



WORKPLACE JUSTICE

## STATE AND LOCAL LAWS ADVANCING FAIR WORK SCHEDULES

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

Unstable and unpredictable work hours yield unstable and unpredictable incomes and make it extremely challenging for working people to manage responsibilities like caregiving, pursuing higher education, or holding down a second job. It can be particularly hard for parents with difficult work schedules to afford and access the high-quality child care that would provide needed stability for their children and

help prepare them for school. And research shows that the stress caused by inadequate income and constantly fluctuating work hours is not only bad for workers, but can also undermine their children's well-being.<sup>3</sup>

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

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

## Promoting Employee Input into Work Schedules

Many workers in low-wage jobs have few opportunities for meaningful input into the timing of the hours that they work, and are unable to make even minor adjustments to their work schedules or place limitations on their available hours without fear of retribution by their employers.<sup>4</sup> In a 2008 survey, about half of low-wage workers reported having little or no control over the timing of their work hours, and other surveys have similar findings.<sup>5</sup> Early-career employees of color in hourly jobs report less control over their work hours than do their white counterparts.<sup>6</sup> And more than a third of parents believe they've been “passed over” for a promotion, raise, or a new job due to a need for a flexible work schedule.<sup>7</sup>

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

### State & local laws regarding right to request

#### Emeryville, CA

Emeryville's Fair Workweek ordinance, passed in 2016, grants employees the right to request additional shifts or hours, changes in days or times of work, a predictable



work schedule, permission for shift-trading, limitations on availability, part-time employment, job sharing arrangements, changes in work duties, or part-year employment.<sup>8</sup>

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

## New Hampshire

A state law passed in 2016 prohibits employers from retaliating against any employee solely because the employee requests a flexible work schedule.<sup>9</sup>

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

## New York City, NY

An amendment to New York City's Fair Workweek ordinances enacted in 2018 requires employers to allow employees to take two temporary schedule changes per calendar year—such as using paid time off, working remotely, changing work hours or using unpaid leave—relating to a “personal event,” defined as caregiving needs, the need to attend a legal proceeding or hearing for subsistence benefits, or any circumstance that would constitute a basis for permissible use of safe time or sick time. The ordinance also provides employees with a right to request other schedule changes, but an employer is not obligated to grant such requests.<sup>10</sup>

- **Who is covered:** All employees, except for those who have worked for an employer for fewer than 120 days and certain entertainment industry employees as defined in the ordinance.

## Oregon

Oregon's Fair Workweek law, passed in 2016, includes a provision granting covered employees the right to identify limitations in their work schedules or request not to be scheduled during certain times or at certain locations.<sup>11</sup>

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

# Requiring Advance Notice of Work Schedules

“Just-in-time scheduling” bases workers' schedules on perceived consumer demand and often results in workers being given very little advance notice of their work schedules.<sup>15</sup> Scheduling software is frequently used to schedule workers at the last minute, matching the number of workers as closely as possible to retail traffic or other indicators of consumer demand.<sup>16</sup>

According to research analyzing the work schedules of a

## San Francisco, CA

Under San Francisco's Family Friendly Workplace Ordinance, passed in 2013, all eligible employees have the right to request a flexible or predictable work arrangement to assist with caregiving responsibilities. The law also prohibits discrimination on the basis of caregiver status. Any request must be made in writing and include an explanation of how the request relates to caregiving. Employers may deny requests for bona fide business reasons.<sup>12</sup>

- **Who is covered:** Any employee caring for a child, a family member with a serious health condition, or a parent over the age of 65, who works for an employer with 20 or more employees.

## Seattle, WA

Under Seattle's Secure Scheduling ordinance, adopted in 2016, a covered employee has the right to request to work at certain times or at certain locations and the right to identify preferences for the hours or location of work. Employers are required to discuss the request and must grant employee schedule requests related to a major life event—i.e., the employee's serious health condition, education, caregiving responsibilities, second job responsibilities, or changes in the employee's transportation or housing—unless the employer has a bona fide business reason for denying the request. In the event of a denial of a request related to a major life event, the employer must state the reason for the denial in writing and the bona fide business reason for the decision.<sup>13</sup>

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

## Vermont

A law enacted in 2014 grants any employee the right to request a flexible working arrangement. The employer must consider the employee's request in good faith and determine whether the request is consistent with current business operations.<sup>14</sup>

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

representative sample of early-career adults (26-32 years old), over a third (38 percent) of early career employees know their work schedule one week or less in advance.<sup>17</sup> Such short notice is significantly more common among hourly workers (41 percent) than others (33 percent), and among part-time (48 percent) than full-time workers (35 percent).<sup>18</sup> Black and Latino workers are more likely than white workers to receive no more than a week's notice.<sup>19</sup>



A recent survey of nearly 3,000 hourly retail workers (the “Retail Work and Family Life Survey”) found that 60 percent received less than two weeks’ notice of their work schedules,<sup>20</sup> and additional studies have found that workers in retail, restaurant, and hospitality jobs commonly receive just a few days’ notice of a scheduled shift.<sup>21</sup> And sometimes notice is even shorter: an employee scheduled for a “call-in” or “on-call” shift must be available to work, but will find out just hours before the shift whether she must actually report to work.<sup>22</sup>

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

## State & local laws regarding advance notice

### Emeryville, CA

The Fair Workweek ordinance requires a covered employer to provide an employee, upon hiring, with a good faith estimate of the employee’s work schedule. It also requires employers to provide employees with at least 14 days’ notice of their work schedules covering seven-day periods on a biweekly schedule. An employer is also required to provide a new employee, prior to his or her first day of employment, with an initial work schedule that runs through the date that the next biweekly schedule for existing employees is scheduled to be posted. The ordinance prohibits employers from requiring an employee to work additional hours not included in the initial work schedule unless the employee consents.<sup>23</sup>

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

### New York City, NY

Two Fair Workweek ordinances enacted in 2017 require:

(1) *Fast food employers* to provide employees with a good faith estimate of their work schedules upon hiring, to provide at least 14 days’ notice of work schedules, and to

obtain written consent for shifts added with less than 14 days’ notice; and

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

Under the retail ordinance, retail employers also must not schedule employees for on-call shifts or cancel shifts with less than three days’ notice.<sup>24</sup>

- **Who is covered:** Employees working at (1) a fast food establishment with 30 or more restaurants nationwide, or (2) a retail store that primarily sells consumer goods and employs 20 or more workers in New York City.
- **Exceptions:** A retail employer may change an employee’s schedule with less than 72 hours’ notice due to a closure resulting from threats to worker safety or employer property; public utility failure; shutdown of public transportation; fire, flood, or other natural disaster; or a government-declared state of emergency. A retail employer may also grant an employee time off at the employee’s request or allow the employee to trade shifts with another retail employee.

### Oregon

The Fair Workweek law requires covered employers to provide employees with a good faith estimate of their work schedules upon hiring and to provide at least 14 days’ notice of work schedules. (Only seven days’ notice will be required during the initial implementation period between July 1, 2018 and June 30, 2020.) An employee has a right to decline any schedule change made with less than the required notice.<sup>25</sup>

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

### San Francisco, CA

Under the San Francisco Retail Workers Bill of Rights, adopted in 2014, a covered employer must provide, prior to the start of employment, a good faith estimate of an employee’s expected minimum number of scheduled shifts per month, excluding on-call shifts. Employers are required to post schedules of hourly workers 14 days in advance.<sup>26</sup>

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



## Seattle, WA

The Secure Scheduling ordinance requires employers to provide an employee, upon hiring and annually, with a good faith estimate of median number of hours and whether they will be expected to work on-call shifts. It also requires employers to provide employees their work schedules 14 days in advance; prohibits employers from requiring an employee to work hours not included in his or her initial work schedule; and prohibits employers from

requiring employees to find a replacement to cover their shifts when they are unable to work due to an emergency or major life event or a reason covered by another local, state, or federal law that bars asking such questions or protects the absence from employer interference.<sup>27</sup>

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

## Providing Compensation for Last-Minute Work Schedule Changes

Unpredictable and unstable work schedules yield unpredictable and unstable income, making it difficult for families to budget and meet their expenses. In the Retail Work and Family Life Survey, nearly half of the retail workers surveyed reported that their household incomes vary from week to week, and one-third reported that it is hard for them to pay their bills in a typical month.<sup>28</sup> Employees who report to work only to be sent home an hour later, who make transportation and child care arrangements to prepare for on-call shifts that never materialize, or who otherwise experience last-minute changes to scheduled shifts may end up incurring costs rather than being paid the wages they are counting on.<sup>29</sup>

Several mechanisms in laws governing work schedules can be used to promote more stable work schedules and incomes by discouraging last-minute schedule changes and compensating employees when such changes are made: **predictability pay, reporting pay, and on-call pay.**

**Predictability pay** provisions require employers to pay employees a certain number of hours of compensation, in addition to payment for any time actually worked, when employers make last-minute changes to employees' schedules.

### State & local laws regarding predictability pay

#### Emeryville, CA

The Fair Workweek ordinance requires employers to pay one extra hour of pay at the employee's regular rate for each shift that is changed with less than 14 days' notice. For each shift that is cancelled or reduced with less than 24 hours' notice, employers are required to pay the employee for four hours or the number of hours in the scheduled shift, whichever is less, at the employee's regular rate of pay.<sup>30</sup>

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

- **Exceptions:** Predictability pay is not required for shift changes with less than 14 days' notice if the change is the result of voluntary shift-trading by employees or other voluntary shift modifications by employees, or if employer operations are suspended due to threats to employees or property, failure of public utilities, or acts of nature, civil unrest, strikes, or other causes not within the employer's control.

#### New York City, NY

The Fair Workweek Law applicable to fast food establishments requires a premium to be paid to employees for schedule changes made by the employer with less than 14 days' notice to the employee. Changes to schedules include canceling, shortening, or moving shifts, adding hours to scheduled shifts, and adding shifts. The premium amount required ranges from \$10 to \$75 per schedule change, depending on the type of change and the length of advance notice given.<sup>31</sup>

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

#### Oregon

The Fair Workweek Ordinance requires employers to compensate employees for employer-requested schedule changes made with less than 14 days' advance notice (less than seven days' notice during the initial implementation period between July 1, 2018 and June 30, 2020). An employer must pay an employee for one hour of time at the employee's regular rate, in addition to wages earned, when the employer



adds more than 30 minutes of work to the employee's schedule, changes the start or end time of the employee's shift with no loss of hours, or schedules the employee for an additional on-call or regular shift. An employer must pay an employee at half the regular rate for each scheduled hour not worked when the employer subtracts hours from the employee's shift before or after the employee reports for duty (see reporting time pay, *infra*); changes the date or start or end time of the employee's shift, resulting in a loss of hours; or cancels the employee's shift.<sup>32</sup>

- **Who it covers:** Hourly employees working at a retail, hospitality, or food service establishment with 500 or more employees worldwide.
- **Exceptions:** Predictability pay is not required if: the schedule change is the result of an employee request or voluntary shift-trading by employees; an employee has agreed to be on an employer's voluntary standby list and accepts an offer of work; employer operations are suspended due to threats to employees or property, recommendation of a public official, failure of public utilities, natural disasters, or other causes not within the employer's control; operation hours have shifted because of cancellation or rescheduling of a ticketed event; an employer subtracts hours from an employee for disciplinary reasons; or an employer asks an employee to work additional hours "to address unanticipated customer needs or unexpected employee absence," the employee agrees in writing to do so, the employer has already attempted unsuccessfully to use its standby list if it has one (contacting all employees on that list), and the employer has either used "group communication" to make the request of multiple employees or individually asked an employee working at the time of the need for coverage in person.

## San Francisco, CA

Under the Retail Workers Bill of Rights, if an employer makes changes to the posted schedule with less than seven days' notice but more than 24 hours' notice, the employee receives one extra hour of pay for each shift that is changed. This includes on-call shifts modified with less than seven days' notice. If the employer changes the schedule within 24 hours of the scheduled shift, the employee receives two hours of extra pay for each shift of four hours or less and four hours of additional pay for each shift of more than four hours.<sup>33</sup>

- **Who is covered:** Nonexempt employees working for retail employers with 20 or more employees that have at least 40 establishments worldwide and at least 20 employees in San Francisco, as well as their janitorial and security contractors.
- **Exceptions:** The employer is not required to provide

predictability pay to the employee for schedule changes that the employee requests (including employee-requested sick leave, shift trades, or additional shifts), or when the change is a result of another employee's inability to work that shift and the employer did not receive at least seven days' notice of the absence. Predictability pay also does not apply when operations cannot begin or continue due to threats to employees or property, a failure in the public utilities or sewer system, or a natural disaster or other causes not within the employer's control.

## Seattle, WA

The Secure Scheduling Ordinance requires employers to pay one hour of extra pay for each employer-initiated schedule change after the schedule is posted that adds hours of work or changes the date or start or end time of a work shift with no loss of hours. If the employer reduces the hours in a scheduled work shift, changes the date or start or end time of a work shift resulting in a loss of hours, or cancels a work shift, the employer must pay the employee at half the usual rate for any scheduled hours not worked.<sup>34</sup>

- **Who is covered:** Hourly employees in retail and fast food establishments with 500 or more employees worldwide, or in full-service restaurants with 500 or more employees and 40 or more full service locations worldwide.
- **Exceptions:** Predictability pay is not required if the schedule change is the result of an employee request or voluntary shift-trading by employees; an employee's voluntary acceptance of additional hours in response to a) mass communication in writing from the employer about the availability of additional hours, or b) in-person group communication about additional hours that are due to unanticipated customer needs and are consecutive to the employee's current shift; if employer operations are suspended due to threats to employees or property, recommendation of public official, failure of public utilities, natural disasters, or other causes not within the employer's control; or an employer subtracts hours from an employee for disciplinary reasons.

**On-call pay** provisions require employers to pay employees for a certain number of hours of compensation when employees are required to be available to work a shift and to contact the employer or wait to be contacted to determine whether they must report to work.

## State & local laws regarding on-call pay

### Oregon

The Fair Workweek law requires an employer to pay an employee one-half times the employee's regular rate of pay



per hour for each scheduled hour that the employee does not work for unused on-call shifts.<sup>35</sup>

- **Who it covers:** Hourly employees working at a retail, hospitality, or food service establishment with 500 or more employees worldwide.
- **Exceptions:** On-call pay is not required if the schedule change is the result of an employee request or voluntary shift-trading by employees; employer operations are suspended due to threats to employees or property, recommendation of a public official, failure of public utilities, natural disasters, or other causes not within the employer's control; operation hours have shifted because of cancellation or rescheduling of a ticketed event; or an employer subtracts hours from an employee for disciplinary reasons.

## San Francisco, CA

The Retail Workers Bill of Rights requires an employer to pay an employee two hours of pay at the employee's regular rate for each unused on-call shift of four hours or less, and four hours of pay for each unused on-call shift of four hours or more.<sup>36</sup>

- **Who it covers:** Nonexempt employees working for retail employers with 20 or more employees that have at least 40 establishments worldwide and at least 20 employees in San Francisco, as well as their janitorial and security contractors.
- **Exceptions:** The employer is not required to provide on-call pay to the employee for schedule changes that the employee requests, or when operations cannot begin or continue due to threats to employees or property, a failure in the public utilities or sewer system, or a natural disaster or other causes not within the employer's control.

## Seattle, WA

Under the Secure Scheduling Ordinance, for any on-call shift for which the employee does not need to report to work, the employer is required to pay the employee no less than one-half times the employee's regular rate of pay for any scheduled hours not worked.<sup>37</sup>

- **Who is covered:** Hourly employees in retail and fast food establishments with 500 or more employees worldwide, or in full-service restaurants with 500 or more employees and 40 or more full service locations worldwide.
- **Exceptions:** On-call pay is not required if: the schedule change is the result of an employee request or voluntary shift-trading by employees; employer operations are suspended due to threats to employees

or property, recommendation of public official, failure of public utilities, natural disasters, or other causes not within the employer's control; or an employer subtracts hours from an employee for disciplinary reasons.

**Reporting pay** provisions require employers to pay employees for some portion of their originally scheduled shifts when employees report for work but are then told that their shifts have been cancelled or reduced.

## State & local laws regarding reporting pay

### California

Under California regulations, if an employee reports to work but is not put to work or is given less than half of their usual or scheduled day's work, the employee must be paid for half the usual or scheduled day's work, but in no event for less than two hours or more than four hours at the employee's regular rate of pay.<sup>38</sup>

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

### Connecticut

By regulation, Connecticut requires reporting pay for employees in mercantile trades, restaurants and hotel restaurants. For those in mercantile trades, employees must be paid for four hours of work at their regular rate; for those in restaurants and hotel restaurants, two hours at the minimum wage.<sup>39</sup>

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

### District of Columbia

D.C. regulations require an employer to pay an employee for at least four hours on any day an employee reports to work but is given no work or less than four hours of work, unless the employee is regularly scheduled for less than four hours. In that case, the employee must be paid for the hours regularly scheduled. The rate of pay is the employee's regular rate for any hours worked, plus payment at the minimum wage for any hours not worked.<sup>40</sup>

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



## Massachusetts

When an employee is scheduled to work three or more hours and is not provided with those expected hours, Massachusetts regulations require the employer to pay the employee for at least three hours at no less than the minimum wage. For any time actually worked, the employee must be paid his or her regular wage.<sup>41</sup>

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

## New Hampshire

Under New Hampshire law, on any day an employee reports to work at an employer's request, he or she must be paid for at least two hours at the employee's regular rate of pay. Employers who make a good faith effort to notify an employee not to report to work are not liable under the section. If an employee reports to work after an employer's unsuccessful attempt to notify him or her, the employee shall perform whatever duties are assigned by the employer at the time the employee reports to work.<sup>42</sup>

- **Who is covered:** Any nonexempt employee, except for employees of counties or municipalities or ski and snowboard instructors at ski resorts.
- **Exceptions:** The pay requirement does not apply if an employee requests to leave on the basis of illness, personal or family emergency; if an employee is notified in writing upon hire that the position will consistently require work of less than two hours per day; or to health care employees of community based outreach service providers in some circumstances as specified in regulation.<sup>43</sup>

## New Jersey

Under New Jersey regulations, an employee who by request of the employer reports for work on any day shall be paid for at least one hour at the applicable wage rate. However, the provision does not apply to an employer that has made available to the employee the minimum number of hours of work agreed upon by the employer and the employee prior to commencement of work on the day involved.<sup>44</sup>

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

## New York

Under New York regulations, an employee who, by request or permission of the employer, reports to work on any day must be paid no less than the minimum wage for at least four hours or the number of hours in the regularly scheduled shift, whichever is less.<sup>45</sup>

- **Who is covered:** All non-exempt employees not covered by the separate wage orders applicable to the hospitality

industry, building service industry, nonprofit institutions, or farm workers. Under the hospitality industry wage order (which covers all restaurants and hotels), any non-exempt employee who reports to work by the request or permission of the employer must be paid at least three hours of pay for one shift, at least six hours of pay for two shifts totaling six hours or less, or at least eight hours of pay for three shifts totaling eight hours or less (or, in each case, for the number of hours in the regularly scheduled shift(s), whichever is less).<sup>46</sup>

## Oregon

Under the Fair Workweek law, an employer must pay an employee at half the usual rate of pay for each scheduled hour not worked when the employer subtracts hours from the employee's work shift before or after the employee reports for duty.<sup>47</sup>

- **Who it covers:** Hourly employees working at a retail, hospitality, or food service establishment with 500 or more employees worldwide.
- **Exceptions:** Reporting pay is not required if the schedule change is the result of an employee request or voluntary shift-trading by employees; if employer operations are suspended due to threats to employees or property, recommendation of a public official, failure of public utilities, natural disasters, or other causes not within the employer's control; operation hours have shifted because of cancellation or rescheduling of a ticketed event; or an employer subtracts hours from an employee for disciplinary reasons.

## Rhode Island

Rhode Island law requires an employer to pay an employee a minimum of three hours at his or her regular rate when he or she reports to work, even if the scheduled shift is less than three hours.<sup>48</sup>

- **Who is covered:** All non-exempt employees.
- **Exceptions:** Reporting pay is not required if an employee is prevented from working a normal shift due to an Act of God or other events beyond the control of the employer.<sup>49</sup>

## Seattle

Under the Secure Scheduling Ordinance, if an employer reduces the hours in a scheduled work shift after the employee reports for duty, the employer is required to pay the employee no less than one-half times the employee's regular rate of pay for any scheduled hours not worked.<sup>50</sup>

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



# Discouraging Split Shifts and “Clopening” Shifts

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

“Clopening” refers to the practice of scheduling employees for a closing shift one night and opening shift the next morning.<sup>51</sup> These shifts not only leave workers physically exhausted, but they make it difficult to balance child care, school, or other obligations.

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

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

## State & local laws regarding split-shift pay

### California

Under California regulations, when an employee works a split shift, the employer must pay the employee one hour’s pay at the minimum wage, except when the employee resides at the place of employment. (A shift with a bona fide break, such as a meal break, or a break at the employee’s request is not considered a split shift.)<sup>52</sup>

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

### District of Columbia

D.C. regulations require an employer to pay an employee for one additional hour at the minimum wage for each day during which the employee works a split shift, except when the employee resides at the place of employment. (A schedule in which the total time out for meals does not exceed one hour is not considered a split shift.)<sup>53</sup>

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

### New York

Under New York regulations, an employer must pay an employee for one additional hour at the minimum wage rate for any day in which the employee works a split shift or the “spread of hours” (i.e., the length of the interval between the beginning and end of an employee’s workday, including meal breaks and time off duty) exceeds 10 hours.<sup>54</sup>

- **Who is covered:** All non-exempt employees not covered by the separate wage orders applicable to the hospitality industry, building service industry, nonprofit institutions, or farm workers. Under the hospitality industry wage order, any non-exempt employee in a restaurant or all-year hotel who works a spread of hours greater than 10 in a day must receive one extra hour of pay at the minimum wage rate.<sup>55</sup>

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

## State & local laws regarding right to rest

### Emeryville, CA

The Fair Workweek ordinance prohibits employers from requiring employees to work within 11 hours of the end of the previous day’s shift or a shift that spans two days; if an employee agrees to work during these times, any hours worked must be compensated at one-and-a-half times the employee’s regular rate.<sup>56</sup>

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

### New York City, NY

Under the Fair Workweek ordinance applicable to the fast food industry, employers may not require employees to work back-to-back shifts when the first shift closes the establishment and the second shift opens it the next day, with fewer than 11 hours in between. An employer must pay an employee who agrees to work a “clopening” shift \$100 for each instance that the employee works such a shift.<sup>57</sup>

- **Who it covers:** Employees working at a fast food establishment with 30 or more restaurants nationwide.





## Oregon

The Fair Workweek law requires employers to allow 10 hours between work shifts for employees unless the employee consents to work with less time between shifts. An employer must pay an employee at 1.5 times the regular rate for each hour or portion of an hour an employee works during a rest period.<sup>58</sup>

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

## Seattle, WA

The Secure Scheduling Ordinance prohibits employers from requiring employees to work within 10 hours of the end of the previous day's shift or the end of a shift that spans two days, and requires any hours worked during these times to be compensated at one-and-a-half times the employee's regular rate.<sup>59</sup>

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

## Ensuring Fair Treatment for Part-Time Workers

Part-time workers are often disadvantaged by lower hourly wages relative to their full-time counterparts, as well as a lack of access to benefits.<sup>60</sup> In addition, part-time workers are often passed over for promotions and raises in favor of full-time workers.<sup>61</sup>

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

### *State & local laws regarding part-time parity*

#### San Francisco, CA

Under the Retail Workers Bill of Rights, employers

must provide equal treatment to part-time employees, as compared to full-time employees at their same level, with respect to starting hourly wage, access to employer-provided paid time off and unpaid time off; and eligibility for promotions. Distinctions are permissible if they are based on something other than part-time status, such as seniority or a merit system. The ordinance also prohibits employers from requiring employees to have open availability to receive full-time status.<sup>62</sup>

- **Who is covered:** Applies to employers with 20 or more employees that have at least 40 retail establishments worldwide as defined in the ordinance.

## Promoting Full Time Work

Working people who want full-time employment but are only offered part-time hours—often described as the “underemployed”—struggle to support their families with fewer hours and less pay. About one in five part-time employees work part time involuntarily and would prefer to find full-time work,<sup>63</sup> and involuntary part-time work is especially common in some low-wage sectors. In the Retail Work and Family Life Survey, for example, 70 percent of the retail workers surveyed reported that they would like to work more hours.<sup>64</sup> Among workers who work part time “voluntarily,” 20 percent report working part time because of child care problems or other family or personal obligations<sup>65</sup>—and women are especially likely to work part time for these reasons.<sup>66</sup> While some of these workers may prefer to work part time, for others the “choice” of part-time work is forced by high child care costs, low wages, or inflexible and unpredictable work schedules.

Laws **promoting full-time work** require employers to offer additional available hours to their qualified existing employees before hiring any additional employees to work those hours.

### *State & local laws regarding promotion of full time work*

#### Emeryville, CA

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



and 24 hours to accept the hours if the additional work is expected to last two weeks or less.<sup>67</sup>

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

## New York City, NY

The Fair Workweek ordinance applicable to the fast food industry requires employers to offer additional available work hours to existing qualified employees before hiring additional employees or subcontractors. The employer must post the additional hours in writing for three consecutive calendar days, unless shorter notice is required, as well as send notice to each employee electronically. An employee who wishes to accept the additional hours must do so in writing.<sup>68</sup>

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

## San Francisco, CA

Employers with additional available hours of work must offer those hours first to existing, qualified, part-time staff before hiring new employees. Employees have up to 72 hours to accept any additional hours offered to them by the employer; after 72 hours the employer may hire new employees to work the additional hours. The 72 hours begins when the employee receives written notice of the additional hours or when the employer posts the offer of additional hours, whichever is later. An employee who wishes to accept the additional hours must do so in writing.<sup>69</sup>

- **Who is covered:** Applies to employers with 20 or more employees that have at least 40 retail establishments worldwide as defined in the ordinance.

## San Jose, CA

The Opportunity to Work ordinance, adopted by ballot initiative in 2016, requires employers to offer additional available hours to existing, qualified part-time employees,

and distribute such hours according to a transparent and nondiscriminatory process, before hiring additional employees, unless doing so would require paying overtime or another premium rate.<sup>70</sup>

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

## SeaTac, WA

Under a ballot initiative adopted in 2014, hospitality and transportation employers must offer additional hours to qualified part-time employees before hiring additional employees or subcontractors.<sup>71</sup>

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

## Seattle, WA

Employers with additional available hours of work must offer those hours first to existing, qualified part-time staff before hiring new employees or subcontractors. The employer shall post notice of the additional hours for three consecutive calendar days or send to employees electronically.<sup>72</sup>

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



# Appendix A: Summary of Fair Work Schedules Laws

	Advance Notice	On-Call Pay	Part-Time Parity	Predictability Pay	Private Right of Action	Promotion of Full-Time Work	Reporting Pay	Right to Request	Right to Rest	Split-Shift Pay
<b>California</b> Cal. Code Regs. tit. 8, § 11040					✓		✓			✓
<b>Connecticut</b> Conn. Agencies Regs. §§ 31-62- D2(d), E1					✓		✓			
<b>Massachusetts</b> 454 Mass. Code Regs. 27.04					✓		✓			
<b>New Hampshire</b> N.H. Rev. Stat. Ann. § 275:37-b					✓		✓			
<b>New Hampshire</b> N.H. Rev. Stat. Ann. § 275:43-a								✓		
<b>New Jersey</b> N.J. Admin Code § 12:56-5.5					✓		✓			
<b>New York</b> N.Y. Comp. R. & Regs. tit. 12 §§ 142-2.3, 2.4; 146-1.5, 1.6					✓		✓			✓
<b>Oregon</b> S.B. 828, 2017 Leg., 79th Sess	7 days (as of 7/2018) 14 days (as of 7/2020)	✓		✓	✓		✓	✓	✓	
<b>Rhode Island</b> 28 R.I. Gen. Laws § 28-12-3.2					✓		✓			
<b>Vermont</b> 21 Vt. St. Ann. § 309								✓		
<b>Washington, DC</b> D.C. Mun. Reg. tit. 7 §§ 906, 907					✓		✓			✓
<b>Emeryville, CA</b> Emeryville, Cal., Mun. Code §§ 5-39.01 - .12	14 days			✓	✓	✓		✓	✓	
<b>New York City, NY</b> N.Y.C., N.Y., Admin. Code §§ 20- 1201 - 1212, 1221 - 1241 (fast food)	14 days			✓	✓	✓		✓	✓	
<b>New York City, NY</b> N.Y.C., N.Y., Admin. Code §§ 20- 1201 - 1212, 1251 - 1252 (retail)	72 hours				✓					
<b>New York City, NY</b> N.Y.C., N.Y., Admin. Code §§ 20- 1261-1263								✓		
<b>San Francisco, CA</b> S.F., Cal., Admin. Code §§ 12Z.1 - .12								✓		
<b>San Francisco, CA</b> S.F., Cal., Police Code art. 33F §§ 3300F.1 - .18, art. 33G §§ 3300G.1 - .18	14 days	✓	✓	✓		✓	✓			
<b>San Jose, CA</b> San Jose, Cal., Mun. Code § 4.101.040					✓	✓				
<b>SeaTac, WA</b> SeaTac, Wash., Mun. Code § 7.45.030					✓	✓				
<b>Seattle, WA</b> Seattle, Wash., Mun. Code § 14.22.055 - .150	14 days	✓		✓	✓	✓	✓	✓	✓	



## Appendix B: Glossary of Fair Work Schedules Provisions

- **Right to request** laws protect employees who want to request flexible working arrangements or other changes to their schedules by granting them the express right to do so free from retaliation by their employers.
- **Advance notice** provisions require employers to provide employees with a certain amount of advance notice of their schedules. Some provisions also require employers to provide estimates of schedules and minimum hours before an employee begins employment.
- **Predictability pay** provisions require employers to pay employees a certain number of hours of compensation, in addition to payment for any time actually worked, when employers make last-minute changes to employees' schedules.
- **On-call pay** provisions require employers to pay employees for a certain number of hours of compensation when employees are required to be available to work a shift and to contact the employer or wait to be contacted to determine whether they must report to work.
- **Reporting pay** provisions require employers to pay employees for some portion of their originally scheduled shifts when employees report for work but are then told that their shifts have been cancelled or reduced.
- **Split-shift pay** provisions require employers to pay employees additional wages as compensation for any day on which they are required to work shifts in which they have a gap or gaps between scheduled hours in the same day.
- **Right to rest** provisions require employers to provide a minimum amount of rest time between shifts and to pay employees who consent to work without the rest time at a higher rate.
- **Part-time parity** provisions require employers to treat part-time and full-time employees equally with regard to wages, ability to accrue benefits, and eligibility for pay raises and promotions.
- Provisions **promoting full-time work** require employers to offer additional available hours to their qualified existing employees before hiring any additional employees to work those hours.

\* \* \*

1. See generally NAT'L WOMEN'S LAW CTR. (NWLC), COLLATERAL DAMAGE: SCHEDULING CHALLENGES FOR WORKERS IN LOW-WAGE JOBS AND THEIR CONSEQUENCES (2017), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/04/Collateral-Damage.pdf>.
2. NWLC calculations based on U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS (BLS), CURRENT POPULATION SURVEY (CPS), TABLE E-5: EMPLOYED PERSONS BY CLASS OF WORKER AND PART-TIME STATUS, SEASONALLY ADJUSTED, [https://www.bls.gov/web/empsit/cpsee\\_e05.pdf](https://www.bls.gov/web/empsit/cpsee_e05.pdf) (showing just over 5 million—19.3 percent—of those working part time in the first quarter of 2018 did so “for economic reasons,” i.e., involuntarily).
3. See generally JULIE VOGTMAN & KAREN SCHULMAN, NWLC, SET UP TO FAIL: WHEN LOW-WAGE WORK JEOPARDIZES PARENTS' AND CHILDREN'S SUCCESS (2016), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2016/01/FINAL-Set-Up-To-Fail-When-Low-Wage-Work-Jeopardizes-Parents%E2%80%99-and-Children%E2%80%99s-Success.pdf>.
4. LIZ WATSON & JENNIFER E. SWANBERG, FLEXIBLE WORKPLACE SOLUTIONS FOR LOW-WAGE HOURLY WORKERS: A FRAMEWORK FOR A NATIONAL CONVERSATION 6 (2011), <http://workplaceflexibility2010.org/images/uploads/whatsnew/Flexible%20Workplace%20Solutions%20for%20Low-Wage%20Hourly%20Workers.pdf>. See also Robert C. Bird, *Precarious Work: The Need for Flextime Employment Rights and Proposals for Reform*, 37 BERKELEY J. EMP. & LAB. L. 1, 3 (2016).
5. See WATSON & SWANBERG, *supra* note 4, at 19-20; LONNIE GOLDEN, ECON. POLICY INST., IRREGULAR WORK SCHEDULING AND ITS CONSEQUENCES, BRIEFING PAPER # 394 9 (2014), <http://s2.epi.org/files/pdf/82524.pdf> (finding in an analysis of International Social Survey Program data that 45 percent of workers surveyed said “their employer decides” their work schedule; only 15 percent reported they were “free to decide” their work schedule, while the remaining 40 percent felt they could “decide within limits”); SUSAN J. LAMBERT, PETER J. FUGIEL, & JULIA R. HENLY, PRECARIOUS WORK SCHEDULES AMONG EARLY-CAREER EMPLOYEES IN THE US: A NATIONAL SNAPSHOT 14 (2014), [https://ssascholars.uchicago.edu/sites/default/files/work-scheduling-study/files/lambert.fugiel.henly\\_precarious\\_work\\_schedules.august2014\\_0.pdf](https://ssascholars.uchicago.edu/sites/default/files/work-scheduling-study/files/lambert.fugiel.henly_precarious_work_schedules.august2014_0.pdf) (finding in an analysis of NLSY data



- that among early career employees, “about 44 percent of workers overall and half of hourly workers say that they do not have any input into when they start and finish work”); DANIEL SCHNEIDER & KRISTEN HARKNETT, SHIFT RESEARCH BRIEF: WORKING IN THE SERVICE SECTOR IN CONNECTICUT 2 (2018), <https://shift.berkeley.edu/files/2018/03/Working-in-the-service-sector-in-Connecticut.pdf> [hereinafter SHIFT RESEARCH BRIEF] (finding 48 percent of retail and food service workers surveyed in Connecticut have no input into their work schedules).
6. 58 percent of Latino hourly workers, 55 percent of Black hourly workers, and 47 percent of white hourly workers (age 26-32) report that their employer controls their work hours. LAMBERT, FUGIEL, & HENLY, *supra* note 5, at 17.
  7. White House Council of Economic Advisers, Nine Facts about American Families and Work 4 (2014), [http://www.whitehouse.gov/sites/default/files/docs/nine\\_facts\\_about\\_family\\_and\\_work\\_real\\_final.pdf](http://www.whitehouse.gov/sites/default/files/docs/nine_facts_about_family_and_work_real_final.pdf).
  8. Emeryville, Cal. Ordinance No. 16-007 (Nov. 1, 2016), available at <http://www.ci.emeryville.ca.us/DocumentCenter/View/10190> (codified at EMERYVILLE, CAL., MUN. CODE § 5-39.01 to .12).
  9. N.H. REV. STAT. ANN. § 275:37-b.
  10. N.Y.C., N.Y., Int. No. 1399-2016 (Jan. 19, 2018), available at <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2900941&GUID=68DC01AE-C577-4B86-B3E5-B9D98836C1E2&Options=&Search> (codified at N.Y.C., N.Y., ADMIN. CODE § 20-1261 to -1263).
  11. S.B. 828, 2017 Leg., 79th Sess. (Or. 2017), available at <https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/SB828>.
  12. S.F., Cal., Ordinance No. 209-13 (Nov. 8, 2013), available at <http://sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances13/o0209-13.pdf> (codified at S.F., CAL., ADMIN. CODE § 12Z.1 - .12).
  13. Seattle, Wash. Ordinance No. 125135 (Sept. 29, 2016), available at <http://seattle.legistar.com/View.ashx?M=F&ID=4706942&GUID=93513A97-92F2-4E76-A7E3-9A5F14761B6A> (codified at SEATTLE, WASH., MUN. CODE § 14.22.005 - .150).
  14. 21 VT. STAT. ANN. § 309.
  15. See generally, e.g., NANCY C. CAUTHEN, DEMOS, SCHEDULING HOURLY WORKERS: HOW LAST MINUTE, JUST-IN-TIME SCHEDULING PRACTICES ARE BAD FOR WORKERS, FAMILIES AND BUSINESS (Mar. 2011), available at [http://www.demos.org/sites/default/files/publications/Scheduling\\_Hourly\\_Workers\\_Demos.pdf](http://www.demos.org/sites/default/files/publications/Scheduling_Hourly_Workers_Demos.pdf).
  16. See GOLDEN, *supra* note 5, at 4.
  17. LAMBERT, FUGIEL, & HENLY, *supra* note 5, at 6. See also, e.g., GOLDEN, *supra* note 5, at 18 (noting that analysis of the General Social Survey shows 43 percent of workers reported receiving less than a week’s advance notice of their hours, including almost one in five who received their schedule “a day or less” in advance).
  18. LAMBERT, FUGIEL, & HENLY, *supra* note 5, at 6.
  19. *Id.* at 7.
  20. Daniel Schneider & Kristen Harknett, *Schedule Instability and Unpredictability and Worker and Family Health and Wellbeing 16* (Wash. Ctr. for Equitable Growth Working Paper 2016-09, 2016), <http://equitablegrowth.org/working-papers/schedule-instability-and-unpredictability/>.
  21. For example, in a study of low-skilled, non-production jobs at 22 sites in the hospitality, retail, transportation, and financial services industries, all but one hotel studied posted schedules the Thursday or Friday before the workweek that began on Sunday, and all but one retail firm posted schedules the Wednesday or Thursday before. Susan J. Lambert, *Passing the Buck: Labor Flexibility Practices that Transfer Risk onto Hourly Workers*, 61 J. HUMAN RELATIONS 1203, 1217 (2008). See also, e.g., STEPHANIE LUCE & NAOKI FUJITA, DISCOUNTED JOBS: HOW RETAILERS SELL WORKERS SHORT 8 (2012), available at [http://retailactionproject.org/wp-content/uploads/2012/03/7-75\\_RAP+cover\\_lowres.pdf](http://retailactionproject.org/wp-content/uploads/2012/03/7-75_RAP+cover_lowres.pdf) (observing that in a survey of retail industry workers in New York, about a fifth of respondents reported receiving their work schedules only three days in advance); SHIFT RESEARCH BRIEF, *supra* note 5, at 2 (finding 56 percent of retail and food service workers surveyed in Connecticut receive no more than two weeks’ notice of work schedules, and nearly one in five receive four days of notice or less); UCLA LABOR CTR. & LAANE, HOUR CRISIS: UNSTABLE SCHEDULES IN THE LOS ANGELES RETAIL SECTOR (2018), <https://www.labor.ucla.edu/publication/hourcrisisreport/> (finding 77 percent of L.A. retail workers receive a week or less notice of their schedules, and the majority face last-minute scheduling changes, including cancellation, after their hours have been posted).
  22. See, e.g., CTR. FOR LAW & SOCIAL POLICY, RETAIL ACTION PROJECT, & WOMEN EMPLOYED, TACKLING UNSTABLE AND UNPREDICTABLE WORK SCHEDULES 11 (2014), available at <http://www.clasp.org/resources-and-publications/publication-1/Tackling-Unstableand-Unpredictable-Work-Schedules-3-7-2014-FINAL-1.pdf>; CTR. FOR POPULAR DEMOCRACY, HOUR BY HOUR: WOMEN IN TODAY’S WORKWEEK 5 (2015), available at [http://populardemocracy.org/sites/default/files/HourbyHour\\_final.pdf](http://populardemocracy.org/sites/default/files/HourbyHour_final.pdf). See also, e.g., LUCE & FUJITA, *supra* note 21, at 8 (finding that 44 percent of retail employees working at large New York City retailers surveyed reported that they must be available for call-in shifts at least some of the time, including one-fifth who reported that they “always or often” must be available for such shifts); SHIFT RESEARCH BRIEF, *supra* note 5, at 2 (finding 25 percent of retail and food service workers surveyed in Connecticut have worked on-call shifts).
  23. Emeryville, Cal., Ordinance No. 16-007, *supra* note 8, and Emeryville, Cal., Ordinance No. 17-013 (Oct. 17, 2017), available at <http://www.ci.emeryville.ca.us/DocumentCenter/View/10181> (adding further exceptions to consent and predictability pay provisions) (codified as amended at EMERYVILLE, CAL., MUN. CODE § 5-39.01 to .12 (2018)).
  24. New York City’s Fair Workweek law applicable to fast food establishments consists of two ordinances, Int. No. 1388-2016 and 1395-2016. The law applicable only to retail establishments is Int. No. 1387-2016, and Int. No. 1396-2016 contains provisions applicable to both industries. All are codified at N.Y.C., N.Y., ADMIN. CODE § 20-1201 to 1263 (2018), available at [http://library.amlegal.com/nxt/gateway.dll/New%20York/admin/title20consumeraffairs/chapter12fairworkpractices?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:newyork\\_ny\\$anc=JD\\_T20C012](http://library.amlegal.com/nxt/gateway.dll/New%20York/admin/title20consumeraffairs/chapter12fairworkpractices?f=templates$fn=default.htm$3.0$vid=amlegal:newyork_ny$anc=JD_T20C012).
  25. S.B. 828, 2017 Leg., 79th Sess. (Or. 2017), available at <https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/SB828>.
  26. The “Retail Workers Bill of Rights” consists of two ordinances, both enacted in 2014: S.F., Cal., Ordinance No. 236-14 (Nov. 25, 2014), available at <http://sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances14/o0236-14.pdf>, and S.F., Cal., Ordinance No. 241-14 (Nov. 25, 2014), available at <http://sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances14/o0241-14.pdf>. All are codified at S.F., CAL., POLICE CODE art. 33F § 3300F.1-18, art. 33G § 3300G.1-18 (2018).
  27. SEATTLE, WASH., MUN. CODE § 14.22.015, .040-.045.
  28. Schneider & Harknett, *supra* note 20, at 17.
  29. See generally NWLC, COLLATERAL DAMAGE, *supra* note 1. See also, e.g., Julia R. Henly & Susan J. Lambert, *Unpredictable Work*



*Timing in Retail Jobs*, 67 INDUS. & LAB. REL. REV. 986-1016, 1001 (2014) (finding in a study of retail employees that “the average employee experienced mismatch between scheduled and worked days equivalent to almost one-half day”); Lambert, *supra* note 21, at 1218 (finding in a study of low-skilled, non-production jobs in the hospitality, retail, transportation, and financial services industries that “[l]ast-minute adjustments to work schedules—adding or subtracting hours to the posted schedule a day or two in advance—were rampant in the jobs studied”).

30. EMERYVILLE, CAL., MUN. CODE § 5-39.01 to .02, .04.
31. N.Y.C., N.Y., ADMIN. CODE § 20-1221 to 1222.
32. S.B. 828, 2017 Leg., 79th Sess. (Or. 2017) available at <https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/SB828>.
33. S.F., CAL., POLICE CODE art. 33G § 3300G.4 (2018).
34. SEATTLE, WASH., MUN. CODE § 14.22.020, .050 (2018).
35. S.B. 828, 2017 Leg., 79th Sess. (Or. 2017) available at <https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/SB828>.
36. S.F., CAL., POLICE CODE art. 33G § 3300G.4(d) (2018).
37. SEATTLE, WASH., MUN. CODE § 14.22.020, .050.
38. CAL. CODE REGS. tit. 8, § 11040.
39. CONN. AGENCIES REGS. § 31-62-D2(d) (mercantile trade); CONN. AGENCIES REGS. § 31-62-E1 (hotels, hotel restaurants), available at <https://eregulations.ct.gov/eRegsPortal/Browse/RCSA/%7B8A3AC716-2D6B-43BF-A261-7B2A1ED28592%7D>.
40. D.C. MUN. REG. tit. 7, § 907.
41. 454 MASS. CODE REGS. 27.04.
42. N.H. REV. STAT. ANN. § 275:43-a.
43. N.H. CODE ADMIN. R. Lab § 803.03(f).
44. N.J. ADMIN. CODE § 12:56-5.5.
45. N.Y. COMP. R. & REGS. tit. 12, § 142-2.3. Note that New York has proposed amendments to its reporting pay regulations that would, *inter alia*, guarantee pay for shifts canceled with less than three days’ notice and require 14 days’ notice of work schedules. See N.Y. Dep’t of Labor, Proposed Rule Making: Employee Scheduling (Call-In Pay), 39 N.Y. Reg. 8 (Nov. 22, 2018), <https://docs.dos.ny.gov/info/register/2017/nov22/pdf/rulemaking.pdf> (revising call-in pay requirements of the Minimum Wage Order for Miscellaneous Industries and Occupations, N.Y. COMP. R. & REGS. tit. 12, at §§ 142-2.3 & 3.3).
46. N.Y. COMP. R. & REGS. tit. 12, § 146-1.5. For hospitality industry employees, the wage rate for reporting pay is (1) payment for time of actual attendance calculated at the employee’s regular or overtime rate of pay, whichever is applicable, minus any customary and usual tip credit; (2) payment for the balance of the period calculated at the minimum wage rate with no tip credit subtracted. The regulations define a “regularly scheduled shift” as a “fixed, repeating shift that an employee normally works on the same day of each week,” and notes that “[i]f an employee’s total hours worked or scheduled to work on a given day of the week change from week to week, there is no regularly scheduled shift.”
47. S.B. 828, 2017 Leg., 79th Sess. (Or. 2017), available at <https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/SB828>.
48. 28 R.I. GEN. LAWS § 28-12-3.2.
49. 16 R.I. CODE R. § 020-007, available at [http://www.dlt.ri.gov/ls/pdfs/PaymentWages\\_rr02.pdf](http://www.dlt.ri.gov/ls/pdfs/PaymentWages_rr02.pdf).
50. SEATTLE, WASH., MUN. CODE § 14.22.050.
51. See Steven Greenhouse, *In Service Sector, No Rest for the Working*, N.Y. TIMES, (Feb. 21, 2015) [https://www.nytimes.com/2015/02/22/business/late-to-bed-early-to-rise-and-working-tired.html?\\_r=2](https://www.nytimes.com/2015/02/22/business/late-to-bed-early-to-rise-and-working-tired.html?_r=2).
52. CAL. CODE REGS. tit. 8, § 11040.
53. D.C. MUN. REGS. tit. 7, § 906.
54. N.Y. COMP. R. & REGS. tit. 12, § 142-2.4.
55. N.Y. COMP. R. & REGS. tit. 12, § 146-1.6.
56. EMERYVILLE, CAL., MUN. CODE § 5-39.06.
57. N.Y.C., N.Y., ADMIN. CODE § 20-1231 (2018), available at [http://library.amlegal.com/nxt/gateway.dll/New%20York/admin/title20consumeraffairs/chapter12fairworkpractices?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:newyork\\_ny\\$sanc=JD\\_20-1231](http://library.amlegal.com/nxt/gateway.dll/New%20York/admin/title20consumeraffairs/chapter12fairworkpractices?f=templates$fn=default.htm$3.0$vid=amlegal:newyork_ny$sanc=JD_20-1231).
58. S.B. 828, 2017 Leg., 79th Sess. (Or. 2017), available at <https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/SB828>.
59. SEATTLE, WASH., MUN. CODE § 14.22.035 (2018).
60. See generally, e.g., ANNE MORRISON & KATE GALLAGHER ROBBINS, NWLC, PART-TIME WORKERS ARE PAID LESS, HAVE LESS ACCESS TO BENEFITS—AND TWO-THIRDS ARE WOMEN (2015), [https://nwlc-ciw49tixqw5lbab.stackpathdns.com/wp-content/uploads/2015/08/part-time\\_workers\\_fact\\_sheet\\_8.21.1513.pdf](https://nwlc-ciw49tixqw5lbab.stackpathdns.com/wp-content/uploads/2015/08/part-time_workers_fact_sheet_8.21.1513.pdf); LONNIE GOLDEN, ECON. POLICY INST., STILL FALLING SHORT ON HOURS AND PAY (2016), <http://www.epi.org/files/pdf/114028.pdf>; CTR. FOR POPULAR DEMOCRACY, JOB QUALITY AND ECONOMIC OPPORTUNITY IN RETAIL (2017), <https://populardemocracy.org/sites/default/files/DataReport-WebVersion-01-03-18.pdf>.
61. Nantiya Ruan & Nancy Reichman, *Hours Equity is the New Pay Equity*, 59 VILL. L. REV. 35, 39 (2014). See also CTR. FOR POPULAR DEMOCRACY, *supra* note 60.
62. S.F., CAL. POLICE CODE art. 33G § 3300G.5 (2018).
63. NWLC calculations based on U.S. DEP’T OF LABOR, BLS, CPS, *supra* note 2.
64. Schneider & Harknett, *supra* note 20, at 17.
65. NWLC calculations based on U.S. CENSUS BUREAU, BLS, CPS, TABLE A.25: PERSONS AT WORK 1 TO 34 HOURS IN ALL AND IN NONAGRICULTURAL INDUSTRIES BY REASON FOR WORKING LESS THAN 35 HOURS AND USUAL FULL- OR PART-TIME STATUS (March 2018), <https://www.bls.gov/web/empsit/cpseea25.pdf>.
66. See MORRISON & GALLAGHER ROBBINS, *supra* note 60, at 2-3.
67. EMERYVILLE, CAL., MUN. CODE § 5-39.05.
68. N.Y.C., N.Y., ADMIN. CODE § 20-1201 to -1241 (2018), available at [http://library.amlegal.com/nxt/gateway.dll/New%20York/admin/title20consumeraffairs/chapter12fairworkpractices?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:newyork\\_ny\\$sanc=JD\\_20-1241](http://library.amlegal.com/nxt/gateway.dll/New%20York/admin/title20consumeraffairs/chapter12fairworkpractices?f=templates$fn=default.htm$3.0$vid=amlegal:newyork_ny$sanc=JD_20-1241).
69. S.F., CAL., POLICE CODE art. 33F § 3300F.3 (2018).
70. SAN JOSE, CAL., MUN. CODE § 4.101.040 (2018).
71. SEATAC, WASH., MUN. CODE § 7.45.030.
72. SEATTLE, WASH., MUN. CODE § 14.22.055 (2018).

