

113TH CONGRESS  
2D SESSION

# H. R. 5159

To permit employees to request changes to their work schedules without fear of retaliation, and to ensure that employers consider these requests; and to require employers to provide more predictable and stable schedules for employees in certain growing low-wage occupations, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 22, 2014

Mr. GEORGE MILLER of California (for himself, Ms. DELAURO, Ms. SCHA-KOWSKY, Mr. CUMMINGS, Mr. HONDA, Ms. MOORE, Mr. NADLER, Ms. NORTON, Mr. GRAYSON, Mrs. CAROLYN B. MALONEY of New York, Mr. CONYERS, Mr. GRIJALVA, Ms. JACKSON LEE, Ms. WILSON of Florida, Ms. HAHN, Mr. HINOJOSA, Mr. HOLT, Ms. FUDGE, Mr. TAKANO, Ms. BROWN of Florida, Ms. KELLY of Illinois, Ms. EDWARDS, Ms. CLARKE of New York, Mr. RANGEL, Ms. MATSUI, Mr. JOHNSON of Georgia, Mr. POCAN, Mr. COURTNEY, Mr. ELLISON, and Mr. DANNY K. DAVIS of Illinois) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committees on House Administration, Oversight and Government Reform, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To permit employees to request changes to their work schedules without fear of retaliation, and to ensure that employers consider these requests; and to require employers to provide more predictable and stable schedules for employees in certain growing low-wage occupations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; FINDINGS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Schedules That Work Act”.

6 (b) FINDINGS.—Congress finds the following:

7 (1) The vast majority of the United States  
8 workforce today is juggling responsibilities at home  
9 and at work. Women are primary breadwinners or  
10 co-breadwinners in 63 percent of families in the  
11 United States and 26 percent of families with chil-  
12 dren are headed by single mothers.

13 (2) Despite the dual responsibilities of today’s  
14 workforce, workers across the income spectrum have  
15 very little ability to make changes to their work  
16 schedules when those changes are needed to accom-  
17 modate family responsibilities. Only 27 percent of  
18 employers allow all or most of their employees to pe-  
19 riodically change their starting and quitting times.

20 (3) Although low-wage workers are most likely  
21 to be raising children on their own, as more than  
22 half of mothers of young children in low-wage jobs  
23 are doing, low-wage workers have the least control  
24 over their work schedules and the most unpredict-  
25 able schedules. For example—

1 (A) roughly half of low-wage workers re-  
2 ported very little or no control over the timing  
3 of the hours they were scheduled to work;

4 (B) many workers in low-wage jobs receive  
5 their schedules with very little advance notice  
6 and have work hours that vary significantly  
7 from week to week or month to month;

8 (C) some workers in low-wage jobs are sent  
9 home from work when work is slow without  
10 being paid for their scheduled shift;

11 (D) in some industries, the use of “call-in  
12 shift” requirements—requirements that workers  
13 call in to work to find out whether they will be  
14 scheduled to work later that day—has become  
15 common practice; and

16 (E) at the same time, 20 to 30 percent of  
17 workers in low-wage jobs struggle with being re-  
18 quired to work extra hours with little or no no-  
19 tice.

20 (4) Unfair work scheduling practices make it  
21 difficult for low-wage workers to—

22 (A) provide necessary care for children and  
23 other family members, including arranging child  
24 care;

1 (B) qualify for and maintain eligibility for  
2 child care subsidies, due to fluctuations in in-  
3 come and work hours, or keep an appointment  
4 with a child care provider, due to not knowing  
5 how many hours or when the workers will be  
6 scheduled to work;

7 (C) pursue workforce training;

8 (D) get or keep a second job that some  
9 part-time workers need to make ends meet; and

10 (E) arrange transportation to and from  
11 work.

12 (5) Unpredictable and unstable schedules are  
13 prevalent in retail sales, food preparation and serv-  
14 ice, and building cleaning occupations, which are  
15 among the lowest-paid and fastest-growing occupa-  
16 tions in the workforce today. For workers in those  
17 occupations, often difficult and sometimes abusive  
18 work scheduling practices combine with very low  
19 wages to make it extremely challenging to make  
20 ends meet.

21 (6) Retail sales, food preparation and service,  
22 and building cleaning occupations are among those  
23 most likely to have unpredictable and unstable  
24 schedules. According to data from the Bureau of  
25 Labor Statistics, 66 percent of food service workers,

1 52 percent of retail workers, and 40 percent of jani-  
2 tors and housekeepers know their schedules only a  
3 week or less in advance. The average variation in  
4 work hours in a single month is 70 percent for food  
5 service workers, 50 percent for retail workers, and  
6 40 percent for janitors and housekeepers.

7 (7) Those are among the lowest-paid and fast-  
8 est-growing occupations, accounting for 18 percent  
9 of workers in the economy, some 23,500,000 work-  
10 ers. The median pay for workers in those 3 occupa-  
11 tions is between \$9.15 and \$10.44 per hour, and  
12 women make up more than half of the workers in  
13 those occupations.

14 (8) Employers that have implemented fair work  
15 scheduling policies that allow workers to have more  
16 control over their work schedules, and provide more  
17 predictable and stable schedules, have experienced  
18 significant benefits, including reductions in absentee-  
19 ism and workforce turnover, and increased employee  
20 morale and engagement.

21 (9) This Act is a first step in responding to the  
22 needs of workers for a voice in the timing of their  
23 work hours and for more predictable schedules.

24 **SEC. 2. DEFINITIONS.**

25 As used in this Act, the following definitions apply:

1           (1) BONA FIDE BUSINESS REASON.—The term  
2           “bona fide business reason” means—

3                   (A) the identifiable burden of additional  
4                   costs to an employer, including the cost of pro-  
5                   ductivity loss, retraining or hiring employees, or  
6                   transferring employees from one facility to an-  
7                   other facility;

8                   (B) a significant detrimental effect on the  
9                   employer’s ability to meet organizational needs  
10                  or customer demand;

11                  (C) a significant inability of the employer,  
12                  despite best efforts, to reorganize work among  
13                  existing (as of the date of the reorganization)  
14                  staff;

15                  (D) a significant detrimental effect on  
16                  business performance;

17                  (E) insufficiency of work during the peri-  
18                  ods an employee proposes to work;

19                  (F) the need to balance competing sched-  
20                  uling requests when it is not possible to grant  
21                  all such requests without a significant detri-  
22                  mental effect on the employer’s ability to meet  
23                  organizational needs; or

1 (G) such other reason as may be specified  
2 by the Secretary of Labor (or the corresponding  
3 administrative officer specified in section 8).

4 (2) CAREER-RELATED EDUCATIONAL OR TRAIN-  
5 ING PROGRAM.—The term “career-related edu-  
6 cational or training program” means an educational  
7 or training program or program of study offered by  
8 a public, private, or nonprofit career and technical  
9 education school, institution of higher education, or  
10 other entity that provides academic education, career  
11 and technical education, or training (including reme-  
12 dial education or English as a second language, as  
13 appropriate), that is a program that leads to a rec-  
14 ognized postsecondary credential (as identified under  
15 section 122(d) of the Workforce Innovation and Op-  
16 portunity Act), and provides career awareness infor-  
17 mation. The term includes a program allowable  
18 under the Workforce Investment Act of 1998 (29  
19 U.S.C. 2801 et seq.), the Workforce Innovation and  
20 Opportunity Act, the Carl D. Perkins Career and  
21 Technical Education Act of 2006 (20 U.S.C. 2301  
22 et seq.), or the Higher Education Act of 1965 (20  
23 U.S.C. 1001 et seq.), without regard to whether or  
24 not the program is funded under the corresponding  
25 Act.

1           (3) CAREGIVER.—The term “caregiver” means  
2           an individual with the status of being a significant  
3           provider of—

4                   (A) ongoing care or education, including  
5                   responsibility for securing the ongoing care or  
6                   education, of a child; or

7                   (B) ongoing care, including responsibility  
8                   for securing the ongoing care, of—

9                           (i) a person with a serious health con-  
10                           dition who is in a family relationship with  
11                           the individual; or

12                           (ii) a parent of the individual, who is  
13                           age 65 or older.

14           (4) CHILD.—The term “child” means a biologi-  
15           cal, adopted, or foster child, a stepchild, a legal  
16           ward, or a child of a person standing in loco  
17           parentis to that child, who is—

18                   (A) under age 18; or

19                   (B) age 18 or older and incapable of self-  
20                   care because of a mental or physical disability.

21           (5) COVERED EMPLOYER.—

22                   (A) IN GENERAL.—The term “covered em-  
23                   ployer”—

24                           (i) means any person engaged in com-  
25                           merce or in any industry or activity affect-



1           ing commerce who employs 15 or more em-  
2           ployees (described in paragraph (7)(A));

3           (ii) includes any person who acts, di-  
4           rectly or indirectly, in the interest of such  
5           an employer to any of the employees (de-  
6           scribed in paragraph (7)(A)) of such em-  
7           ployer;

8           (iii) includes any successor in interest  
9           of such an employer; and

10          (iv) includes an agency described in  
11          clause (iii) or (iv) of subparagraph (A) of  
12          section 101(4) of the Family and Medical  
13          Leave Act of 1993 (29 U.S.C. 2611(4)), to  
14          which subparagraph (B) of such section  
15          shall apply.

16          (B) RULE.—For purposes of determining  
17          the number of employees who work for a person  
18          described in subparagraph (A)(i), all employees  
19          (described in paragraph (7)(A)) performing  
20          work for compensation on a full-time, part-time,  
21          or temporary basis shall be counted, except that  
22          if the number of such employees who perform  
23          work for such a person for compensation fluc-  
24          tuates, the number may be determined for a  
25          calendar year based upon the average number

1 of such employees who performed work for the  
2 person for compensation during the preceding  
3 calendar year.

4 (C) PERSON.—In this paragraph, and  
5 paragraph (7), the term “person” has the  
6 meaning given the term in section 3 of the Fair  
7 Labor Standards Act of 1938 (29 U.S.C. 203).

8 (6) DOMESTIC PARTNER.—The term “domestic  
9 partner” means the person recognized as being in a  
10 relationship with an employee under any domestic  
11 partnership, civil union, or similar law of the State  
12 or political subdivision of a State in which the em-  
13 ployee resides.

14 (7) EMPLOYEE.—The term “employee” means  
15 an individual who is—

16 (A) an employee, as defined in section 3(e)  
17 of the Fair Labor Standards Act of 1938 (29  
18 U.S.C. 203(e)), who is not described in any of  
19 subparagraphs (B) through (G);

20 (B) a State employee described in section  
21 304(a) of the Government Employee Rights Act  
22 of 1991 (42 U.S.C. 2000e–16c(a));

23 (C) a covered employee, as defined in sec-  
24 tion 101 of the Congressional Accountability

1 Act of 1995 (2 U.S.C. 1301), other than an ap-  
2 plicant for employment;

3 (D) a covered employee, as defined in sec-  
4 tion 411(c) of title 3, United States Code;

5 (E) a Federal officer or employee covered  
6 under subchapter V of chapter 63 of title 5,  
7 United States Code;

8 (F) an employee of the Library of Con-  
9 gress; or

10 (G) an employee of the Government Ac-  
11 countability Office.

12 (8) EMPLOYER.—The term “employer” means  
13 a person—

14 (A) who is—

15 (i) a covered employer, as defined in  
16 paragraph (4), who is not described in any  
17 of clauses (ii) through (vii);

18 (ii) an entity employing a State em-  
19 ployee described in section 304(a) of the  
20 Government Employee Rights Act of 1991;

21 (iii) an employing office, as defined in  
22 section 101 of the Congressional Account-  
23 ability Act of 1995;

1 (iv) an employing office, as defined in  
2 section 411(c) of title 3, United States  
3 Code;

4 (v) an employing agency covered  
5 under subchapter V of chapter 63 of title  
6 5, United States Code;

7 (vi) the Librarian of Congress; or

8 (vii) the Comptroller General of the  
9 United States; and

10 (B) who is engaged in commerce (including  
11 government), in the production of goods for  
12 commerce, or in an enterprise engaged in com-  
13 merce (including government) or in the produc-  
14 tion of goods for commerce.

15 (9) FAMILY RELATIONSHIP.—The term “family  
16 relationship” means a relationship with a child,  
17 spouse, domestic partner, parent, grandchild, grand-  
18 parent, sibling, or parent of a spouse or domestic  
19 partner.

20 (10) GRANDCHILD.—The term “grandchild”  
21 means the child of a child.

22 (11) GRANDPARENT.—The term “grandparent”  
23 means the parent of a parent.

24 (12) MINIMUM NUMBER OF EXPECTED WORK  
25 HOURS.—The term “minimum number of expected

1 work hours” means the minimum number of hours  
2 an employee will be assigned to work on a weekly or  
3 monthly basis.

4 (13) PARENT.—The term “parent” means a bi-  
5 ological or adoptive parent, a stepparent, or a person  
6 who stood in a parental relationship to an employee  
7 when the employee was a child.

8 (14) PARENTAL RELATIONSHIP.—The term  
9 “parental relationship” means a relationship in  
10 which a person assumed the obligations incident to  
11 parenthood for a child and discharged those obliga-  
12 tions before the child reached adulthood.

13 (15) PART-TIME EMPLOYEE.—The term “part-  
14 time employee” means an individual who works  
15 fewer than 30 hours per week on average during any  
16 1-month period.

17 (16) RETAIL, FOOD SERVICE, OR CLEANING EM-  
18 PLOYEE.—

19 (A) IN GENERAL.—The term “retail, food  
20 service, or cleaning employee” means an indi-  
21 vidual employee who is employed in any of the  
22 following occupations, as described by the Bu-  
23 reau of Labor Statistics Standard Occupational  
24 Classification System (as in effect on the day  
25 before the date of enactment of this Act):

1 (i) Retail sales occupations consisting  
2 of occupations described in 41–1010 and  
3 41–2000, and all subdivisions thereof, of  
4 such System, which includes first-line su-  
5 pervisors of sales workers, cashiers, gam-  
6 ing change persons and booth cashiers,  
7 counter and rental clerks, parts sales-  
8 persons, and retail salespersons.

9 (ii) Food preparation and serving re-  
10 lated occupations as described in 35–0000,  
11 and all subdivisions thereof, of such Sys-  
12 tem, which includes supervisors of food  
13 preparation and serving workers, cooks  
14 and food preparation workers, food and  
15 beverage serving workers, and other food  
16 preparation and serving related workers.

17 (iii) Building cleaning occupations as  
18 described in 37–2011, 37–2012 and 37–  
19 2019 of such System, which includes jani-  
20 tors and cleaners, maids and housekeeping  
21 cleaners, and building cleaning workers.

22 (B) EXCLUSIONS.—Notwithstanding sub-  
23 paragraph (A), the term “retail, food service, or  
24 cleaning employee” does not include any person  
25 employed in a bona fide executive, administra-

1           tive, or professional capacity, as defined for  
2           purposes of section 13(a)(1) of the Fair Labor  
3           Standards Act of 1938 (29 U.S.C. 213(a)(1)).

4           (17) SECRETARY.—The term “Secretary”  
5           means the Secretary of Labor.

6           (18) SERIOUS HEALTH CONDITION.—The term  
7           “serious health condition” has the meaning given  
8           the term in section 101 of the Family and Medical  
9           Leave Act of 1993 (29 U.S.C. 2611).

10          (19) SIBLING.—The term “sibling” means a  
11          brother or sister, whether related by half blood,  
12          whole blood, or adoption, or as a stepsibling.

13          (20) SPLIT SHIFT.—The term “split shift”  
14          means a schedule of daily hours in which the hours  
15          worked are not consecutive, except that a schedule  
16          in which the total time out for meals does not exceed  
17          1 hour shall not be treated as a split shift.

18          (21) SPOUSE.—

19                 (A) IN GENERAL.—The term “spouse”  
20                 means a person with whom an individual en-  
21                 tered into—

22                         (i) a marriage as defined or recog-  
23                         nized under State law in the State in  
24                         which the marriage was entered into; or

1 (ii) in the case of a marriage entered  
2 into outside of any State, a marriage that  
3 is in the place where entered into and  
4 could have been entered into in at least 1  
5 State.

6 (B) SAME-SEX OR COMMON LAW MAR-  
7 RIAGE.—Such term includes an individual in a  
8 same-sex or common law marriage that meets  
9 the requirements of subparagraph (A).

10 (22) STATE.—The term “State” has the mean-  
11 ing given the term in section 3 of the Fair Labor  
12 Standards Act of 1938 (29 U.S.C. 203).

13 (23) WORK SCHEDULE.—The term “work  
14 schedule” means those days and times within a work  
15 period when an employee is required by an employer  
16 to perform the duties of the employee’s employment  
17 for which the employee will receive compensation.

18 (24) WORK SCHEDULE CHANGE.—The term  
19 “work schedule change” means any modification to  
20 an employee’s work schedule, such as an addition or  
21 reduction of hours, cancellation of a shift, or a  
22 change in the date or time of a work shift, by an  
23 employer.



1           (25) WORK SHIFT.—The term “work shift”  
2 means the specific hours of the workday during  
3 which an employee works.

4           (26) VARIOUS ADDITIONAL TERMS.—

5           (A) COMMERCE TERMS.—The terms “com-  
6 merce” and “industry or activity affecting com-  
7 merce” have the meanings given the terms in  
8 section 101 of the Family and Medical Leave  
9 Act of 1993 (29 U.S.C. 2611).

10           (B) EMPLOY.—The term “employ” has the  
11 meaning given the term in section 3 of the Fair  
12 Labor Standards Act of 1938 (29 U.S.C. 203).

13 **SEC. 3. RIGHT TO REQUEST AND RECEIVE A FLEXIBLE,**  
14 **PREDICTABLE OR STABLE WORK SCHEDULE.**

15           (a) RIGHT TO REQUEST.—An employee may apply  
16 to the employee’s employer to request a change in the  
17 terms and conditions of employment as they relate to—

18           (1) the number of hours the employee is re-  
19 quired to work or be on call for work;

20           (2) the times when the employee is required to  
21 work or be on call for work;

22           (3) the location where the employee is required  
23 to work;

24           (4) the amount of notification the employee re-  
25 ceives of work schedule assignments; and

1           (5) minimizing fluctuations in the number of  
2           hours the employee is scheduled to work on a daily,  
3           weekly, or monthly basis.

4           (b) EMPLOYER OBLIGATION TO ENGAGE IN AN  
5 INTERACTIVE PROCESS.—

6           (1) IN GENERAL.—If an employee applies to the  
7           employee’s employer to request a change in the  
8           terms and conditions of employment as set forth in  
9           subsection (a), the employer shall engage in a time-  
10          ly, good faith interactive process with the employee  
11          that includes a discussion of potential schedule  
12          changes that would meet the employee’s needs.

13          (2) RESULT.—Such process shall result in—

14                  (A) either granting or denying the request;

15                  (B) in the event of a denial, considering al-  
16                  ternatives to the proposed change that might  
17                  meet the employee’s needs and granting or de-  
18                  nying a request for an alternative change in the  
19                  terms and conditions of employment as set  
20                  forth in subsection (a); and

21                  (C) in the event of a denial, stating the  
22                  reason for denial.

23          (3) INFORMATION.—If information provided by  
24          the employee making a request for a change requires  
25          clarification, the employer shall explain what further

1 information is needed and give the employee reason-  
2 able time to produce the information.

3 (c) REQUESTS RELATED TO CAREGIVING, ENROLL-  
4 MENT IN EDUCATION OR TRAINING, OR A SECOND JOB.—  
5 If an employee makes a request for a change in the terms  
6 and conditions of employment as set forth in subsection  
7 (a) because of a serious health condition of the employee,  
8 due to the employee’s responsibilities as a caregiver, or  
9 due to the employee’s enrollment in a career-related edu-  
10 cational or training program, or if a part-time employee  
11 makes a request for such a change for a reason related  
12 to a second job, the employer shall grant the request, un-  
13 less the employer has a bona fide business reason for deny-  
14 ing the request.

15 (d) OTHER REQUESTS.—If an employee makes a re-  
16 quest for a change in the terms and conditions of employ-  
17 ment as set forth in subsection (a), for a reason other than  
18 those reasons set forth in subsection (c), the employer may  
19 deny the request for any reason that is not unlawful. If  
20 the employer denies such a request, the employer shall  
21 provide the employee with the reason for the denial, in-  
22 cluding whether any such reason was a bona fide business  
23 reason.

1 **SEC. 4. REQUIREMENTS FOR REPORTING TIME PAY, SPLIT**  
2 **SHIFT PAY, AND ADVANCE NOTICE OF WORK**  
3 **SCHEDULES.**

4 (a) **REPORTING TIME PAY REQUIREMENT.**—An em-  
5 ployer shall pay a retail, food service, or cleaning em-  
6 ployee—

7 (1) for at least 4 hours at the employee’s reg-  
8 ular rate of pay for each day on which the retail,  
9 food service, or cleaning employee reports for work  
10 under specific instructions but is given less than  
11 four hours of work, except that if the retail, food  
12 service, or cleaning employee’s scheduled hours are  
13 less than 4 hours, such retail, food service, or clean-  
14 ing employee shall be paid for the employee’s sched-  
15 uled hours for that day if given less than the sched-  
16 uled hours of work; and

17 (2) for at least 1 hour at the employee’s regular  
18 rate of pay for each day the retail, food service, or  
19 cleaning employee is given specific instructions to  
20 contact the employee’s employer, or wait to be con-  
21 tacted by the employer, less than 24 hours in ad-  
22 vance of the start of a potential work shift to deter-  
23 mine whether the employee must report to work for  
24 such shift.

25 (b) **SPLIT SHIFT PAY REQUIREMENT.**—An employer  
26 shall pay a retail, food service, or cleaning employee for

1 one additional hour at the retail, food service, or cleaning  
2 employee's regular rate of pay for each day during which  
3 the retail, food service, or cleaning employee works a split  
4 shift.

5 (c) ADVANCE NOTICE REQUIREMENT.—

6 (1) INITIAL SCHEDULE.—On or before a new  
7 retail, food service, or cleaning employee's first day  
8 of work, the employer shall inform the retail, food  
9 service, or cleaning employee in writing of the em-  
10 ployee's work schedule and the minimum number of  
11 expected work hours the retail, food service, or  
12 cleaning employee will be assigned to work per  
13 month.

14 (2) CHANGE TO SCHEDULE.—Except as pro-  
15 vided in paragraph (3), if the retail, food service, or  
16 cleaning employee's work schedule changes from the  
17 work schedule of which the retail, food service, or  
18 cleaning employee was informed pursuant to para-  
19 graph (1), the employer shall provide each retail,  
20 food service, or cleaning employee with the employ-  
21 ee's new work schedule not less than 14 days before  
22 the first day of the new work schedule. If the ex-  
23 pected minimum number of work hours a retail, food  
24 service, or cleaning employee will be assigned  
25 changes, the employer shall also provide notification

1 of that change, not less than 14 days in advance of  
2 the first day this change will go into effect. Nothing  
3 in this subsection shall be construed to prohibit an  
4 employer from providing greater advance notice of a  
5 retail, food service, or cleaning employee's work  
6 schedule than is required under this section.

7 (3) WORK SCHEDULE CHANGES MADE WITH  
8 LESS THAN 24 HOURS' NOTICE.—An employer may  
9 make work schedule changes as needed, including by  
10 offering additional hours of work to retail, food serv-  
11 ice, or cleaning employees beyond those previously  
12 scheduled, but an employer shall be required to pro-  
13 vide one extra hour of pay at the retail, food service,  
14 or cleaning employee's regular rate for each shift  
15 that is changed with less than 24 hours' notice, ex-  
16 cept in the case of the need to schedule the retail,  
17 food service, or cleaning employee due to the unfore-  
18 seen unavailability of a retail, food service, or clean-  
19 ing employee previously scheduled to work that shift.

20 (4) NOTIFICATIONS IN WRITING.—The notifica-  
21 tions required under paragraphs (1) and (2) shall be  
22 made to the employee in writing. Nothing in this  
23 subsection shall be construed as prohibiting an em-  
24 ployer from using any additional means of notifying

1 a retail, food service, or cleaning employee of the  
2 employee's work schedule.

3 (5) SCHEDULE POSTING REQUIREMENT.—Every  
4 employer employing any retail, food service, or clean-  
5 ing employee subject to this Act shall post the  
6 schedule and keep it posted in a conspicuous place  
7 in every establishment where such retail, food serv-  
8 ice, or cleaning employee is employed so as to permit  
9 them to observe readily a copy. Availability of that  
10 schedule by electronic means accessible by all em-  
11 ployees of that employer shall be considered compli-  
12 ance with this subsection.

13 (6) EMPLOYEE SHIFT TRADING.—Nothing in  
14 this subsection shall be construed to prevent an em-  
15 ployer from allowing a retail, food service, or clean-  
16 ing employee to work in place of another employee  
17 who has been scheduled to work a particular shift as  
18 long as the change in schedule is mutually agreed  
19 upon by the employees. An employer shall not be  
20 subject to the requirements of paragraph (2) or (3)  
21 for such voluntary shift trades.

22 (d) EXCEPTION.—The requirements in subsections  
23 (a), (b), and (c) shall not apply during periods when reg-  
24 ular operations of the employer are suspended due to  
25 events beyond the employer's control.

1 **SEC. 5. PROHIBITED ACTS.**

2 (a) INTERFERENCE WITH RIGHTS.—It shall be un-  
3 lawful for any employer to interfere with, restrain, or deny  
4 the exercise or the attempt to exercise, any right of an  
5 employee as set forth in section 3 or of a retail, food serv-  
6 ice, or cleaning employee as set forth in section 4.

7 (b) RETALIATION PROHIBITED.—It shall be unlawful  
8 for any employer to discharge, threaten to discharge, de-  
9 mote, suspend, reduce work hours of, or take any other  
10 adverse employment action against any employee in retal-  
11 iation for exercising the rights of an employee under this  
12 Act or opposing any practice made unlawful by this Act.  
13 For purposes of section 3, such retaliation shall include  
14 taking an adverse employment action against any em-  
15 ployee on the basis of that employee's eligibility or per-  
16 ceived eligibility to request or receive a change in the  
17 terms and conditions of employment, as described in such  
18 section, on the basis of a reason set forth in section 3(c).

19 (c) INTERFERENCE WITH PROCEEDINGS OR INQUIR-  
20 IES.—It shall be unlawful for any person to discharge or  
21 in any other manner discriminate against any individual  
22 because such individual—

23 (1) has filed any charge, or has instituted or  
24 caused to be instituted any proceeding, under or re-  
25 lated to this Act;



1           (2) has given or is about to give, any informa-  
2           tion in connection with any inquiry or proceeding re-  
3           lating to any right provided under this Act; or

4           (3) has testified, or is about to testify, in any  
5           inquiry or proceeding relating to any right provided  
6           under this Act.

7 **SEC. 6. REMEDIES AND ENFORCEMENT.**

8           (a) INVESTIGATIVE AUTHORITY.—

9           (1) IN GENERAL.—To ensure compliance with  
10          this Act, or any regulation or order issued under  
11          this Act, the Secretary shall have, subject to para-  
12          graph (3), the investigative authority provided under  
13          section 11(a) of the Fair Labor Standards Act of  
14          1938 (29 U.S.C. 211(a)).

15          (2) OBLIGATION TO KEEP AND PRESERVE  
16          RECORDS.—Each employer shall make, keep, and  
17          preserve records pertaining to compliance with this  
18          Act in accordance with regulations issued by the  
19          Secretary under section 8.

20          (3) REQUIRED SUBMISSIONS GENERALLY LIM-  
21          ITED TO AN ANNUAL BASIS.—The Secretary shall  
22          not under the authority of this subsection require  
23          any employer to submit to the Secretary any books  
24          or records more than once during any 12-month pe-  
25          riod, unless the Secretary has reasonable cause to

1 believe there may exist a violation of this Act or any  
2 regulation or order issued pursuant to this Act, or  
3 is investigating a charge pursuant to subsection (c).

4 (4) SUBPOENA POWERS.—For the purposes of  
5 any investigation provided for in this section, the  
6 Secretary shall have the subpoena authority provided  
7 for under section 9 of the Fair Labor Standards Act  
8 of 1938 (29 U.S.C. 209).

9 (b) CIVIL ACTION BY EMPLOYEES.—

10 (1) LIABILITY.—Any employer who violates sec-  
11 tion 5(a) (with respect to a right set forth in section  
12 4) or subsection (b) or (c) of section 5 (referred to  
13 in this section as a “covered provision”) shall be lia-  
14 ble to any employee affected for—

15 (A) damages equal to the amount of—

16 (i) any wages, salary, employment  
17 benefits (as defined in section 101 of the  
18 Family and Medical Leave Act of 1993 (29  
19 U.S.C. 2611)), or other compensation de-  
20 nied, lost, or owed to such employee by  
21 reason of the violation; or

22 (ii) in a case in which wages, salary,  
23 employment benefits (as so defined), or  
24 other compensation have not been denied,  
25 lost, or owed to the employee, any actual

1           monetary losses sustained by the employee  
2           as a direct result of the violation;

3           (B) interest on the amount described in  
4           subparagraph (A) calculated at the prevailing  
5           rate;

6           (C) an additional amount as liquidated  
7           damages equal to the sum of the amount de-  
8           scribed in subparagraph (A) and the interest  
9           described in subparagraph (B), except that if  
10          an employer who has violated a covered provi-  
11          sion proves to the satisfaction of the court that  
12          the act or omission which violated the covered  
13          provision was in good faith and that the em-  
14          ployer had reasonable grounds for believing that  
15          the act or omission was not a violation of a cov-  
16          ered provision, such court may, in the discretion  
17          of the court, reduce the amount of liability to  
18          the amount and interest determined under sub-  
19          paragraphs (A) and (B), respectively; and

20          (D) such equitable relief as may be appro-  
21          priate, including employment, reinstatement,  
22          and promotion.

23          (2) RIGHT OF ACTION.—An action to recover  
24          the damages or equitable relief set forth in para-  
25          graph (1) may be maintained against any employer

1 (including a public agency) in any Federal or State  
2 court of competent jurisdiction by any one or more  
3 employees for and on behalf of—

4 (A) the employees; or

5 (B) the employees and other employees  
6 similarly situated.

7 (3) FEES AND COSTS.—The court in such an  
8 action shall, in addition to any judgment awarded to  
9 the plaintiff, allow a reasonable attorney’s fee, rea-  
10 sonable expert witness fees, and other costs of the  
11 action to be paid by the defendant.

12 (4) LIMITATIONS.—The right provided by para-  
13 graph (2) to bring an action by or on behalf of any  
14 employee shall terminate on the filing of a complaint  
15 by the Secretary in an action under subsection (c)(3)  
16 in which a recovery is sought of the damages de-  
17 scribed in paragraph (1)(A) owing to an employee by  
18 an employer liable under paragraph (1) unless the  
19 action described is dismissed without prejudice on  
20 motion of the Secretary.

21 (c) ACTIONS BY THE SECRETARY.—

22 (1) ADMINISTRATIVE ACTION.—The Secretary  
23 shall receive, investigate, and attempt to resolve  
24 complaints of violations of this Act in the same man-  
25 ner that the Secretary receives, investigates, and at-

1        tempts to resolve complaints of violations of sections  
2        6 and 7 of the Fair Labor Standards Act of 1938  
3        (29 U.S.C. 206 and 207), and may issue an order  
4        making determinations, and assessing a civil penalty  
5        described in paragraph (4) (in accordance with para-  
6        graph (4)), with respect to such an alleged violation.

7            (2) ADMINISTRATIVE REVIEW.—An affected  
8        person who takes exception to an order issued under  
9        paragraph (1) may request review of and a decision  
10       regarding such an order by an administrative law  
11       judge. In reviewing the order, the administrative law  
12       judge may hold an administrative hearing con-  
13       cerning the order, in accordance with the require-  
14       ments of sections 554, 556, and 557 of title 5,  
15       United States Code. Such hearing shall be conducted  
16       expeditiously. If no affected person requests such re-  
17       view within 60 days after the order is issued under  
18       paragraph (1), the order shall be considered to be a  
19       final order that is not subject to judicial review.

20            (3) CIVIL ACTION.—The Secretary may bring  
21       an action in any court of competent jurisdiction on  
22       behalf of aggrieved employees to—

23            (A) restrain violations of this Act;

1 (B) award such equitable relief as may be  
2 appropriate, including employment, reinstatement,  
3 and promotion; and

4 (C) in the case of a violation of a covered  
5 provision, recover the damages and interest described  
6 in subparagraphs (A) through (C) of  
7 subsection (b)(1).

8 (4) CIVIL PENALTY.—An employer who willfully  
9 and repeatedly violates—

10 (A) paragraph (1), (4), or (5) of section  
11 4(e) shall be subject to a civil penalty in an  
12 amount to be determined by the Secretary, but  
13 not to exceed \$100 per violation; and

14 (B) subsection (b) or (c) of section 5 shall  
15 be subject to a civil penalty in an amount to be  
16 determined by the Secretary, but not to exceed  
17 \$1,100 per violation.

18 (d) LIMITATION.—

19 (1) IN GENERAL.—Except as provided in paragraph  
20 (2), an action may be brought under this section  
21 not later than 2 years after the date of the last  
22 event constituting the alleged violation for which the  
23 action is brought.

24 (2) WILLFUL VIOLATION.—In the case of such  
25 action brought for a willful violation of section 5,

1 such action may be brought within 3 years of the  
2 date of the last event constituting the alleged viola-  
3 tion for which such action is brought.

4 (3) COMMENCEMENT.—In determining when an  
5 action is commenced by the Secretary under this  
6 section for the purposes of this subsection, it shall  
7 be considered to be commenced on the date when the  
8 complaint is filed.

9 **SEC. 7. NOTICE AND POSTING.**

10 (a) IN GENERAL.—Each employer shall post and  
11 keep posted, in conspicuous places on the premises of the  
12 employer where notices to employees and applicants for  
13 employment are customarily posted, a notice, to be pre-  
14 pared or approved by the Secretary (or the corresponding  
15 administrative officer specified in section 8) setting forth  
16 excerpts from, or summaries of, the pertinent provisions  
17 of this Act and information pertaining to the filing of a  
18 complaint under this Act.

19 (b) PENALTY.—Any employer that willfully violates  
20 this section may be assessed a civil money penalty not to  
21 exceed \$100 for each separate offense.

22 **SEC. 8. REGULATIONS.**

23 (a) IN GENERAL.—Except as provided in subsections  
24 (b) through (f), not later than 180 days after the date  
25 of enactment of this Act, the Secretary shall prescribe

1 such regulations as may be necessary to carry out this  
2 Act.

3 (b) BOARD.—Not later than 180 days after the date  
4 of enactment of this Act, the Board of Directors of the  
5 Office of Compliance shall prescribe such regulations as  
6 may be necessary to carry out this Act with respect to  
7 employees described in section 4(7)(C).

8 (c) PRESIDENT.—Not later than 180 days after the  
9 date of enactment of this Act, the President shall prescribe  
10 such regulations as may be necessary to carry out this  
11 Act with respect to employees described in section  
12 4(7)(D).

13 (d) OFFICE OF PERSONNEL MANAGEMENT.—Not  
14 later than 180 days after the date of enactment of this  
15 Act, the Office of Personnel Management shall prescribe  
16 such regulations as may be necessary to carry out this  
17 Act with respect to employees described in section 4(7)(E).

18 (e) LIBRARIAN OF CONGRESS.—Not later than 180  
19 days after the date of enactment of this Act, the Librarian  
20 of Congress shall prescribe such regulations as may be  
21 necessary to carry out this Act with respect to employees  
22 of the Library of Congress.

23 (f) COMPTROLLER GENERAL.—Not later than 180  
24 days after the date of enactment of this Act, the Comp-  
25 troller General of the United States shall prescribe such



1 regulations as may be necessary to carry out this Act with  
2 respect to employees of the Government Accountability Of-  
3 fice.

4 **SEC. 9. RESEARCH, EDUCATION, AND TECHNICAL ASSIST-**  
5 **ANCE PROGRAM.**

6 (a) IN GENERAL.—The Secretary shall provide infor-  
7 mation and technical assistance to employers, labor orga-  
8 nizations, and the general public concerning compliance  
9 with this Act.

10 (b) PROGRAM.—In order to achieve the objectives of  
11 this Act—

12 (1) the Secretary, acting through the Adminis-  
13 trator of the Wage and Hour Division of the Depart-  
14 ment of Labor, shall issue guidance on compliance  
15 with this Act regarding providing a flexible, predict-  
16 able, or stable work environment through changes in  
17 the terms and conditions of employment as provided  
18 in section 3(a); and

19 (2) the Secretary shall carry on a continuing  
20 program of research, education, and technical assist-  
21 ance, including—

22 (A)(i) conducting pilot programs that im-  
23 plement fairer work schedules, including by pro-  
24 moting cross training, providing three weeks or  
25 more advance notice of schedules, providing em-

1 employees with a minimum number of hours of  
2 work, and using computerized scheduling soft-  
3 ware to provide more flexible, predictable, and  
4 stable schedules for employees; and

5 (ii) evaluating the results of such pilot pro-  
6 grams for employees, employee's families, and  
7 employers;

8 (B) publishing and otherwise making avail-  
9 able to employers, labor organizations, profes-  
10 sional associations, educational institutions, the  
11 various communication media, and the general  
12 public the findings of studies regarding fair  
13 work scheduling policies and other materials for  
14 promoting compliance with this Act;

15 (C) sponsoring and assisting State and  
16 community informational and educational pro-  
17 grams; and

18 (D) providing technical assistance to em-  
19 ployers, labor organizations, professional asso-  
20 ciations, and other interested persons on means  
21 of achieving and maintaining compliance with  
22 the provisions of this Act.

23 (c) GAO STUDY.—

24 (1) STUDY.—The Comptroller General of the  
25 United States shall conduct a study on—

1 (A) the impact of difficult scheduling prac-  
2 tices on employees and employers, including un-  
3 predictable and unstable schedules and sched-  
4 ules over which employees have little control,  
5 and particularly how these scheduling practices  
6 impact absenteeism, workforce turnover, and  
7 employees' ability to meet their caregiving re-  
8 sponsibilities;

9 (B) the prevalence in occupations not de-  
10 scribed in section 2(16)(A) of employees rou-  
11 tinely receiving inadequate advance notice of  
12 the shifts or hours of the employees, being as-  
13 signed split shifts, being sent home from work  
14 prior to the completion of their scheduled shift  
15 without being paid for the hours in their sched-  
16 uled shift, being assigned call-in shifts (where  
17 the employee is required to contact the em-  
18 ployer, or wait to be contacted by the employer,  
19 less than 24 hours in advance of the potential  
20 work shift to determine whether the employee  
21 must report to work), or being called into work  
22 outside of scheduled hours;

23 (C) the effects on employees in occupations  
24 not described in section 2(16)(A) of providing  
25 advance notice of work schedules, reporting

1 time pay when employees are sent home without  
2 working their full scheduled shift or are as-  
3 signed to call-in shifts but given no work for  
4 those shifts, and split shift pay when employees  
5 are assigned split shifts; and

6 (D) the effects on employers in occupations  
7 not described in section 2(16)(A) of providing  
8 advance notice of work schedules, reporting  
9 time pay when employees are sent home without  
10 working their full scheduled shift or assigned to  
11 call-in shifts but given no work for those shifts,  
12 and split shift pay when employees are assigned  
13 split shifts.

14 (2) REPORTS.—Not later than 18 months after  
15 the date of enactment of this Act, the Comptroller  
16 General of the United States shall prepare and sub-  
17 mit a report to the appropriate committees of Con-  
18 gress concerning the initial results of the study con-  
19 ducted pursuant to paragraph (1). Not later than 5  
20 years after the date of enactment of this Act, the  
21 Comptroller General shall prepare and submit a fol-  
22 low-up report to such committees concerning the re-  
23 sults of such study.

1 **SEC. 10. RIGHTS RETAINED BY EMPLOYEES.**

2 This Act provides minimum requirements and shall  
3 not be construed to preempt, limit, or otherwise affect the  
4 applicability of any other law, regulation, requirement,  
5 policy, or standard that provides for greater rights for em-  
6 ployees than are required in this Act.

7 **SEC. 11. EXEMPTION.**

8 This Act shall not apply to any employee covered by  
9 a bona fide collective bargaining agreement if the terms  
10 of the collective bargaining agreement include terms that  
11 govern work scheduling practices.

12 **SEC. 12. EFFECT ON OTHER LAW.**

13 Nothing in this Act shall be construed as creating or  
14 imposing any requirement in conflict with any Federal or  
15 State law or regulation (including the Americans with Dis-  
16 abilities Act of 1990 (42 U.S.C. 12101 et seq.), the Fam-  
17 ily and Medical Leave Act of 1993 (29 U.S.C. 2611 et  
18 seq.), the National Labor Relations Act (29 U.S.C. 151  
19 et seq.), and title VII of the Civil Rights Act of 1964 (42  
20 U.S.C. 2000e et seq.)), nor shall anything in this Act be  
21 construed to diminish or impair the rights of an employee  
22 under any valid collective bargaining agreement.

○