

**Testimony of Emily Martin  
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**In Support of Senate Bill 828  
Before the  
Oregon Senate Committee on Workforce**

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Thank you for the opportunity to submit this testimony on behalf of the National Women's Law Center in support of Senate Bill 828. The National Women's Law Center has been working since 1972 to secure and defend women's legal rights, and to help women and families achieve economic security. SB 828 provides crucial protections from scheduling practices that undermine workers' ability to provide for themselves and their families. These protections are particularly important to women, who are disproportionately affected by unfair scheduling practices.

Women's income is more critical than ever before to families' economic security. In Oregon, nearly 58 percent of women age 16 and over are in the labor force<sup>1</sup> and women make up close to half of Oregon's overall workforce.<sup>2</sup> Nationally, working mothers are primary breadwinners in 42 percent of families with children, and they are co-breadwinners—bringing in between 25 percent and 49 percent of family earnings—in another 22 percent of these families.<sup>3</sup>

But unstable, unpredictable work schedules over which workers have little control too often constrain the ability of working women in Oregon to support themselves and their families. Particularly in low-wage jobs, workers may regularly be required to be on call for shifts that never materialize, may have schedules—and thus incomes—that fluctuate unpredictably from week to week, or may never be assigned enough hours to obtain full-time work. Low-wage jobs are all too often marked by work scheduling policies and practices that pose particular problems for workers with responsibilities outside of their jobs, including caregiving, pursuing education and workforce training, or holding down a second job.<sup>4</sup> In Oregon, these scheduling practices are particularly concentrated in the food service and retail industries—the industries that are expected to add the most jobs to the state economy by 2024.<sup>5</sup>

In Oregon, women make up 60 percent of the workforce in jobs that typically pay less than \$10.50 per hour.<sup>6</sup> In addition to holding the majority of low-wage jobs, women still shoulder the majority of caregiving responsibilities in families;<sup>7</sup> consequently, difficult scheduling practices hit women especially hard. And for the single mothers who head nearly one-quarter of families in

*With the law on your side, great things are possible.*

Oregon,<sup>8</sup> work scheduling challenges can be especially acute since there is often no one else with whom to share caregiving responsibilities.

## **I. Work Scheduling Practices that Fail to Take Workers' Lives into Account Undermine Workers' Best Efforts to Provide for Themselves and Their Families**

The fallout from scheduling practices that do not take workers' needs into account can be devastating. Difficult scheduling practices undermine workers' efforts to fulfill their caregiving responsibilities and make maintaining stable child care nearly impossible—which can negatively affect their children. They also make it tougher to pursue education or training while holding down a job, as many workers want to do to make a better life for themselves and their families. For workers who need a second part-time job to make ends meet because they cannot get enough hours at their primary job, unpredictable scheduling practices can make juggling two jobs very difficult. And workers managing serious medical conditions are often denied the control over their schedules that they need to manage their health.

### **A. Having Little Say in Their Schedules Makes It Nearly Impossible for Workers to Plan Their Lives**

Nationwide, workers across the income spectrum report having very few opportunities for meaningful input into the timing of the hours that they work, and some are unable to request even minor changes to their work schedules without suffering a penalty.<sup>9</sup> Overall, less than half of workers have flexibility in the scheduling of their work hours.<sup>10</sup> More than a third of parents believe they have been “passed over” for a promotion, raise, or a new job due to a need for a flexible work schedule.<sup>11</sup>

Workers in low-wage jobs often have the least say in their work schedules. 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>12</sup> Early-career employees of color in hourly jobs report less control over their work hours than do their white counterparts.<sup>13</sup> Some employers have policies requiring employees to have completely open availability in order to qualify for full-time hours, making it extremely difficult for workers with significant responsibilities outside of work to achieve full-time status.<sup>14</sup> In a non-representative survey of nearly 750 Oregonians conducted by the University of Oregon's Labor Education and Research Center in 2016 (“the Oregon survey”), 73 percent of respondents reported they are expected to have open availability to work to obtain more hours or a better schedule.<sup>15</sup> And workers who request a schedule that allows them to attend school, take a child to a regular medical appointment, or address their own health needs too often find that their employers retaliate by cutting their hours sharply.<sup>16</sup>

### **B. Little Advance Notice of Schedules Means The Only Plans Workers Can Make Are Those They Can Break**

Providing notice of work schedules a week or less in advance is common in many industries. According to research analyzing the work schedules of a 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> African American and Latino workers are more likely than white

workers to receive no more than a week's notice.<sup>19</sup> Additional studies find that workers in retail, restaurant, and hospitality jobs commonly receive just a few days' notice of a scheduled shift.<sup>20</sup>

Of the workers participating in the Oregon survey, 35 percent reported receiving between one and two weeks notice of their work schedule, 38 percent reported receiving less than one week notice, and 16 percent had less than 24 hours' notice.<sup>21</sup> Moreover, 73 percent of Oregon respondents reported that their schedule is sometimes or always changed after it is posted.<sup>22</sup>

Another practice, especially common for retail workers, is to schedule workers for "on-call shifts," which means they must call their employers to find out whether they need to report to work that same day, and are not paid if they are not called into work, despite the need to keep that time free.<sup>23</sup> In the Oregon survey, 52 percent of respondents working in hospitality, 27 percent working in food service, and 17 percent working in retail reported being expected to be available for on-call shifts.<sup>24</sup> These practices hinder workers' efforts to seek education or workforce training<sup>25</sup> or arrange transportation to and from work,<sup>26</sup> and make it extremely difficult for part-time workers who need to hold down more than one job in order to get enough hours to make ends meet.<sup>27</sup>

Last-minute scheduling practices can also be particularly challenging for parents, who often must scramble to find care for their children during their shifts. When workers are unable to find child care or child care falls through, sometimes workers must miss work and lose pay. In one study, 40 to 60 percent of workers who reported missing work due to child care problems also reported losing pay or benefits, or being penalized in some way.<sup>28</sup> Another common problem that some workers report is being required to stay past their scheduled shift. In a survey of restaurant workers, nearly a third of workers reported that they had been required to stay past the end of a scheduled shift and, as a result, paid fines to child care providers for picking their children up late.<sup>29</sup>

### **C. When the Amount of Hours Workers are Assigned Varies, It is Difficult for Workers to Budget and Meet Expenses**

Many workers in low-wage jobs experience unstable schedules that vary from week to week or month to month, or periodic reductions in work hours when work is slow. Among early-career adults, nearly three-quarters of those in hourly jobs report at least some fluctuations in the number of hours they worked in the previous month, with hours fluctuating, on average, by 50 percent<sup>30</sup>—and among those in retail and food service positions, close to nine in ten report variable hours.<sup>31</sup> In the Oregon survey, 41 percent of workers reported that they have been sent home early from their scheduled shifts.<sup>32</sup> For those hourly workers who need more hours, such fluctuations can make it extremely difficult to make ends meet.<sup>33</sup>

Variable work hours can also make it hard for workers to maintain eligibility for child care subsidies that are tied to work hours or simply to meet basic expenses like food, rent, and utilities. And even in months when workers are scheduled for sufficient hours to pay their bills, workers experience the incredible stress and uncertainty that comes with not knowing in advance how much income they will be bringing home.

### **D. Many Part-Time Workers Want Full-Time Hours In Order to Make Ends Meet**

Nationally, one in five part-time employees works part time involuntarily and would prefer to find full-time work.<sup>34</sup> Some workers are hired expecting full-time hours only to find that they are

not put on the schedule at all for weeks and months at a time, a practice that is especially well-documented in the retail industry.<sup>35</sup> In the Oregon survey, nearly three-quarters of the surveyed part-time workers indicated that they would prefer to work more hours.<sup>36</sup>

Part-time workers are more than three times as likely as full-time workers to hold low-wage jobs that typically pay \$10.50 per hour or less, and nearly three-quarters of part-time workers in these low-wage jobs are women.<sup>37</sup> These workers often need more than one job to make ends meet, but when workers have little say in their work schedules at their primary job, it can be difficult to impossible to arrange a schedule at a second job. Women who work part time involuntarily are more than twice as likely to be poor as women who work part time for other reasons, and five times as likely to be poor as women who work full time.<sup>38</sup>

### **E. Unfair Scheduling Practices Harm Children, Too**

High-quality early care and education benefits children, particularly children from low-income families, helping them gain the early math, language, literacy, social, emotional, and learning skills they need to enter school ready to succeed. But low-wage workers' ability to access quality, affordable, and stable child care is often compromised by unpredictable work schedules.<sup>39</sup> With work schedules and incomes that fluctuate from week to week, many workers have no choice but to cobble together child care at the last minute.<sup>40</sup> Because many centers require caregivers to pay a weekly or monthly fee, regardless of how often the child attends, holding a spot in a child care center is often infeasible for workers who do not know when, or even if, they will work that week. Further, workers with unstable schedules may not qualify for child care subsidies due to fluctuations in income and work hours.<sup>41</sup> As a result of these barriers, parents in low-wage jobs frequently rely on family, friends, and neighbors or seek out lower-cost—and often lower-quality—care for their young children.<sup>42</sup> While some families may have a reliable relative, neighbor, or friend available who can provide nurturing care for their children, other families may be forced to settle for options that do not offer the early learning experiences they want for their children because they have no other choice.

Moreover, the features of low-wage work that increase parents' stress—including nonstandard and constantly fluctuating work hours, rigid attendance policies, and a lack of any paid time off—can also adversely affect their children's development.<sup>43</sup> Studies have linked parents' nonstandard work to children's behavior problems,<sup>44</sup> with larger effects often observed in families in which the parents work in lower-wage jobs.<sup>45</sup> Children's cognitive development may also be affected: for example, parents' employment in nonstandard schedules early in their children's lives is associated with lower expressive language ability in early childhood,<sup>46</sup> and longer periods of nonstandard work are linked to lower reading and math performance in middle childhood and adolescence.<sup>47</sup> These associations may be due to the increased stress that challenging work schedules impose on parents, straining their relationships with their children<sup>48</sup> (and with one another<sup>49</sup>).

In addition, parents with unpredictable schedules may not be available for their children when they would like to be, such as for family meals, homework help, and other routines. Scheduling practices more common in low-wage jobs can also make it more difficult for parents to be engaged in their children's schooling; for example, in one survey, few professional workers but many low-wage workers reported not participating in children's school activities due to a lack of flexibility and paid time off.<sup>50</sup> A number of the low-wage workers surveyed reported being required

to give one to two weeks' advance notice to their employers to take any time off—far more notice than their children's schools provided in advance of events.<sup>51</sup> While studies specifically examining unstable and unpredictable schedules are limited, researchers suggest that the extent to which workers can choose their schedules may influence outcomes for their children, with more positive outcomes linked to parents with more control over their work hours and the degree to which they vary.<sup>52</sup>

## **II. SB 828 Provides Crucial Protections for Workers**

### **A. SB 828 Provides Workers with More Predictable and Stable Schedules**

SB 828 provides important predictability protections for workers in large retail, food service, full service restaurant, and hospitality establishments where last minute scheduling practices are particularly common. SB 828 would require employers in these industries to provide schedules at least 14 days in advance of when an employee is scheduled to work. Requiring 14 days' notice—and not less—is essential. When fair scheduling advocates have spoken with workers across the country, the consensus has been that workers need at least two weeks' notice of their schedules in order to be able to plan their caregiving responsibilities, schooling, or a second job and meet their primary job responsibilities. A recent study of 3,000 workers conducted by Daniel Schneider of the University of California at Berkeley and Kristin Harknett at the University of Pennsylvania found that workers who receive less than two weeks' notice of their schedules report significantly higher rates of psychological distress than workers who receive at least two weeks' notice.<sup>53</sup> Requiring employers to provide anything less than two weeks' advance notice risks encouraging employers to set a lower standard when businesses, like Starbucks, are moving towards providing two to three weeks' notice.<sup>54</sup>

In another key provision, SB 828 requires that if an employer subsequently adds hours of work to a work shift, or changes the start/end time or date of a shift without a loss of hours, the employer must pay the employee one hour of pay, in addition to wages earned, for each changed shift. If the employer subtracts hours from a work shift before or after the employee reports for duty, cancels a shift, or schedules an employee for an on-call shift but does not call him or her into work, the employer must pay the employee one-half times the employee's rate of pay for the scheduled hours the employee does not work. (Such extra pay is not required in a number of circumstances, including when the schedule change was made at the employee's request, as the result of a mutually agreed upon shift trade among employees, or when the employee volunteers to work additional hours.)

This additional pay helps compensate employees for the cost of shifting schedules, like the cost of rearranging child care or not being able to pay a bill as expected—costs that so many workers are not in a position to absorb. These protections are particularly crucial for workers who are required to be on-call for shifts that never materialize or are sent home early without working their scheduled shifts, as they may have already paid for transportation to and from work, paid for child care in many instances, and foregone other plans (such as working a shift at another job or going to school).

The additional pay also plays the important role of incentivizing employers to plan ahead and make schedule changes only when genuinely necessary. It is not a penalty on employers, but a means of balancing incentives and costs between employers and their employees. Employees in

retail, food service, and hospital establishments are currently bearing the costs of last-minute schedule changes but are least able to absorb them. Importantly, limiting employers' flexibility in changing employee schedules does not mean that *employee* flexibility to attend to personal and family needs will also become more limited. To the contrary, when employers are required to give employees their schedules sufficiently in advance and discouraged from making last minute schedule changes, employees are better able to plan their lives so that they can attend to both their work and personal obligations. The fair scheduling ordinances that were enacted in Emeryville and San Francisco, California, and Seattle, Washington all included similar additional compensation for changes to employee schedules after they have been posted.

### **B. SB 828 Provides Workers with a Say in Their Schedules**

SB 828 provides all employees in Oregon the right to identify and request, without fear of retaliation, limitations or changes in their work schedule availability and preferences for certain work schedules or arrangements. This protection is incredibly important to putting an end to the retaliation, in the form of reduced work hours or even termination, that employees who place some limits on their availability or request particular schedule modifications too often experience. An employee who asks her employer if she can have Tuesday nights off to attend night classes, or a schedule that allows her to see her children in the evenings, should not risk punishment just for making the request. Similar protections have recently been enacted in Vermont, New Hampshire, Seattle, San Francisco, and Emeryville, California.<sup>55</sup>

### **C. SB 828 Ensures that Workers Have the Right to Rest Between Shifts**

SB 828 will also help ensure that workers in large retail, food service, full service restaurant, and hospitality establishments have adequate time to travel and rest between shifts by prohibiting employers from requiring employees to work less than 10 hours after the end of the previous calendar day's work shift, or within the 10 hour period immediately following the end of a shift that spanned two days. In the Oregon survey, approximately 60 percent of respondents working in both hospitality and food services, and nearly half of retail workers, reported having to work back to back shifts, including the closing shift one day and the opening shift the next morning—a harmful practice known as “cloping.”<sup>56</sup> If an employee consents to work such shifts, SB 828 requires the employer to pay the employee at one and one-half times her rate of pay for the hours she works in a shift that began less than 10 hours after her previous shift ended. In 2016, both Seattle, Washington and Emeryville, California passed similar protections.<sup>57</sup>

### **D. SB 828 Provides Important Opportunities for Part-Time Workers**

SB 828 would help workers in large retail, food service, full service restaurant, and hospitality establishments, especially those who are involuntarily working part-time hours, make ends meet by promoting full-time work opportunities. Specifically, the bill would require employers to offer available hours to current, qualified employees before hiring new employees or subcontractors. Seattle, Washington and San Francisco, San Jose, and Emeryville, California have all enacted similar requirements to help workers get the hours they need to provide for themselves and their families.<sup>58</sup> In San Jose, where such a requirement was put to the voters as a 2016 ballot initiative, a resounding 64 percent of voters supported it.<sup>59</sup>

### **III. Fair Scheduling Practices Are Good for Employees and Their Families—and for Businesses and the Bottom Line**

When employers provide advance notice of work schedules, minimize disruptions to scheduled shifts (and provide additional compensation for last-minute schedule changes), give employees a voice in their work schedules, and treat part-time workers fairly, working parents are better able to plan their lives and secure stable child care along with the pay and benefits they need to support their families. This increased stability helps ameliorate parents' stress and the risks that exist for their children.

Moreover, while scheduling practices that fail to take workers' needs into account result in higher rates of turnover and absenteeism and lower worker engagement,<sup>60</sup> fair scheduling leads to more productive and committed employees and lower turnover.<sup>61</sup> In other words, businesses benefit when they provide working arrangements that are responsive to their employees' needs. Research shows that the benefits of implementing fair scheduling practices for lower-wage workers are comparable and even greater than the benefits of providing those arrangements to their higher-wage counterparts.<sup>62</sup> Among the benefits are reduced absenteeism, increased retention, reduced health care costs, and increased revenue.<sup>63</sup> When workers have schedules that work, everyone wins.

Importantly, SB 828's protections—similar to the protections that have recently passed in Seattle, Washington, and San Francisco and Emeryville, California—are tailored to affect primarily large employers in the retail, food service, and hospitality industries. Employers in these industries have been most likely to engage in abusive scheduling practices and are also the most readily able to adopt fair scheduling practices given their size and resources.

### **IV. Conclusion**

With this bill, Oregon joins Arizona, California, the District of Columbia, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, North Carolina, and Rhode Island, which have all recently considered legislation to curb abusive scheduling practices.<sup>64</sup> By passing this legislation, Oregon would join its West Coast neighbors Seattle, Washington and San Francisco, Emeryville, and San Jose, California, which have all enacted fair scheduling ordinances in the last two years, emerging as leaders in the national movement to create workplace policies that truly work for workers and their families. We urge your support for this important legislation.

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<sup>1</sup> U.S. Census Bureau, American Community Survey (ACS) 2015 1-Year Estimates, Table DP03, *available at* [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_15\\_1YR\\_DP03&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_15_1YR_DP03&prodType=table) (last visited Feb. 25, 2017).

<sup>2</sup> Nat'l Women's Law Ctr. (NWLC) calculations based on U.S. Census Bureau, ACS 2015 1-Year Estimates, Table S1101, *available at* <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk> (last visited Feb. 26, 2017).

<sup>3</sup> *See* CTR. FOR AM. PROGRESS, BREADWINNING MOTHERS ARE INCREASINGLY THE U.S. NORM (Dec. 2016), *available at* <https://www.americanprogress.org/issues/women/reports/2016/12/19/295203/breadwinning-mothers-areincreasingly-the-u-s-norm/>.

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<sup>4</sup> See generally JULIE VOGTMAN & KAREN SCHULMAN, NWLC, SET UP TO FAIL: WHEN LOW-WAGE WORK JEOPARDIZES PARENTS’ AND CHILDREN’S SUCCESS (Jan. 2016), available at <http://nwlc.org/resources/set-up-to-fail-when-low-wage-work-jeopardizes-parents-and-childrens-success/>.

<sup>5</sup> ELLEN SCOTT, MARY KING, & RAAHI REDDY, THE IMPACT ON OREGONIANS OF THE RISE OF IRREGULAR SCHEDULING 2 (Feb. 2017), available at <https://static1.squarespace.com/static/57e1a70329687fa8f38cad8b/t/58ade79dd2b857f79e2e2fb0/1487792033442/The+Impact+on+Oregonians+of+the+Rise+of+Irregular+Scheduling.pdf>.

<sup>6</sup> NWLC calculations based on U.S. Census Bureau, ACS 2015 1-Year Estimates using IPUMS. While NWLC often defines “low-wage job” as one with a median hourly wage of \$10.50 or less, “low-wage jobs” or “low-wage workers” may be defined in a variety of ways, and the definition of “low-wage” varies throughout this testimony because it draws on multiple data sources. Please reference the individual sources cited for specific details.

<sup>7</sup> See Bureau of Labor Statistics, U.S. Dep’t of Labor, American Time Use Survey, Table A-1. Time spent in detailed primary activities and percent of the civilian population engaging in each activity, averages per day by sex, 2015 annual averages (2016), available at [https://www.bls.gov/tus/tables/a1\\_2015.pdf](https://www.bls.gov/tus/tables/a1_2015.pdf).

<sup>8</sup> NWLC calculations based on U.S. Census Bureau, ACS 2015 1-Year Estimates, Table S1101, [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_15\\_1YR\\_S1101&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_15_1YR_S1101&prodType=table) (last visited Feb. 26, 2017).

<sup>9</sup> LIZ WATSON & JENNIFER SWANBERG, FLEXIBLE WORKPLACE SOLUTIONS FOR LOW-WAGE HOURLY WORKERS: A FRAMEWORK FOR A NATIONAL CONVERSATION 6 (May 2011), available at <http://workplaceflexibility2010.org/images/uploads/whatsnew/Flexible%20Workplace%20Solutions%20for%20Low-Wage%20Hourly%20Workers.pdf>.

<sup>10</sup> White House Council of Economic Advisers, *Nine Facts about American Families and Work* 4 (June 2014), available at [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).

<sup>11</sup> *Id.*

<sup>12</sup> See WATSON & SWANBERG, *supra* note 9, at 19-20; LONNIE GOLDEN, ECON. POLICY INST., IRREGULAR WORK SCHEDULING AND ITS CONSEQUENCES, BRIEFING PAPER # 394 9 (Apr. 2014), available at <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 (Aug. 2014), available at [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”).

<sup>13</sup> 58 percent of Hispanic 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 12, at 17.

<sup>14</sup> See Jodi Kantor, *Starbucks to Revise Policies to End Irregular Schedules for Its 130,000 Baristas*, N.Y. TIMES (Aug. 14, 2014), available at [http://www.nytimes.com/2014/08/15/us/starbucks-to-revise-work-scheduling-policies.html?\\_r=0](http://www.nytimes.com/2014/08/15/us/starbucks-to-revise-work-scheduling-policies.html?_r=0).

<sup>15</sup> SCOTT, KING, & REDDY, *supra* note 5, at 8.

<sup>16</sup> See, e.g., RETAIL ACTION PROJECT, WHAT YOU NEED TO KNOW ABOUT ERRATIC SCHEDULING: 5 TRENDS IN UNPREDICTABLE RETAIL SCHEDULING, <http://retailactionproject.org/advocacy/policy/erratic-scheduling/> (last visited Feb. 25, 2017).

<sup>17</sup> LAMBERT, FUGIEL & HENLY, *supra* note 12, at 6; see also, e.g., GOLDEN, *supra* note 12, 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).

<sup>18</sup> LAMBERT, FUGIEL, & HENLY, *supra* note 12, at 6.

<sup>19</sup> *Id.* at 7.



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<sup>20</sup> 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).

<sup>21</sup> SCOTT, KING, & REDDY, *supra* note 5, at 8-9.

<sup>22</sup> *Id.* at 8.

<sup>23</sup> *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* LUCE & FUJITA, *supra* note 20, at 8.

<sup>24</sup> SCOTT, KING, & REDDY, *supra* note 5, at 11.

<sup>25</sup> *See* EXECUTIVE OFFICE OF THE PRESIDENT, COUNCIL OF ECONOMIC ADVISERS, WORK-LIFE BALANCE AND THE ECONOMICS OF WORKPLACE FLEXIBILITY 3 (2010); LISA MATUS-GROSSMAN & SUSAN GOODEN, MDRC, OPENING DOORS: STUDENTS' PERSPECTIVES ON JUGGLING WORK, FAMILY AND COLLEGE 65 (2002), available at [http://www.mdrc.org/sites/default/files/full\\_466.pdf](http://www.mdrc.org/sites/default/files/full_466.pdf).

<sup>26</sup> JOAN C. WILLIAMS & PENELOPE HUANG, CTR. FOR WORK LIFE LAW, IMPROVING WORK-LIFE FIT IN HOURLY JOBS: AN UNDERUTILIZED COST-CUTTING STRATEGY IN A GLOBALIZED WORLD 13, 15, 57 (2011); NANCY C. CAUTHEN, DEMOS, SCHEDULING HOURLY WORKERS: HOW LAST MINUTE JUST-IN-TIME SCHEDULING PRACTICES ARE BAD FOR WORKERS, FAMILIES AND BUSINESS 7 (2011), available at <http://www.demos.org/publication/scheduling-hourly-workers-how-last-minute-just-time-scheduling-practices-are-bad-workers>.

<sup>27</sup> WATSON & SWANBERG, *supra* note 9, at 8-9.

<sup>28</sup> *Id.* at 8.

<sup>29</sup> RESTAURANT OPPORTUNITIES CTR. UNITED, THE THIRD SHIFT: CHILD CARE NEEDS AND ACCESS FOR LOW-WAGE WORKING MOTHERS IN RESTAURANTS 9-10 (July 2013), available at <http://www.scribd.com/doc/161943672/The-Third-Shift-Child-Care-Needs-and-Access-for-Working-Mothers-in-Restaurants>.

<sup>30</sup> LAMBERT, FUGIEL, & HENLY, *supra* note 12, at 11.

<sup>31</sup> *Id.* at 17-18.

<sup>32</sup> SCOTT, KING, & REDDY, *supra* note 5, at 8.

<sup>33</sup> LAMBERT, FUGIEL, & HENLY, *supra* note 12, Table 7.

<sup>34</sup> ANNE MORRISON & KATHERINE GALLAGHER ROBBINS, NWLC, PART-TIME WORKERS ARE PAID LESS, HAVE LESS ACCESS TO BENEFITS—AND TWO-THIRDS ARE WOMEN 2 (Sept. 2015), available at [http://www.nwlc.org/sites/default/files/pdfs/part-time\\_workers\\_fact\\_sheet\\_8.21.1513.pdf](http://www.nwlc.org/sites/default/files/pdfs/part-time_workers_fact_sheet_8.21.1513.pdf).

<sup>35</sup> LUCE & FUJITA, *supra* note 20, at 6, 13. *See also* 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?pagewanted=all>.

<sup>36</sup> SCOTT, KING, & REDDY, *supra* note 5, at 13.

<sup>37</sup> MORRISON & GALLAGHER ROBBINS, *supra* note 34, at 1. 35.5 percent of part-time workers hold low-wage jobs that typically pay \$10.50 per hour or less, compared to 10.9 percent of full-time workers. 71.6 percent of part-time workers in low-wage jobs are women. *Id.*

<sup>38</sup> *Id.* at 2-3. 25.1 percent of women who work part time involuntarily are poor, compared to 11.1 percent of women who work part time for other reasons and 5.0 percent of women who work full time. *Id.*

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<sup>39</sup> See generally VOGTMAN & SCHULMAN, *supra* note 4, at 17-21.

<sup>40</sup> *Id.* at 17-18.

<sup>41</sup> *Id.* at 20.

<sup>42</sup> *Id.* at 18.

<sup>43</sup> See generally *id.*

<sup>44</sup> See, e.g., Stephanie S. Daniel et al., *Nonstandard Maternal Work Schedules During Infancy: Implications for Children's Early Behavior Problems*, 32 *INFANT BEHAV. & DEV.* 195, 203-04 (2009); E. Rosenbaum & C.R. Morett, *The Effect of Parents' Joint Work Schedules on Infants' Behavior Over the First Two Years of Life: Evidence from the ECSLB*, 13 *MATERNAL & CHILD HEALTH J.* 732, 732 (2009); Wen-Jui Han, *Shift Work and Child Behavioral Outcomes*, 22 *WORK, EMP. & SOC.* 67 (2008); Wen-Jui Han, Daniel P. Miller, & Jane Waldfogel, *Parental Work Schedules and Adolescent Risky Behaviors*, 46 *DEV. PSYCHOL.* 1245, 1261 (2010). See also VOGTMAN & SCHULMAN, *supra* note 4, at 14-15 & 33 nn. 116-19.

<sup>45</sup> See Han, *supra* note 44 (finding that “children whose mothers worked non-day shifts and who had almost always . . . lived in single-mother families, in low-income families, in families where mothers worked in a cashier or service occupation, or in families where mothers worked full-time,” on average had a predicted Behavioral Problems Index score of 8.82, 70 percent higher than the predicted score (5.19) for other children); Han, Miller, & Waldfogel, *supra* note 44, at 1257 (finding that effects of parents' nonstandard work schedules were “particularly pronounced for . . . children in poor families, and children whose mothers never worked as professionals.”).

<sup>46</sup> Erika C. Odom, Lynne Vernon-Feagans, & Ann C. Crouter, *Nonstandard Maternal Work Schedules: Implications for African American Children's Early Language Outcomes*, 28 *EARLY CHILD. RES. Q.* 379 (2013); Wen-Jui Han, *Maternal Nonstandard Work Schedules and Child Cognitive Outcomes*, 76 *CHILD DEV.* 137, 137, 152 (2005).

<sup>47</sup> Wen-Jui Han & Liana E. Fox, *Parental Work Schedules and Children's Cognitive Trajectories*, 73 *J. OF MARRIAGE & FAM.* 962, 962 (Oct. 2011).

<sup>48</sup> See, e.g., Odom, Vernon-Feagans, & Crouter, *supra* note 46; Anna Gassman-Pines, *Low-Income Mothers' Nighttime and Weekend Work: Daily Associations with Child Behavior, Mother-Child Interactions, and Mood*, 60 *FAM. REL.* 15, 26 (2011); Pamela Joshi & Karen Bogen, *Nonstandard Schedules and Young Children's Behavioral Outcomes Among Working Low-Income Families*, 69 *J. OF MARRIAGE & FAM.* 139, 139 (2007).

<sup>49</sup> For example, research has linked nonstandard hours to higher levels of divorce, less time together as a couple, and lower relationship satisfaction. Maureen Perry-Jenkins et al., *Shift Work, Role Overload, and the Transition to Parenthood*, 69 *J. OF MARRIAGE & FAM.* 123-38 (2007). See also Kelly D. Davis et al., *Nonstandard Work Schedules, Perceived Family Well-Being, and Daily Stressors*, 70 *J. OF MARRIAGE & FAM.* 991 (2008). Although some two-parent families in low-wage jobs cope with the child care problems outlined above by “tag teaming,”—working on opposite schedules so that one parent is available to provide child care—this results in even less time together as a couple. HEATHER BOUSHEY, CTR. FOR ECON. & POLICY RESEARCH, *TAG-TEAM PARENTING 3* (2005), available at [http://www.cepr.net/documents/work\\_schedules\\_2006\\_08.pdf](http://www.cepr.net/documents/work_schedules_2006_08.pdf).

<sup>50</sup> Anna Haley-Lock & Linn Posey-Maddox, *Fitting It All In: How Mothers' Employment Shapes Their School Engagement 14-22*, *J. COMMUNITY, WORK & FAMILY* (Dec. 2014).

<sup>51</sup> *Id.* at 20-21.

<sup>52</sup> See Han & Fox, *supra* note 47, at 969, 972, 975, 978; Han, Miller, & Waldfogel, *supra* note 44, at 1249, 1257, 1259. Compare with Rucker C. Johnson, Ariel Kalil, & Rachel E. Dunifon, *Employment Patterns of Less-Skilled Workers: Links to Children's Behavior and Academic Progress*, 47 *DEMOGRAPHY* (2012). For a detailed discussion of these studies and their findings, see VOGTMAN & SCHULMAN, *supra* note 4, at 15 & 34 nn. 127-34.

<sup>53</sup> Daniel Schneider & Kristin Harknett, *Schedule Instability and Unpredictability and Worker and Family Health and Wellbeing 20-21* (Washington Ctr. for Equitable Growth Working Paper 2016-09, 2016), <http://equitablegrowth.org/working-papers/schedule-instability-and-unpredictability/>.

<sup>54</sup> See Starbucks Approach to Staffing and Scheduling, <https://news.starbucks.com/views/starbucks-approach-to-staffing-and-scheduling> (last visited March 2, 2017).

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- <sup>55</sup> NWLC, RECENTLY ENACTED AND INTRODUCED STATE AND LOCAL FAIR SCHEDULING LEGISLATION 3-5 (Jan. 2017), available at <http://nwlc.org/wp-content/uploads/2017/01/Fair-Scheduling-Report-1.30.17-1.pdf>.
- <sup>56</sup> SCOTT, KING, & REDDY, *supra* note 5, at 14.
- <sup>57</sup> NWLC, RECENTLY ENACTED AND INTRODUCED STATE AND LOCAL FAIR SCHEDULING LEGISLATION, *supra* note 55, at 3-5.
- <sup>58</sup> *Id.*
- <sup>59</sup> See Santa Clara County Registrar of Voters, November 8, 2016 Presidential General Election Results, [http://results.enr.clarityelections.com/CA/Santa\\_Clara/64404/184659/Web01/en/summary.html](http://results.enr.clarityelections.com/CA/Santa_Clara/64404/184659/Web01/en/summary.html) (last visited Feb. 25, 2017).
- <sup>60</sup> A BETTER BALANCE, THE BUSINESS CASE FOR WORKPLACE FLEXIBILITY 2-4 (Nov. 2010), available at [http://www.abetterbalance.org/web/images/stories/Documents/fairness/factsheets/BC-2010-A\\_Better\\_Balance.pdf](http://www.abetterbalance.org/web/images/stories/Documents/fairness/factsheets/BC-2010-A_Better_Balance.pdf).
- <sup>61</sup> *Id.*
- <sup>62</sup> ANNA DANZIGER & SHELLEY WATERS BOOTS, WORKPLACE FLEXIBILITY 2010 & URBAN INST., LOWER-WAGE WORKERS AND FLEXIBLE WORK ARRANGEMENTS 7 (2008), available at <http://workplaceflexibility2010.org/images/uploads/Lower-Wage%20Workers%20and%20FWAs.pdf>.
- <sup>63</sup> A BETTER BALANCE, *supra* note 60.
- <sup>64</sup> NWLC, RECENTLY ENACTED AND INTRODUCED STATE AND LOCAL FAIR SCHEDULING LEGISLATION, *supra* note 55.