.
- Be available to work on call every other weekend if they don't have a permanent case that week.
- Notify coordinators in advance if they are unavailable to work on a certain day. That day's hours are deducted from the worker's total hours. If the worker doesn't notify the coordinator ahead of time, she won't be eligible for guaranteed hours that week.
- Have worked at CHCA for 5,460 hours, or approximately three years of full-time employment.

A primer on the program by the Paraprofessional Healthcare Institute (PHI) gives several examples of how the program works:

- Mary has a regular home care case that requires her to work three days a week for four hours at a time. She calls in on the days she is not with her client. The agency does not have a case for her, so she is paid for 12 hours of work and 18 guaranteed hours, for a total of 30 hours.
- Latetia has no permanent case for the week. She calls in daily and works one 8-hour replacement case. She tells her coordinator she cannot work on Thursday. She is paid for 8 hours of work and 16 guaranteed hours (22 hours minus the 6 hours on Thursday she was unavailable).

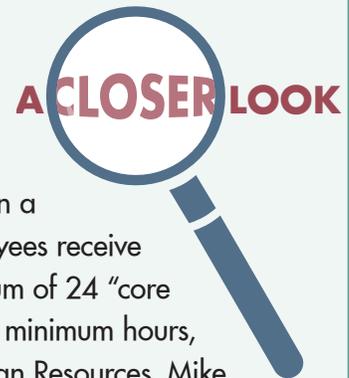
Under this program, workers essentially agree to give up some *flexibility* in their schedules in order to be guaranteed a *set number of hours* or *defined pay level*. The on-call requirement means that workers face a trade-off between stability and predictability when they enter this program. Of the company's 1000 direct care workers, roughly one-third (370) participate in the program.⁴⁰



Securing Core Hours: The Costco Curve

When you're buying toilet paper or frozen pizzas in bulk at Costco, you're probably not thinking about how many hours the cashier will be working next week—or whether she will have trouble supporting her family if she can't get a certain amount of time on the clock.

Fortunately, Costco's ahead-of-the-curve employee agreement means the cashier doesn't have to worry about those things either.



Costco, long a leader in efficient, effective employment policies, mentioned in a CLASP audio conference in December 2009 that all part-time Costco employees receive their schedules at least two weeks in advance and are guaranteed a minimum of 24 “core hours” per week. Since retail employers aren't legally required to guarantee minimum hours, and most don't, CLASP interviewed Costco's Assistant Vice President of Human Resources, Mike Brosius, to get the details on this policy.⁴¹

Costco's policy of 24 core hours dates back to 1985, with 20 hours guaranteed before 1985. While about half of Costco's employees are full-time, roughly 45 percent of Costco employees work “standard” part-time and are eligible for core hours. On their date of hire, all Costco workers receive a copy of the company's Employee Agreement, which establishes the guarantee of a minimum of 24 hours per week for standard part-time employees.

For a mom depending on a paycheck, that security can be a huge relief and helps make sure the mortgage, rent, or grocery bill are not subject to weekly fluctuations in take-home pay.

“We want people to work for us who consider us a career,” Brosius explained. “Long-term employees are more productive and serve the needs of our customers better. So we give our employees what's fair and what they need to make a living.”

Costco's minimum hours policy has contributed to one of the lowest employee turnover rates in the retail industry, at just 11 percent annually. Although tough economic times are also a factor in an employee's decision to keep a job, Costco's turnover rate prior to the economic downturn was still only about 17 percent. For the retail industry, those numbers are impressively low.

Costco's policy on “core hours” does not apply to everyone; in addition to the roughly half of employees who work full-time, approximately 3 percent of employees work limited part-time or are in a special program for college students. These are workers who work fewer than 24 hours per week, perhaps because they have other full-time jobs or are employed seasonally when not in school.

But for standard part-time workers, Costco takes its core hours program seriously.

“Employees can call Human Resources to let us know they're not getting core hours, and it will be taken care of the next day,” Brosius said. “But that has never happened.”

That's great news for part-time Costco workers trying to plan ahead and make ends meet.

“We have thirty-five patients on the medical surgical floor, and three CNAs. If the patient census is low, for example if it goes down to ten, they call one or two of the CNAs around 4:30 in the morning and their shift will get cancelled for the day. It affects the monthly budget. I pay for daycare, gas, food—and I’ll struggle to see how I’m going to make ends meet.”

– Certified Nursing Assistant, Chicago⁴²

Reporting Pay Laws and Policies

These laws and policies, which are sometimes called “show up pay,” compensate employees for a minimum number of hours during a work shift for which they have been scheduled, even when the employee is sent home because the employer has no work for him or her to perform.⁴³ While employees may still be sent home from work, they are guaranteed one or more hours of pay to offset the expenses associated with showing up at work (transportation, childcare, etc.). In fact, when employers are required to provide reporting pay, they often find work for employees who would have been sent home without pay.

While some employers voluntarily adopt such policies, several states have statutes, administrative regulations, and/or wage orders that require such policies to be in place. See Appendix 1 for an overview of state laws related to reporting pay. Although these laws provide an important safeguard for workers facing erratic scheduling, evidence suggests they are not always well-enforced or well-known. According to a 2012 study of retail workers in New York City, only 15 percent of surveyed workers reported receiving the full four hours of pay required by state law when they were sent home from work early.⁴⁴

Another mechanism for establishing reporting pay or minimum hours policies is collective bargaining. Some unions have negotiated reporting pay as a part of their contracts. These include contracts that cover healthcare workers,

airport security workers, government employees, and others. See Appendix 2 for examples of reporting pay clauses in collective bargaining agreements (CBAs). Some union contracts also have minimum hours provisions. (See box on Bloomingdale’s CBA for more information.)

“Call-in pay” rules are another related policy meant to address scheduling challenges. Under these rules, when an employee is called in to work at a time when s/he is not on the schedule, the employee may be entitled to be paid for a minimum number of hours. In some cases, s/he may be paid at a premium rate. Like reporting pay, call-in pay provisions exist in CBAs and in state laws, and some employers voluntarily adopt such rules. In state law, the vast majority of call-in pay rules apply only to state employees. However, work underway in New York seeks to change that. (See box on reforming New York reporting pay laws for further information.)

While reporting pay policies and laws provide important protection for workers who are sent home early from work, they often include exceptions and exemptions that limit their effectiveness. Moreover, particularly for workers who are covered under state laws, enforcement can be difficult; workers face considerable risks in filing complaints and may not feel these risks are worth taking, given the paltry damages awards most laws provide. As it stands, the burden for enforcing these rules falls heavily on vulnerable low-wage workers.⁴⁵

Bargaining for Better Scheduling: Bloomingdale's Flagship Store in NYC

In 2012, workers at Bloomingdale's New York City flagship store secured one of the best examples of a collective bargaining agreement that addresses critical scheduling issues facing hourly workers. The president of Local 3 United Storeworkers of the Retail, Wholesale and Department Store Union (RWDSU), Cassandra Bercoral, called the contract "a miracle on 59th Street," adding that it would "improve the lives of our members for many years to come."⁴⁶ The contract includes minimum hours provisions, as well as other crucial protections such as advance notification of scheduling, worker input into scheduling, and protections against overscheduling/late shifts.



Full-time Bloomingdale's employees are guaranteed 37.5 hours of work per week. Part-time workers have a regular schedule of at least 20 hours per week. They work on average 20-25 hours per week, but can also pick up additional hours. If they are working full-time hours, the union can make the case to have them reclassified as full-time.

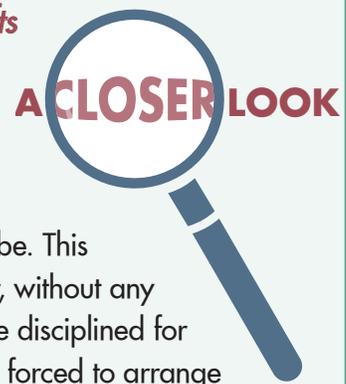
Other provisions in the contract reduce unstable and unpredictable scheduling. For example, workers must be notified of their schedule at least 21 days in advance of the workweek. Changes to the schedule cannot be made without at least one-week notice. In addition, employees can make requests regarding scheduling and select permanent non-rotating days off. To maintain full-time status, employees must be available at least 32 hours per week. The contract also restricts the number of "late nights" for which employees can be scheduled. If workers' hours are reduced to part-time for a period due to seasonal fluctuations, they are given preference for future opportunities that would restore their hours.⁴⁷

In its statement, the union said the contract would "have industry-wide implications because it comes as many retail workers struggle with underemployment and find it difficult to get the hours they want and deserve. Members of Local 3 only have these scheduling guarantees because they are covered by a union contract. A recent study of the retail industry in New York City revealed that only 17 percent of workers have a regular schedule."⁴⁸

“Scheduling is really important to me because I am the caregiver for my elderly father. Thankfully, my hours are guaranteed each week because of the union, so my paycheck is steady even if my shifts change. Next year, I will get to choose several shifts six months in advance, and the rest I will get at least a week notice. Then I will be able to plan my family's doctor appointments for my days off without having to take a personal or vacation day. This kind of stability balanced with flexibility really makes a difference for balancing work with my family life.”

– Retail Sales Associate, New York City;
member, Local 1S Retail, Wholesale and Department Store Union (RWDSU, UFCW)⁴⁹

Reforming the New York Reporting Pay Law to Include On-Call Shifts



Retailers are increasingly scheduling workers for “on-call” or “call-in” shifts, wreaking havoc on workers’ lives.⁵⁰ On-call scheduling requires workers to call their employer one to two hours before their shift to find out if they must report to work, preventing workers from having any advance notice of their schedules, ability to plan their lives, or know how much their paychecks will be. This practice requires workers to be available for work at no cost to the employer, without any guarantee of having paid working hours. If workers aren’t available, they are disciplined for a “no show.” Mothers and other caregivers are disproportionately impacted, forced to arrange childcare or eldercare at the last minute. The Discounted Jobs report found that more than half of mothers and caregivers surveyed were required to be available for on-call shifts.⁵¹ This abusive just-in-time scheduling practice also hinders workers from obtaining other jobs to bring them to full employment or being successful students.

The New York State reporting pay law⁵² provides: “An employee who by request or permission of the employer *reports for work* on any day shall be paid for at least four hours, or the number of hours in the regularly scheduled shift, whichever is less, at the basic minimum hourly wage.”⁵³ The interpretation of “reports for work” has generally been physical presence in the workplace. Under federal law, if a worker is “engaged to wait” she must be paid; if “waiting to be engaged,” she need not be paid.⁵⁴ We believe that when workers are required to call in for shifts and are disciplined for not being available, that time should be considered time “engaged to wait” as the retail worker’s time is being restricted by her employer.⁵⁵ Adding a minimum shift pay to on-call shifts would likely curb the industry practice or at least offer workers pay for being required to be available without a guarantee of work.

In addition to legislative solutions, organizing and corporate accountability campaigns at major retailers can help curb this practice. The Just Hours New York campaign seeks to tackle the emerging crisis of underemployment and restore fair and stable hours for retail workers through policy, organizing, and legal solutions. In 2012, workers at Abercrombie & Fitch’s flagship store in New York City formed a Retail Action Project (RAP) Just Hours committee⁵⁶ to take on the company’s abusive on-call shifts. Workers experienced significant fluctuations in hours along with frequent on-call shifts. RAP members in the store launched a public campaign and petition, and witnessed a reduction in on-call shifts at their store.

Strengthening the New York State reporting pay law will help curb abusive on-call scheduling practices. Just Hours New York seeks to redefine what it means to “report to work” to include a shift pay for when workers are required to call, email, or text their employer within 24 hours to determine if they are scheduled to work. The reporting pay law was originally enacted to guarantee workers a minimum income if they were sent home early. With the spread of on-call scheduling practices, reforming reporting pay laws to cover on-call shifts is a promising solution for bringing more predictability and stability to low-wage workers’ schedules.

“During our many years working here, we have seen the company transform from a law-breaking employer that paid us below the legal minimum wage and provided no benefits whatsoever into an upstanding small retailer. It’s hard to believe that through organizing, we not only won back our unpaid wages (over \$19,000)—but we now have jobs that offer steady raises, guaranteed hours and paid leave. We have had three healthy children and now that we have a union, our jobs provide the stability and living wages that help our family thrive.”

– Retail Stock Lead and Retail Sales Associate, husband and wife at same retail outlet in New York City; members, Retail, Wholesale and Department Store Union (RWDSU, UFCW)⁵⁷

Recommendations

Workers who experience scheduling instability and unpredictability face challenges to their family lives, economic security, health, and well-being. Furthermore, the increasingly common business practices that lead to scheduling challenges may also have negative consequences for businesses. To reverse the trend toward just-in-time scheduling and reduce its most harmful effects, we offer the following recommendations:

Enforcement

- State labor standards enforcement agencies should ensure that existing reporting pay laws are enforced. This includes educating employers and employees about the statutes and regulations where they do exist.
- State reporting pay laws should be amended to increase damages awards for violations, thereby motivating vulnerable workers to take the risks inherent in filing complaints, and include reimbursement of legal fees.⁵⁸ Moreover, workers need protection from retaliation for filing complaints.



Organizing

- Advocates should expand on worker organizing efforts to identify strategies for establishing minimum hours policies and for giving voice to those most affected by the absence of supportive practices and policies.
- Advocates should support workers taking legal action when workers experience discriminatory scheduling practices.
- Advocates should develop the leadership of workers to raise public awareness about abusive scheduling practices, model employer practices, and policy solutions.
- Advocates should educate workers about their reporting pay rights and help them recover unpaid wages if those rights are violated.



Awareness

- Advocates and government officials should raise public awareness of reporting pay



laws where they exist using various outreach strategies, including community organizing, distribution of written materials, and signage.

- Advocates and labor groups should raise awareness among unions about the utility of reporting pay clauses in collective bargaining agreements. They should encourage unions, particularly ones with many members in service jobs, to negotiate such clauses in their contracts.
- Advocates and “high road” employers should raise awareness about existing minimum guaranteed hours policies. Employers with such policies should encourage other corporations to adopt similar policies. Advocates should urge unions to consider negotiating for such programs.
- Advocates should raise consumer awareness of the good or bad scheduling practices of certain companies, encouraging them to patronize businesses that have fair policies.

Legislation

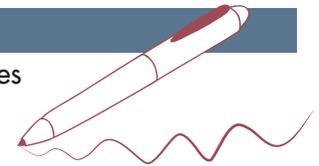


- Legislators should oppose anti-union bills, such as “right-to-work” legislation, and encourage bills that make organizing easier and prevent intimidation of workers seeking collective bargaining rights.
- Legislators and advocates should work to pass laws, regulations, and/or wage orders that require employers to provide reporting pay.
- Legislators and advocates should work to pass laws that require minimum guaranteed hours. At the same time, new legislation should be written carefully to avoid any unintended consequences, such as the possibility that employers will do away with schedules entirely in the face of such laws.⁵⁹
- Legislators and advocates should work to

pass other laws that may secure more stable scheduling practices for workers. Such laws include: advance notification of schedules, right to request workplace flexibility and predictable hours, part-time equity bills, laws governing on-call work, and protections for temporary workers.

- Legislators should expand worker protections as contained in the Fair Labor Standards Act (FLSA) to protect workers from exploitive scheduling practices.⁶⁰

Regulation



- Government agencies should create job quality criteria for the receipt of government subsidies or contracts, including criteria regarding scheduling issues, such as minimum hours and reporting pay. In addition, related accountability measures should be established including clawbacks⁶¹ that rescind subsidies if employers or contractors do not meet job quality criteria set in the original subsidy agreement, statute, or regulation. Government agencies should encourage the creation of community benefits agreements and assist in the creation of agreements that will set job quality standards such as minimum hours and reporting pay.
- The U.S. Department of Labor’s Wage and Hour Division should revisit the “on-call worker” classification in the FLSA to assess if workers affected by last minute call-in practices should be included in these protections.
- The U.S. Department of Labor’s Wage and Hour Division should review the FLSA “on-call worker” classification and invite testimony on expanding protections for these workers.

States with Reporting Time Pay Requirements

*Endnotes 62-66

State	Employees Covered	Pay Requirement	Exceptions	Citation & Notes
California	Non-exempt employees in specific industries, including the mercantile, public housekeeping, and amusement/recreation industries.	If an employee reports to work when required, but is given less than half of the usual/scheduled day's work, the employee must be paid (at her regular rate of pay) for half of the usual/scheduled day's work, but not less than two hours nor more than four hours. Other provisions apply to situations where a worker is required to report for a second time in a single workday.	No pay is required when: (a) operations cannot begin or continue due to threats to employees or property or when recommended by civil authorities; (b) public utilities fail to supply electricity, water, or gas or there is a failure in public utilities or the sewer system; or (c) the interruption of work is due to an act of God or other cause not in the employer's control.	Cal. Code Regs. tit. 8, § 11010(5) - 11150(5) (2013) California has 17 separate wage orders covering a number of industries. Many of these orders contain requirements for "reporting time pay." The state agency publishes a 50-page booklet to help determine which order applies to a particular business or occupation. (Each wage order is approximately 10 pages long in small type and must be "posted where employees can read it easily.")
Connecticut	Non-exempt employees in specific industries, including the mercantile trade and restaurant industries.	An employee who reports for duty (by request or permission of the employer) must be paid a minimum of four hours of pay at her regular rate. For restaurant and hotel workers only two hours are required to be paid.	This requirement can be waived if an employee is regularly scheduled to work fewer than four hours, but specific requirements must be met.	Conn. Agencies Regs. §31-62-A2, B2, C2, D2, E1 (2013) In Connecticut, this "minimum daily earnings" requirement is set out in separate wage orders that apply to workers in certain industries. Some of the wage orders (covering laundry, dry cleaning, and beauty shop workers, for example) are not readily available online.

Appendix 1: States with Reporting Time Pay Requirements

State	Employees Covered	Pay Requirement	Exceptions	Citation & Notes
District of Columbia	Non-exempt employees.	If an employee reports for work under general or specific instructions but is given no work or is given less than four hours of work, the employee must be paid for at least four hours. The daily wage shall be calculated as follows: payment at the employee's regular rate for the hours worked, plus payment at minimum wage for the hours not worked.	If an employee is regularly scheduled for less than four hours a day, such employee shall be paid for the hours regularly scheduled.	D.C. Code Mun. Regs. tit. 7 § 907.1 (2013) This "minimum daily wage" requirement is a statutory obligation.
Massachusetts	Most non-exempt employees, except employees of charitable organizations.	If an employee is (a) scheduled to work three or more hours and (b) reports at the time set by the employer (and no work is provided), the worker must be paid for at least three hours at no less than the minimum wage.	An opinion letter issued by the state agency notes that, if a worker is, in good faith, scheduled to work fewer than three hours, she must only be paid for the time actually worked and the three-hour rule does not apply.	455 Mass. Code Regs. 2.03 (2013) This requirement (called the "three-hour rule" by the agency that administers it) is set out in regulations implementing the Massachusetts minimum fair wage law.
New Hampshire	Most non-exempt employees, except employees of counties or municipalities.	If an employee reports to work at the employer's request, she must be paid not less than two hours' pay at the regular rate of pay.	No pay is required if the employer makes a good faith effort to notify an employee not to report to work.	N.H. Rev. Stat. Ann. § 275:43-a (2013) This is a statutory requirement.
New Jersey	Non-exempt employees.	If an employee reports to work at the employer's request, she must be paid for at least one hour at the applicable wage rate.	No pay is required if the employer has made available to the employee the minimum hours of work agreed upon by the employer and the employee prior to the commencement of the workday involved.	N.J. Admin. Code § 12:56-5.5 (2013) This is a statutory requirement.

Appendix 1: States with Reporting Time Pay Requirements

State	Employees Covered	Pay Requirement	Exceptions	Citation & Notes
New York	Non-exempt employees in specific industries, including the restaurant and hotel industries.	The requirements vary under different wage orders. For example, in the restaurant and hotel industries, an employee who (by request or permission) reports for duty must be paid at least three hours for one shift or the number of hours in the regularly-scheduled shift, whichever is less. Other specific minimum payments are required when workers were scheduled to work two or three shifts. In the wage order that applies to “miscellaneous industries and occupations,” an employee is entitled to a minimum of four hours of pay, or the number of hours in the regularly-scheduled shift, whichever is less. The rate of pay varies under the wage orders, but seems to be based on the minimum wage (with specific provisions for tipped employees).	None.	N.Y. Comp. Codes R. Regs. tit. 12, § 142-2.3 (2013) These “call-in” pay provisions are set out in separate wage orders that apply to specific industries. There is no call-in pay provision in the wage orders for the building services industry or for farm workers.
Oregon	Employees younger than 18 years old.	A minor who is required to report for work must be provided sufficient work to earn at least one-half of the amount earned during the minor’s regularly scheduled shift or be paid reasonable compensation if the work is not provided. (continued on next page)	None.	Or. Admin R. 839-021-0087 (2013) This is a statutory requirement.

Appendix 1: States with Reporting Time Pay Requirements

State	Employees Covered	Pay Requirement	Exceptions	Citation & Notes
Oregon (continued)		(continued from previous page) Reasonable compensation means the greater of: (a) the amount the minor receives for one hour of work at her regular rate of pay; or (b) the amount determined by multiplying the minor's regular rate of pay by one-half of the hours the minor was scheduled to work.		
Puerto Rico	Employees in the construction; quarrying; ice cream; lumber and wood products; metal furniture; doors and windows; straw, hair, and related products; laundry and dry cleaning; transportation; general agricultural activities; and stone, clay, glass, cement, and related products industries.	An employee is guaranteed at least four hours of pay at the regular rate.	The requirement does not apply when: (a) the employer notifies the employee before the end of her previous work shift not to report; or (b) acts of God prevent the performance of work.	Minimum Wage Board Reg. No. 7; Mandatory Decrees 7, 11, 15, 20, 22, 23, 24, 25, 37, 38, 41, 44, 50, 57, 67
Rhode Island	Non-exempt employees.	An employer who requests or permits an employee to report for duty at the beginning of a shift must either provide three hours of work or three hours of pay to that employee. A separate provision states that non-exempt retail employees must be guaranteed at least four hours' work on Sundays or holidays at time-and-a-half.	Administrative regulations confirm that no pay is required if an employee is prevented from working a normal shift by events beyond the employer's control or by acts of God.	R.I. Gen. Laws. § 28-12-3.2 (2012) This is a statutory requirement.

Collective Bargaining Agreements with Reporting Pay Clauses

Following are examples of collective bargaining agreements that include reporting pay clauses. These are the product of a broad Internet search and are not meant to be an exhaustive list.

Parties to the Collective Bargaining Agreement	Industry/Description of Business (State)	Reporting Pay Details
<ul style="list-style-type: none"> ▪ Army Fleet Support (AFS) ▪ International Association of Machinists and Aerospace Workers (IAMAW), American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) 	Aviation maintenance for the U.S. Army and Air Force (AL).	Clause 10.12 states that, so long as s/he is not told in advance not to report to work, an employee who is scheduled for work will be paid for four hours of work, whether or not such work is available. Exceptions exist for circumstances beyond the control of management, such as natural disasters. ⁶⁷
<ul style="list-style-type: none"> ▪ State of Oregon's Department of Administrative Services ▪ Oregon Public Employees Union (OPEU), Service Employees International Union (SEIU) Local 503 	Government workers (OR).	Clause 40.3 states that when an employee who is scheduled to work, reports for work and is released, s/he shall be paid the equivalent of two hours' pay. When an employee actually begins his/her scheduled shift, the employee shall be paid for the remainder of the scheduled shift. An exception to this rule exists when there are inclement or hazardous conditions. ⁶⁸
<ul style="list-style-type: none"> ▪ Northern Michigan University ▪ American Federation of State, County and Municipal Employees (AFSCME) Local 1094 	Food workers, maintenance workers, and police officers (MI).	Art. 9, Section H states that an employee who reports for scheduled work and finds no work available will receive three hours of pay at the employee's regular straight time rate. ⁶⁹
<ul style="list-style-type: none"> ▪ Kaiser Permanente ▪ SEIU United Healthcare Workers West (UHW) 	Frontline healthcare workers including respiratory care practitioners, dietary staff, environmental services staff, and nursing staff (CA).	Clause 9.A for the Northern Region of CA states that if a scheduled employee reports to work and the employer is unable to utilize the employee, s/he may leave work and be paid for his/her regular shift, not to exceed eight hours, excluding shift differential. The section will not apply if the lack of work is outside the employer's control, if the employer makes a reasonable effort to notify the employee at least two hours before his/her scheduled time, or if the employee fails to provide his/her current telephone number. Clause 9.B

Appendix 2: Collective Bargaining Agreements with Reporting Pay Clauses

Parties to the Collective Bargaining Agreement	Industry/Description of Business (State)	Reporting Pay Details
		<p>for the Southern Region of CA states that when an employee who is scheduled to report for work is unable to be utilized, and when the reason(s) for lack of work are within the control of the employer, the employee will be paid for two hours at the regular rate. There is an exception under this clause for acts of God or failure of utilities, so long as the employer makes a reasonable effort to inform the employee not to report for work at least two hours before his/her scheduled shift.⁷⁰</p>
<ul style="list-style-type: none"> ▪ San Francisco International Airport ▪ Airport Workers United, SEIU Local 1877 	<p>Airport security workers (CA).</p>	<p>Clause 2.6.2.1 states that if an employee reports for a scheduled shift or is traveling to work for a scheduled shift and the employer notifies him/her that work is not available, the employee will be paid for four hours or half of his/her scheduled shift, whichever is greater. This also applies to an employee who starts a shift and is released prior to four hours or half of the scheduled shift, whichever is greater.⁷¹</p>
<ul style="list-style-type: none"> ▪ Mechanical Contractors Association of Metropolitan Washington, Inc. ▪ Plumbers Local 5, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the U.S. and Canada, AFL-CIO 	<p>Contractors who build and service plumbing, heating, ventilation, air conditioning, and refrigeration systems (MD, VA, DC).</p>	<p>Clause 127 states that an employee who reports for work and is informed that no work is available shall receive two hours at the regular hourly rate, unless s/he was notified before leaving his/her home not to report. An employee who reports and is assigned work shall receive at least four hours' pay. Exceptions exist when strike conditions or stoppage of work make it impossible to work, or an employee leaves work of his/her own accord.⁷²</p>
<ul style="list-style-type: none"> ▪ City of Chicago ▪ Pipe Fitters Local 597, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the U.S. and Canada, AFL-CIO 	<p>Pipe fitters (IL).</p>	<p>Clause 5.4 states that when an employee reports for a regularly scheduled shift, the employee shall receive a minimum of two hours' work or pay at the employee's regular hourly rate, unless the employee was told at least three hours prior to the beginning of his/her shift not to report, except for reasons beyond the employer's control. If an employee works more than two hours s/he shall receive a minimum of four hours' work or pay for that day. If an employee works more than four hours, s/he shall receive a minimum of eight hours' work or pay for that day.⁷³</p>

Appendix 2: Collective Bargaining Agreements with Reporting Pay Clauses

Parties to the Collective Bargaining Agreement	Industry/Description of Business (State)	Reporting Pay Details
<ul style="list-style-type: none"> ▪ State of Oregon’s Department of Administrative Services, on behalf of the Department of Environmental Quality ▪ AFSCME Local 3336 	Government workers (OR).	Clause 25.2 states that an employee who reports to work and is immediately released shall be paid for four hours, unless the scheduled shift is less than four hours in duration, in which case the employee is paid for the entire shift. When an employee actually begins the scheduled shift, s/he shall be paid for the remainder of the scheduled shift. An exception to this clause exists in the event of inclement or hazardous conditions. ⁷⁴
<ul style="list-style-type: none"> ▪ McKenzie Willamette Medical Center ▪ SEIU Local 49 	Healthcare (OR).	Article 26 states that any employee who is requested to report for work and not put to work shall receive four hours’ pay. The section does not apply if the lack of work is outside the employer’s control, or if the employer makes a reasonable effort to notify the employee by telephone not to report to work at least two hours before his/her shift is scheduled to begin. ⁷⁵
<ul style="list-style-type: none"> ▪ Legacy Emanuel Hospital ▪ SEIU Local 49 	Non-professional hospital workers (OR).	Clause 6.1 states that all employees reporting or scheduled for work or requested to report for work shall be guaranteed not less than four hours of employment on the day reporting. ⁷⁶
<ul style="list-style-type: none"> ▪ Kaiser Foundation Hospitals and Kaiser Foundation Health Plan of the Northwest ▪ SEIU Local 49 	Healthcare (OR and WA).	Clause 18.1 states that an employee who is scheduled to report for work, and is permitted to come to work without receiving prior notice that no work is available, will receive a minimum of four hours’ pay at his/her regular rate. ⁷⁷

Endnotes

- ¹ See for example: Julia R. Henly and Susan J. Lambert, "Schedule Flexibility and Unpredictability in Retail: Implications for Employee Work-Life Outcomes," University of Chicago School of Social Service Administration (2010). http://ssascholars.uchicago.edu/work-scheduling-study/files/henly_lambert_unpredictability_and_work-life_outcomes.pdf; Harriet B. Presser, *Working in a 24/7 Economy: Challenges for American Families*, Russell Sage Foundation (2005); Liz Watson and Jennifer E. Swanberg, *Flexible Workplace Solutions for Low-Wage Hourly Workers: A Framework for a National Conversation*, Georgetown Law and University of Kentucky (2011). <http://workplaceflexibility2010.org/images/uploads/whatsnew/Flexible%20Workplace%20Solutions%20for%20Low-Wage%20Hourly%20Workers.pdf>
- ² Steven Greenhouse "A Part-Time Life, as Hours Shrink and Shift," *The New York Times* (27 October, 2012). <http://www.nytimes.com/2012/10/28/business/a-part-time-life-as-hours-shrink-and-shift-for-american-workers.html?pagewanted=all>; Zeynep Ton, "Why 'Good Jobs' Are Good for Retailers," *Harvard Business Review* Vol. 90 no. 1 (January-February 2012). <http://hbr.org/2012/01/why-good-jobs-are-good-for-retailers>; Liz Watson and Jennifer E. Swanberg, *Flexible Workplace Solutions for Low-Wage Hourly Workers: A Framework for a National Conversation* (2011), p. 24, footnotes 78 and 80.
- ³ Most notably, advance notice of schedules is an important policy that advocates are currently fighting for in New York City and elsewhere. "Right to request" laws, which allow employees to request flexible work arrangements or predictable hours, have also begun to receive increased attention in the U.S. The state of Vermont recently passed a law that includes the right to request flexibility, and San Francisco's municipal government recently considered a ballot initiative that would have protected employees' right to request both flexibility and predictability. Finally, "on-call pay" – pay that workers receive when they must remain available for a potential shift, preventing them from engaging in other paid work – is another policy solution. See: The Retail Action Project "Just Hours" campaign. <http://retailactionproject.org/campaigns-2/sustainable-scheduling-new/>; Liz Ben-Ishai, "State, Local Policies Make Important Steps Forward for Workplace Flexibility," CLASP (25 June, 2013). <http://www.clasp.org/issues/work-life-and-job-quality/pages/state-local-policies-make-important-steps-forward-for-workplace-flexibility>
- ⁴ Susan J. Lambert and Julia R. Henly, *Work Scheduling Study: Managers' Strategies for Balancing Business Requirements with Employee Needs*, University of Chicago School of Social Service Administration (2010). <http://www.employmentpolicy.org/sites/www.employmentpolicy.org/files/LambertScheduling.pdf>; Susan J. Lambert and Julia R. Henly, *Scheduling in Hourly Jobs: Promising Practices for the Twenty-First Century Economy*, The Mobility Agenda (2009). <http://www.mobilityagenda.org/home/page/Scheduling-in-Hourly-Jobs-Promising-Practices-for-the-Twenty-First-Century-Economy.aspx>; Jennifer E. Swanberg, Jacquelyn B. James, and Sharon P. McKechnie, "Can Business Benefit By Providing Workplace Flexibility to Hourly Workers?," CitiSales Study (2008). http://www.uky.edu/Centers/iwin/citisaless/hourly-ib2_flex.html; Zeynep Ton, "Why 'Good Jobs' Are Good for Retailers" (2012).
- ⁵ Susan J. Lambert, "The Limits of Voluntary Employer Action for Improving Low-Level Jobs" in Marion Crain and Michael Sherraden (eds.), *Working and Living in the Shadow of Economic Fragility*, New York: Oxford University Press, forthcoming.
- ⁶ Susan J. Lambert, Anna Haley-Lock, and Julia R. Henly, "Schedule flexibility in hourly jobs: unanticipated consequences and promising directions," *Community, Work & Family* Vol. 15 no. 3 (August 2012).
- ⁷ Charlotte Alexander, Anna Haley-Lock, and Nantiya Ruan, "Stabilizing Low-Wage Work: Legal Remedies for Unpredictable Work Hours and Income Instability," University of Denver Legal Studies (2013). <http://ssrn.com/abstract=2327903>
- ⁸ Zeynep Ton, "Why 'Good Jobs' Are Good for Retailers" (2012).
- ⁹ Susan J. Lambert, "Passing the buck: Labor flexibility practices that transfer risk onto hourly workers," *Human Relations* Vol. 61 no. 9 (September 2008).
- ¹⁰ *Ibid.*
- ¹¹ Mary Gatta, D. Klayman, and D. Herbert, "Workplace Flexibility Analysis," unpublished papers submitted to the U.S. Department of Labor, Women's Bureau (2011).
- ¹² Liz Watson and Jennifer E. Swanberg, *Flexible Workplace Solutions for Low-Wage Hourly Workers: A Framework for a National Conversation* (2011).
- ¹³ Kris Maher, "Wal-Mart Seeks New Flexibility In Worker Shifts," *The Wall Street Journal* (3 January, 2007). http://online.wsj.com/article/SB116779472314165646.html?mod=todays_us_page_one

- ¹⁴ Steven Greenhouse, "A Part-Time Life, as Hours Shrink and Shift" (2012).
- ¹⁵ Ibid.
- ¹⁶ Stephanie Luce and Naoki Fujita, *Discounted Jobs: How Retailers Sell Workers Short*, CUNY Murphy Institute and Retail Action Project (2012). http://retailactionproject.org/wp-content/uploads/2012/03/7-75_RAP+cover_lowres.pdf
- ¹⁷ Liz Watson and Jennifer E. Swanberg, *Flexible Workplace Solutions for Low-Wage Hourly Workers: A Framework for a National Conversation* (2011).
- ¹⁸ Susan J. Lambert, "Passing the buck: Labor flexibility practices that transfer risk onto hourly workers" (2008).
- ¹⁹ Ibid.
- ²⁰ Jennifer Swanberg et al., "Introduction to the CitiSales Study," Citisales Study (2009). http://www.uky.edu/Centers/iwin/citisales/_pdfs/IB1-HourlyWorkers.pdf
- ²¹ Liz Watson and Jennifer E. Swanberg, *Flexible Workplace Solutions for Low-Wage Hourly Workers: A Framework for a National Conversation* (2011).
- ²² U.S. Department of Labor, Bureau of Labor Statistics, "Table A-8. Employed persons by class of worker and part-time status," (January 2013). <http://bls.gov/news.release/empstat.t08.htm>
- ²³ Julia R. Henly and Susan J. Lambert, "Schedule Flexibility and Unpredictability in Retail: Implications for Employee Work-Life Outcomes," (2010); JoAnn Hsueh and Hirokazu Yoshikawa, "Working Nonstandard Schedules and Variable Shifts in Low-Income Families: Associations With Parental Psychological Well-Being, Family Functioning, and Child Well-Being," *Developmental Psychology* Vol. 43 no. 3 (2007).
- ²⁴ Liz Watson and Jennifer E. Swanberg, *Flexible Workplace Solutions for Low-Wage Hourly Workers: A Framework for a National Conversation* (2011); The Restaurant Opportunities Centers United, *The Third Shift: Child Care Needs and Access for Working Mothers in Restaurants*, (2013). <http://www.scribd.com/doc/161943672/The-Third-Shift-Child-Care-Needs-and-Access-for-Working-Mothers-in-Restaurants>
- ²⁵ Walmart, "Opportunity & Benefits" (2013). <http://corporate.walmart.com/our-story/working-at-walmart/opportunity-benefits>
- ²⁶ Arindrajit Dube and Ken Jacobs, "Hidden Cost of Wal-Mart Jobs," University of California Berkeley Labor Center (2004).
- ²⁷ Ibid.
- ²⁸ Susan J. Lambert and Julia R. Henly, *Work Scheduling Study: Managers' Strategies for Balancing Business Requirements with Employee Needs* (2010).
- ²⁹ Ibid.
- ³⁰ Interview conducted by Women Employed, 2008.
- ³¹ Susan J. Lambert and Julia R. Henly. *Scheduling in Hourly Jobs: Promising Practices for the Twenty-First Century Economy* (2009).
- ³² Jennifer E. Swanberg, Jacquelyn B. James, and Sharon P. McKechnie, "Can Business Benefit By Providing Workplace Flexibility to Hourly Workers?" (2008).
- ³³ Zeynep Ton, "Why 'Good Jobs' Are Good for Retailers" (2012).
- ³⁴ Wayne C. Cascio, "Decency Means More than 'Always Low Prices': A Comparison of Costco to Wal-Mart's Sam's Club," *Academy of Management Perspectives* Vol. 20 no. 3 (August 2006).
- ³⁵ Zeynep Ton, "Why 'Good Jobs' Are Good for Retailers" (2012).
- ³⁶ For more on the features of higher quality jobs, see Elizabeth Lower-Basch, "Opportunity at Work: Improving Job Quality," *CLASP Opportunity at Work Series* No. 1 (September 2007). <http://www.clasp.org/issues/body/0374.pdf>

- ³⁷ Susan J. Lambert, “The Limits of Voluntary Employer Action for Improving Low-Level Jobs” (forthcoming).
- ³⁸ Interview with Michael Elsas, July 28, 2011.
- ³⁹ Paraprofessional Healthcare Institute, “Workforce Strategies: The Guaranteed Hours Program,” *Workforce Strategies* No. 4 (July 2007). <http://phinational.org/sites/phinational.org/files/clearinghouse/WorkforceStrategiesNo4.pdf>
- ⁴⁰ *Ibid.*
- ⁴¹ This piece was written up by Emily Stivers based on an audio-conference call coordinated by CLASP on December 14, 2009, which included Mike Brosius from Costco. See Jodie Levin-Epstein, “Scheduling Hourly Workers in a Just in Time World: Can Employees and Employers Sync the Clock?” (2009). http://www.clasp.org/documents/CLASP_121109-2-DS.pdf
- ⁴² Interview conducted by Women Employed, 2008.
- ⁴³ For more on both call-in pay and reporting pay see Charlotte Alexander, Anna Haley-Lock, and Nantiya Ruan, “Stabilizing Low-Wage Work: Legal Remedies for Unpredictable Work Hours and Income Instability” (2013).
- ⁴⁴ Stephanie Luce and Naoki Fujita, *Discounted Jobs: How Retailers Sell Workers Short* (2012).
- ⁴⁵ Charlotte Alexander, Anna Haley-Lock, and Nantiya Ruan, “Stabilizing Low-Wage Work: Legal Remedies for Unpredictable Work Hours and Income Instability” (2013).
- ⁴⁶ John Herzfeld, “RWDSU Members Ratify Five-Year Contract at Flagship Bloomingdale’s Store in New York,” *Bloomberg BNA* (4 May, 2012). <http://www.local3rwdsu.org/files/articles/2012-05-04bna-membersratify.pdf>
- ⁴⁷ Information provided by the Retail, Wholesale and Department Store Union (RWDSU), which negotiated the Bloomingdale’s workers’ contract.
- ⁴⁸ Local 3 United Storeworkers, “Bloomingdale’s Workers Ratify New Five-Year Contract,” Local 3 RWDSU Updates (2 May, 2012). <http://www.local3rwdsu.org/updates/detail.php?id=34>
- ⁴⁹ Stephanie Luce and Naoki Fujita, *Discounted Jobs: How Retailers Sell Workers Short* (2012).
- ⁵⁰ Policy description written by Alana St. Aude, Retail Action Project, 2013.
- ⁵¹ Stephanie Luce and Naoki Fujita, *Discounted Jobs: How Retailers Sell Workers Short* (2012).
- ⁵² New York Administrative Code Title 12, Section 142-2.3.
- ⁵³ See also Appendix 1.
- ⁵⁴ MFY Legal Services, Inc. and Make The Road By Walking, “Protecting Workers’ Right to Be Paid: A Handbook for Advocates,” MFY’s Workplace Justice Project (2009). <http://www.mfy.org/wp-content/uploads/reports/Protecting-Workers-Right-to-Be-Paid.pdf>
- ⁵⁵ *Ibid.*
- ⁵⁶ Just Hours New York includes the Retail Action Project (RAP), A Better Balance, the National Employment Law Project (NELP), the Retail, Wholesale and Department Store Union (RWDSU, UFCW), and a broader growing coalition.
- ⁵⁷ Stephanie Luce and Naoki Fujita, *Discounted Jobs: How Retailers Sell Workers Short* (2012).
- ⁵⁸ Charlotte Alexander, Anna Haley-Lock, and Nantiya Ruan, “Stabilizing Low-Wage Work: Legal Remedies for Unpredictable Work Hours and Income Instability” (2013).
- ⁵⁹ For discussion of this unintended consequence, see Charlotte Alexander, Anna Haley-Lock, and Nantiya Ruan, *ibid.*
- ⁶⁰ For further discussion of FLSA amendments, see Charlotte Alexander, Anna Haley-Lock, and Nantiya Ruan, *ibid.*
- ⁶¹ For more information on Clawbacks, see the work of Good Jobs First. <http://www.goodjobsfirst.org/accountable-development/key-reforms-clawbacks>

NOTES FOR APPENDIX 1:

- ⁶² Information in this chart compiled by Ellen Neely and Lauren French.
- ⁶³ To compile this information, we reviewed materials available on the website of the state agency in each state that appears to have responsibility for wage/hour issues, along with available online statutes and administrative regulations. We have not reviewed case law, pending legislation, or other materials that could change the applicability of the various statutes and orders described above.
- ⁶⁴ State minimum wage statutes contain a variety of exemptions that identify workers who are not protected by the statutes' provisions (sometimes including the reporting time pay provisions). These exemptions vary from state to state, but many statutes exempt outside salesmen and employees of religious orders, as well as employees who fall into the administrative, professional, and executive exemptions outlined in the federal Fair Labor Standards Act.
- ⁶⁵ The following states do not appear to require reporting time pay for adults (states with an asterisk specifically confirm that fact on the website of the state agency responsible for wage/hour issues): Alabama, Alaska, Arizona, Arkansas, Colorado*, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland*, Michigan, Minnesota, Mississippi, Missouri, Montana*, Nebraska, Nevada, New Mexico, North Carolina*, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington*, West Virginia, Wisconsin, and Wyoming. While Oregon's reporting pay law was rescinded in 1990, it does have such a rule in place for workers who are minors.
- ⁶⁶ Puerto Rico information taken from Charlotte Alexander, Anna Haley-Lock, and Nantiya Ruan, "Stabilizing Low-Wage Work: Legal Remedies for Unpredictable Work Hours and Income Instability" (2013).

NOTES FOR APPENDIX 2:

- ⁶⁷ CBA effective May 2, 2011 through April 27, 2014. http://www.dol.gov/olms/regs/compliance/cba/private/cbrp_2446_pri.pdf
- ⁶⁸ CBA 2011-2013. http://www.seiu503.org/files/2012/01/11-13_Union_Specials_1221111.pdf
- ⁶⁹ 2011 contract. <http://www.nmu.edu/hr/node/269#a9>
- ⁷⁰ CBA effective 1 October, 2005. <http://www.seiu-uhw.org/files/2011/08/uhww.pdf>
- ⁷¹ CBA 2009-2011. <http://securityfirstsfo.blogspot.com/p/collective-bargaining-agreement.html>
- ⁷² Agreements effective 1 August, 2010 through 31 July, 2014. <http://www.mcamw.org/wp-content/uploads/2013/09/mcamw-local-cba-clean-11-8-101-04-21-2011-08-10-26.pdf>
- ⁷³ CBA effective 1 July, 2007 through 30 June, 2017. <http://www.cityofchicago.org/dam/city/depts/bldgs/general/Union/unioncontractpipefitters.pdf>
- ⁷⁴ CBA 2011-2013. http://www.afscme3336.org/docs/contracts/2011_13Contract.pdf
- ⁷⁵ CBA effective 11 May, 2011 through 31 December, 2013. http://www.seiu49.org/files/2011/10/2011_MWMC.Draft_.pdf
- ⁷⁶ CBA effective 1 July, 2011 through 30 June, 2014. http://www.seiu49.org/files/2011/09/2011_EmanuelContract.pdf
- ⁷⁷ CBA effective 1 August, 2010 through 30 June, 2013. <http://www.seiu49.org/files/2011/06/KAISER.Contract.Scales.4.11.11.pdf>

*Any errors in this report should be attributed to the writers, not the reviewers.



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