

EMPLOYMENT

FACT SHEET

Overview of Selected State and Local Scheduling Protections

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Workers in the United States face a range of scheduling challenges that limit their ability to succeed at work and in the rest of their lives. This issue brief provides an overview of three legislative solutions to this growing problem that have been enacted at the state and local level: right to request, reporting time pay, and split shift pay laws.

Right to Request

The American workforce experiences work-family conflict at higher levels than anywhere else in the developed world.¹ Across the income spectrum, workers report very little say in when they work, and workers in low-wage jobs often have the least say in their schedules. Lack of control over schedules hits women especially hard as women make up two-thirds of the low-wage workforce and still shoulder the lion's share of family responsibilities.² Eighty percent of mothers in low-wage jobs say that they are unable to meet both their work and family responsibilities.³ Challenging work schedules also make it difficult to hold a second job, which some workers need to make ends meet, attend school or workforce training, pursue treatment for medical conditions, or make any plans that cannot be broken on a moment's notice.⁴

Workers need a voice in when they work, but when workers in low-wage jobs place any limitations on their availability for work, their hours are often cut.⁵ And when workers in higher-wage jobs limit their availability, they are denied promotions or other opportunities to advance, and their pay suffers. In fact, 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.⁶

Fortunately, legislative solutions that give workers more of a say in their schedules are on the horizon at the federal level.⁷ The Schedules that Work Act, the federal scheduling bill, provides a right to request, and in some cases receive, a more flexible, predictable or stable schedule, as well as strong protections from retaliation.⁸ Last year, Vermont and San Francisco both passed "right to request" laws permitting certain employees to request flexible work arrangements and protecting them from retaliation.⁹

Vermont and San Francisco's laws, as well as the Schedules that Work Act, are similar to right to request laws in the European Union and elsewhere.¹⁰ For example, in 2002, the United Kingdom enacted a law that gave employees with caregiving responsibilities for children under six the right to request a flexible work arrangement.¹¹ In 2007, the law was expanded to cover more employees, and in June, 2014, it was extended to all employees.¹² In New South Wales, caregivers have the right to request and receive a flexible work arrangement, as long as the arrangement does not impose an unjustifiable hardship on the employer.¹³

What is the right provided?

Eligible employees in San Francisco and Vermont have the right to request intermediate or long-term changes



in the employee's regular working arrangements. Examples of such changes include: changes in the number of days or hours worked, changes in the time the employee arrives or departs from work, where the employee is required to work, or requests for a more predictable schedule.

Which employers are covered?

In San Francisco, the law only applies to employers with 20 or more employees. In Vermont, all employers are covered.

Which employees are covered?

In San Francisco, employees caring for a child, a family member with a serious health condition, or a parent over the age of 65 have the right to request a flexible work arrangement. In Vermont, all employees have the right to request schedule changes.

What is the process for making a request?

In San Francisco, the request must be in writing and specify the arrangement applied for, the date on which the employee requests that the arrangement become effective, the duration of the arrangement, and an explanation of how the request relates to caregiving. In Vermont, employees may make the request verbally or in writing, and must specify how the arrangement would allow the employer to meet business needs.

How must the employer respond to requests?

In San Francisco, the employer must meet with the employee within 21 days of the request and respond to the request within 21 days of that meeting. If the employer grants the request, the arrangement must be confirmed in writing to the employee. In Vermont, the employer must discuss the request in good faith and notify the employee of their decision.

How many requests can an employee make per year?

In both San Francisco and Vermont, an employee is limited to two requests per year. However, in San Francisco, if the employee experiences a major life event that results in a change in caregiving responsibilities, the employee may make an additional request.

When can an employer deny a request?

In San Francisco, an employer may deny a request if there is a bona fide business reason for the denial. Similarly, in Vermont, an employer may deny the request if granting interferes with business operations

or legal or contractual obligations. Both laws provide non-exhaustive lists of business reasons employers may consider when deciding whether to grant or deny a request.

How are employees protected from retaliation?

The San Francisco ordinance includes an anti-caregiver discrimination provision and both bills prohibit retaliation.

What remedies are available to employees who believe their employers have violated the law?

Neither San Francisco nor Vermont provide a private right of action to enforce the ordinance, but both permit agency enforcement.

What does the Schedules That Work Act propose?

All employees who work for an employer with 15 or more employees have the right to request changes in their work schedules, including requests for a more predictable or stable schedule.¹⁴ After an employee makes a request, the employer must engage in a timely, good faith interactive process with the employee that results in the employer either granting or denying the request. In the event of a denial, the employer must state the reason. If an employee makes a request because of a serious health condition of the employee, responsibilities as a caregiver, enrollment in education or workforce training, or if a part-time employee makes a request to accommodate a second job, the employer must grant the request unless the employer has a bona fide business reason for denying it. Employees who suffer retaliation for making a scheduling request, such as having their hours reduced or being fired, may bring a case in court. Employees who disagree with their employers' decision regarding their request may pursue administrative remedies.

Summaries of San Francisco and Vermont's right to request laws are provided below.

San Francisco: All eligible employees have the right to request a flexible work arrangement to assist with caregiving responsibilities. The law also prohibits discrimination on the basis of caregiver status. The ordinance applies to those employers with 20 or more employees and covers employees with caregiving responsibilities, as defined in the ordinance. The requests 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.¹⁵

Vermont: All eligible employees have the right to request a flexible working arrangement. All employers are covered. The request may be made verbally or in writing, and should include how the arrangement would allow the employer to meet business needs. Employers must discuss the request with the employee in good faith, and may deny the request if it interferes with business operations or contractual obligations.¹⁶

Reporting Time Pay

With employers facing increasing pressure to keep labor costs low by tightly matching employees' work hours to customer demand, in many workplaces, on-demand scheduling is becoming the norm rather than the exception.¹⁷ Many employers use sophisticated scheduling software that tracks consumer traffic and makes scheduling adjustments for increments as small as fifteen minutes. Employers then use the information to make last minute decisions about staffing. As a result, some workers show up to work only to find that their shift has been cancelled, or sent home early if customer traffic ebbs.¹⁸ And some are routinely assigned "call-in" or "on-call" shifts, meaning that they must either call in to work or wait to be called to find out whether they have to report to work.¹⁹ If workers assigned call-in shifts or on-call shifts are told to report to work but are unable to do so, they are often penalized.²⁰

These practices, which are often described as "just-in-time" scheduling, shift the risk and the cost of slack business onto workers. Workers who are sent home early without working their scheduled shifts have already paid for transportation to and from work, paid for child care in many instances, and foregone any other plans they might have made for that day—such as working a shift at another job or going to school. Likewise, workers on call-in shifts and on-call shifts are unable to make any other firm plans for the day, as they must report to work if told to do so, or suffer a penalty. The fluctuations in work hours that result from these scheduling practices lead to wild fluctuations in income, and all too often leave workers with no clue whether they will be able to meet their expenses.²¹

Reporting time pay laws in California, Connecticut, Massachusetts, New Jersey, New Hampshire, New York, Oregon, Puerto Rico, Rhode Island, and the District of

Columbia help curb the abusive scheduling practice of sending workers home in their scheduled shifts. These laws provide an important model for other states and localities. Similarly, reporting time pay is a key provision in the Schedules that Work Act, the federal bill to curb abusive scheduling practices in certain low wage jobs.²² Importantly, the federal bill extends reporting time pay protections to cover both employees who are sent home early without working the hours in their scheduled shift and employees who are assigned to work "on-call" or "call-in" shifts.

What are reporting time pay laws?

Reporting time pay laws require employers that send workers home before the conclusion of their scheduled shift to pay them for a minimum number of hours. These laws discourage employers from making last-minute adjustments in staffing by cancelling shifts after workers have already reported to work or sending workers home when business is slow.

Who is covered by the reporting time pay laws?

The majority of states with reporting time pay laws permit all non-exempt workers to receive reporting time pay. New Hampshire exempts employees of counties or municipalities, and Oregon requires reporting time pay only for minors. Connecticut and Puerto Rico's reporting time pay provisions apply to particular industries. In Massachusetts, only employees scheduled to work three or more hours must receive reporting time pay.

How many hours must be paid to employees under the reporting time pay laws?

Connecticut, New York, and the District of Columbia tie the amount of reporting time pay required to the amount of hours in the scheduled shift—in those states, the employer must pay either a set amount of hours or the amount of hours in the regularly scheduled shift, whichever is less. Massachusetts, New Hampshire, and New Jersey, and Puerto Rico require employers to pay for a set amount of hours—between one and four, regardless of how many hours employees are scheduled to work. California and Oregon require employers to compensate employees for half of their scheduled shift.

Is reporting time pay at an employee's regular rate of pay or at the minimum wage?

California, New Hampshire, New Jersey, Rhode Island, Oregon, and Puerto Rico require employers to pay the

employee at the employee's regular rate of pay. Connecticut, Massachusetts, New York, and the District of Columbia require the employer to pay the employee the minimum wage for any hours not worked.

When are employers exempted from reporting time pay obligations?

California exempts employers when there are threats to employees or property or when recommended by civil authorities, when public utilities fail to provide services, or for interruptions caused by an Act of God or other causes not within the employer's control. Puerto Rico also exempts employers when the interruptions are caused by an Act of God. New Hampshire and Oregon exempt employers who make a good faith effort to notify employees before they report to work that their shift has been cancelled.

What remedies are available to employees who believe their employers have violated the law?

Employees in the eight states, the District of Columbia, and Puerto Rico have a private right of action to enforce reporting time pay laws. They can also bring an action in front of the appropriate state agency.

What does the Schedules That Work Act propose?

The Schedules That Work Act provides a useful model for states and localities interested in enacting reporting time pay laws.²³ It requires employers to pay employees in retail, restaurant, and cleaning jobs for four hours, or the amount of hours in their regularly scheduled shift at their regular rate of pay when the employee reports to work, but is given no work or less than four hours of work. The Act also requires employers to pay employees for at least one hour for each day on which the employee is assigned to work a call-in shift.

Summaries of the reporting time pay laws in eight states, the District of Columbia, and Puerto Rico are provided below.

District of Columbia: In D.C., an employer must pay an employee at least four hours for each 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, as described above.²⁴

California: In California, 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. Employers are exempt from the reporting time pay requirement if: (1) operations cannot commence or continue due to threats to employees or property, or when recommended by civil authorities; (2) when public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities or sewer system; or (3) the interruption is caused by an Act of God or other cause not within the employer's control.²⁵

Massachusetts: When an employee is scheduled to work three or more hours and is not provided with those expected hours, the employee must be paid at least three hours at no less than the basic minimum wage. For any time actually worked, the employee must be paid his/her actual wage. This rule is also referred to as the "three-hour rule."²⁶

Connecticut: By regulation, Connecticut requires reporting time pay for employees in mercantile trades and employees of restaurants and hotel restaurants. For those in mercantile trades, employees must be paid for four hours of work at the minimum wage. For those in restaurants and hotel restaurants, two hours at the minimum wage. The regulations were enacted in 1972.²⁷

New Hampshire: On any day an employee reports to work at an employer's request, he or she must be paid for at least 2 hours at the employee's regular rate of pay. The statute does not apply to employees of counties or municipalities, and no employer who makes a good faith effort to notify an employee not to report to work is liable under the section. If an employee reports to work after an employer's unsuccessful attempt to notify him, the employer shall perform whatever duties are assigned by the employer at the time the employee reports to work.²⁸

New York: An employee who, by request or permission of the employer, reports to work on any day must be paid for at least four hours or the number of hours in the regularly scheduled shift, whichever is less.²⁹

New Jersey: 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.³⁰

Oregon: Employees under the age of 18 must be paid for half of their scheduled shift or for one hour at their regular rate of pay, whichever is more. The rule applies to minors only.³¹

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 are guaranteed at least four hours of pay at the regular rate. However, the requirement does not apply where the employer notifies the employee before the end of her previous work shift not to report or acts of God prevent the performance of work.³²

Rhode Island: Employers must pay employees a minimum of three hours at the regular rate, even if the scheduled shift is less than three hours.³³

Split Shift Pay

A split shift is a schedule of daily hours in which the hours worked are not consecutive. 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. California and the District of Columbia have laws requiring extra pay for split shifts.³⁴

What are split shift laws?

Split shift laws require employers to provide additional compensation to those employees required to work a split shift.

Who is covered by split shift laws?

Non-exempt workers in the District of Columbia and California are covered.

How much compensation does an employee working a split shift receive?

In both the District of Columbia and California, the employer must pay the employee one extra hour of pay.

Is split shift pay at an employee's regular rate of pay or at the minimum wage?

The employee must be paid one hour at the minimum wage in both California and the District of Columbia.

Are there any exceptions?

In California, a shift with bona fide breaks (such as an hour for a meal) or breaks at the employees request is not a split shift. In the District of Columbia, a schedule of daily hours in which the total time out for meals does not exceed one hour is not considered a split shift.

What remedies are available to employees who believe their employers have violated the law?

Employees in California and the District of Columbia have a private right of action to enforce split shift pay laws. They can also bring an action in front of the appropriate state agency.

What does the Schedules That Work Act propose?

The federal bill requires the employer to pay a retail, food service, or cleaning employee for one additional hour at the employee's regular rate of pay for each day during which the employee works a split shift. The House version of the bill exempts schedules of daily hours in which the total time out for meals does not exceed one hour. The Senate version exempts both schedules where the total time out for meals does not exceed one hour, and schedules in which the break in the employee's work shift is requested by the employee.

Summaries of District of Columbia and California's split shift pay laws are provided below.

District of Columbia: This law requires the employer to pay the employee for one additional hour at the minimum wage for each day during which the employee works a split shift. Split shift is defined as a schedule of daily hours in which the hours worked are not consecutive, except that a schedule in which the total time out for meals does not exceed one hour is not considered a split shift.³⁵

California: This law defines split shift as a work schedule which is interrupted by non-paid, non-working periods established by the employer, other than bona fide rest or meal periods. When an employee works a split shift, the employer must pay them one hour's pay at the minimum wage, except when the employee resides at the place of employment.³⁶

- ¹ JOAN C. WILLIAMS & HEATHER BOUSHEY, THE THREE FACES OF WORK-FAMILY CONFLICT: THE POOR, THE PROFESSIONALS, AND THE MISSING MIDDLE 18 (Ctr. for American Progress 2010), available at <http://www.americanprogress.org/wp-content/uploads/issues/2010/01/pdf/threefaces.pdf>.
- ² NATIONAL WOMEN'S LAW CENTER (NWLC), UNDERPAID AND OVERLOADED: WOMEN IN LOW-WAGE JOBS 1, 30 (2014), available at http://www.nwlc.org/sites/default/files/pdfs/final_nwlc_lowwagereport2014.pdf.
- ³ OXFAM, HARD WORK, HARD LIVES: SURVEY EXPOSES HARSH REALITY FACED BY LOW-WAGE WORKERS IN THE U.S. 7 (2013), available at <http://www.oxfam-america.org/files/low-wage-worker-report-oxfam-america.pdf>.
- ⁴ See generally, NAT'L WOMEN'S LAW CTR. (NWLC), COLLATERAL DAMAGE: SCHEDULING CHALLENGES FOR WORKERS IN LOW-WAGE JOBS AND THEIR CONSEQUENCES (Apr. 2014), available at http://www.nwlc.org/sites/default/files/pdfs/collateral_damage_scheduling_fact_sheet.pdf; see also THE SCHEDULES THAT WORK ACT: GIVING WORKERS THE TOOLS THEY NEED TO SUCCEED (July 25, 2014), available at <http://www.nwlc.org/resource/schedules-work-act-giving-workers-tools-they-need-succeed>.
- ⁵ WATSON & SWANBERG, FLEXIBLE WORKPLACE SOLUTIONS FOR LOW-WAGE HOURLY WORKERS 16-17 (Georgetown Univ. 2011), available at <http://workplaceflexibility2010.org/images/uploads/whatsnew/Flexible%20Workplace%20Solutions%20for%20Low-Wage%20Hourly%20Workers.pdf>.
- ⁶ WHITE HOUSE COUNCIL OF ECONOMIC ADVISERS, NINE FACTS ABOUT AMERICAN FAMILIES AND WORK 14 (June 2014), available at http://www.whitehouse.gov/sites/default/files/docs/nine_facts_about_family_and_work_real_final.pdf.
- ⁷ Schedules that Work Act, S. 2642, H.R. 5159 Sec. 3.
- ⁸ Schedules that Work Act, S. 2642, H.R. 5159 Sec. 4(a)(1)-(2); see also NWLC & National Partnership for Women & Families, Schedules That Work Act: Section by Section Summary, available at http://www.nwlc.org/sites/default/files/pdfs/section-by-section_fact_sheet_final.pdf.
- ⁹ 21 V.S.A. § 309; San Francisco Ordinance No. 209-13.
- ¹⁰ See Workplace Flexibility 2010, Comparative Chart of "Right to Ask Laws" in the U.S. and Abroad, available at http://workplaceflexibility2010.org/index.php/policy_components/flexible_work_arrangements/
- ¹¹ Employment Rights Act, aa1-35 pt, 8A (2002) (UK).
- ¹² Press Release, United Kingdom Dep't of Educ., Dep't of Bus. Innovation & Skills, Dep't of Work and Pensions, Dep't of Health, and Ministry of Justice, Landmark Children and Families Act 2014 gains royal assent (March 2014), available at <https://www.gov.uk/government/news/landmark-children-and-families-act-2014-gains-royal-assent>.
- ¹³ Carers' Responsibility Act, Sect. 49 (2001) (New South Wales).
- ¹⁴ Schedules that Work Act, S. 2642, H.R. 5159 Sec. 3.
- ¹⁵ San Francisco Ordinance No. 209-13
- ¹⁶ Vermont, 21 V.S.A. § 309
- ¹⁷ See generally, NAT'L WOMEN'S LAW CTR. (NWLC), COLLATERAL DAMAGE: SCHEDULING CHALLENGES FOR WORKERS IN LOW-WAGE JOBS AND THEIR CONSEQUENCES (Apr. 2014), available at http://www.nwlc.org/sites/default/files/pdfs/collateral_damage_scheduling_fact_sheet.pdf.
- ¹⁸ See Steven Greenhouse, A Part-Time Life as Hours Shrink and Shift, N.Y. TIMES, Oct. 27, 2012, available at http://www.nytimes.com/2012/10/28/business/a-part-time-life-as-hours-shrink-and-shift-for-american-workers.html?_r=0.
- ¹⁹ See, e.g., STEPHANIE LUCE & NAOKI FUJITA, CITY UNIVERSITY OF NEW YORK & RETAIL ACTION PROJECT, DISCOUNTED JOBS: HOW RETAILERS SELL WORKERS SHORT 8-9 (2012), available at <http://retailactionproject.org/2012/04/discounted-jobs-how-retailers-sell-workers-short/>. (over 40 percent of retail workers must be available sometimes, often, or always for "call-in" shifts).
- ²⁰ See CTR. FOR LAW AND SOC. POL'Y, RETAIL ACTION PROJECT, & WOMEN EMPLOYED, TACKLING UNSTABLE AND UNPREDICTABLE WORK SCHEDULES: A POLICY BRIEF ON GUARANTEED MINIMUM HOURS AND REPORTING PAY POLICIES 11 (Mar. 2014), available at <http://www.clasp.org/resources-and-publications/publication-1/Tackling-Unstable-and-Unpredictable-Work-Schedules-3-7-2014-FINAL-1.pdf>.
- ²¹ See SUSAN J. LAMBERT & JULIA R. HENLEY, WORK SCHEDULING STUDY: MANAGERS' STRATEGIES FOR BALANCING BUSINESS REQUIREMENTS WITH EMPLOYEE NEED, MANAGER SURVEY RESULTS (University of Chicago 2010), available at http://sascholars.uchicago.edu/work-scheduling-study/files/univ_of_chicago_work_scheduling_manager_report_6_25.pdf.
- ²² Schedules that Work Act, S. 2642, H.R. 5159 Sec. 4(a)(1)-(2); see also NWLC & National Partnership for Women & Families, Schedules That Work Act: Section by Section Summary, available at http://www.nwlc.org/sites/default/files/pdfs/section-by-section_fact_sheet_final.pdf.
- ²³ Id.
- ²⁴ Minimum Daily Wage, 7 D.C. Mun. Reg Tit. 7 § 907.
- ²⁵ Order Regulating Wages, Hours, and Working Conditions, 8 C.C.R. § 11040.
- ²⁶ Hours Worked, Reporting Pay, 455 C.M.R. 2.03.
- ²⁷ Conn. Regs. 31-62-D2(d) (mercantile trade); Conn. Regs. Sec. 31-62-E1 (hotels, hotel restaurants).
- ²⁸ Required Pay, N.H. Rev. Stat. § 275:43-a.
- ²⁹ Call-in Pay, 12 NYCRR 142-2.3.
- ³⁰ Reporting for Work, N.J.A.C. 12:56-5.5.
- ³¹ Show-up Pay or Adequate Work, Or. Admin. R. 839-021-0087.
- ³² Puerto Rico Minimum Wage Board Reg. No. 7; Mandatory Decrees 7, 11, 15, 20, 22, 23, 24, 25, 37, 38, 41, 44, 50, 57, 67.
- ³³ Wages for Failure to Furnish Shift Work, R.I. Gen. Laws Ann. § 28-12-3.2.
- ³⁴ Order Regulating Wages, Hours, and Working Conditions, 8 C.C.R. § 11040; Minimum Daily Wage, D.C. Mun. Regs. Tit. 7, § 906.
- ³⁵ D.C. Mun. Regs. Tit. 7, § 906.
- ³⁶ 8 C.C.R. § 11040.