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# S. 1386

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 occupations with evidence of unpredictable and unstable scheduling practices that negatively affect employees, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JUNE 20, 2017

Ms. WARREN (for herself, Mrs. MURRAY, Mr. MURPHY, Ms. BALDWIN, Mr. BLUMENTHAL, Mr. BOOKER, Mr. BROWN, Ms. CORTEZ MASTO, Ms. DUCKWORTH, Mr. DURBIN, Mr. FRANKEN, Mrs. GILLIBRAND, Ms. HARRIS, Ms. HIRONO, Mr. LEAHY, Mr. MARKEY, Mr. MERKLEY, Mr. REED, Mr. SANDERS, Mr. SCHUMER, Mr. VAN HOLLEN, Mr. WHITEHOUSE, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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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 occupations with evidence of unpredictable and unstable scheduling practices that negatively affect employees, 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,*

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

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

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

5 (1) The vast majority of the United States  
6 workforce today is juggling responsibilities at home  
7 and at work. Sixty-four percent of mothers are the  
8 primary breadwinners or co-breadwinners in their  
9 families.

10 (2) Despite the dual responsibilities of today’s  
11 workforce, both hourly and salaried workers often  
12 have little ability to make changes to their work  
13 schedules when those changes are needed to accom-  
14 modate family responsibilities.

15 (3)(A) Low-wage working mothers are more  
16 likely to be raising children on their own than high-  
17 er-wage working mothers. For example, more than  
18 half of mothers in low-wage jobs who have very  
19 young children are single parents, compared to  
20 around one-third of all working mothers who have  
21 very young children.

22 (B) At the same time, low-wage workers have  
23 the least control over their work schedules and the  
24 most unpredictable schedules. For example—

1 (i) 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 (ii)(I) many workers in low-wage jobs re-  
5 ceive their work schedules with very little ad-  
6 vance notice; and

7 (II) 41 percent of workers who are ages 26  
8 through 32 (referred to in this section as  
9 “early-career workers”) in hourly jobs report  
10 getting their work schedules a week or less in  
11 advance;

12 (iii) some workers in low-wage jobs are  
13 sent home from work when work is slow with-  
14 out being paid for their scheduled shift;

15 (iv)(I) many employers have adopted “just-  
16 in-time” scheduling, which bases workers’  
17 schedules on perceived consumer demand and  
18 often results in workers being given very little  
19 advance notice of their work schedules; and

20 (II) in some industries, the use of “call-in  
21 shift” requirements—requirements that workers  
22 call in to work to find out whether they will be  
23 scheduled to work later that day—have become  
24 common practice; and

1 (v)(I) 20 to 30 percent of workers in low-  
2 wage jobs struggle with being required to work  
3 extra hours with little or no notice; and

4 (II) in a typical month, for the 74 percent  
5 of early-career workers in hourly jobs who re-  
6 port fluctuations in their work hours, those  
7 hours typically fluctuate by more than an 8-  
8 hour day of work and pay per week.

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

11 (A) provide necessary care for children and  
12 other family members, including securing and  
13 maintaining stable child care;

14 (B) access and receive needed care for the  
15 workers' own serious health conditions;

16 (C) pursue workforce training;

17 (D) get or keep a second job, which many  
18 part-time workers need to make ends meet;

19 (E) plan for and access transportation to  
20 reach worksites; and

21 (F) qualify for and maintain eligibility for  
22 needed public benefits and work supports, such  
23 as child care subsidies and benefits under the  
24 supplemental nutrition assistance program, due  
25 to fluctuations in income and work hours.

1           (5) Twenty-six percent of workers on irregular  
2 or on-call schedules and 19 percent of workers on  
3 rotating or split shift schedules experience work-fam-  
4 ily conflict, compared to 11 percent of workers on  
5 regular work schedules. A recent national survey of  
6 retail workers found that unpredictable schedules for  
7 parents are associated with higher stress and less  
8 time spent with their children.

9           (6) Unpredictable and unstable schedules are  
10 common in a wide range of occupations, including  
11 food preparation and service, retail sales, and clean-  
12 ing occupations. According to data from the Bureau  
13 of Labor Statistics for early-career adults, 64 per-  
14 cent of food service workers, 50 percent of retail  
15 workers, and 40 percent of cleaning workers know  
16 their schedules only a week or less in advance. The  
17 average variation between the least and most hours  
18 worked in a single month is 70 percent for food  
19 service workers, 50 percent for retail workers, and  
20 40 percent for cleaning workers.

21           (7) Food service workers, retail workers, and  
22 cleaning workers are among the lowest-paid workers,  
23 and those 3 occupations account for nearly  
24 24,000,000 workers, which is almost  $\frac{1}{6}$  of the work-  
25 force.

1           (8) Employers that have implemented fair work  
2 scheduling policies that allow workers to have more  
3 control over their work schedules, and provide more  
4 predictable and stable schedules, have experienced  
5 significant benefits, including reductions in absentee-  
6 ism and workforce turnover, and increased worker  
7 morale and engagement.

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

11 **SEC. 2. DEFINITIONS.**

12 As used in this Act:

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

15                   (A) the identifiable burden of additional  
16 costs to an employer, including the cost of pro-  
17 ductivity loss, retraining or hiring employees, or  
18 transferring employees from one facility to an-  
19 other facility;

20                   (B) a significant detrimental effect on the  
21 employer’s ability to meet organizational needs  
22 or customer demand;

23                   (C) a significant inability of the employer,  
24 despite best efforts, to reorganize work among

1 existing (as of the date of the reorganization)  
2 staff;

3 (D) a significant detrimental effect on  
4 business performance;

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

7 (F) the need to balance competing sched-  
8 uling requests when it is not possible to grant  
9 all such requests without a significant detri-  
10 mental effect on the employer's ability to meet  
11 organizational needs; or

12 (G) such other reason as may be specified  
13 by the Secretary of Labor (or the corresponding  
14 administrative officer specified in section 8).

15 (2) CAREER-RELATED EDUCATIONAL OR TRAIN-  
16 ING PROGRAM.—The term “career-related edu-  
17 cational or training program” means an educational  
18 or training program or program of study offered by  
19 a public, private, or nonprofit career and technical  
20 education school, institution of higher education, or  
21 other entity that provides academic education, career  
22 and technical education, or training (including reme-  
23 dial education or English as a second language, as  
24 appropriate), that is a program that leads to a rec-  
25 ognized postsecondary credential (as identified under

1 section 122(d) of the Workforce Innovation and Op-  
2 portunity Act (29 U.S.C. 3152(d)), and provides  
3 career awareness information. The term includes a  
4 program allowable under the Workforce Innovation  
5 and Opportunity Act (29 U.S.C. 3101 et seq.), the  
6 Carl D. Perkins Career and Technical Education  
7 Act of 2006 (20 U.S.C. 2301 et seq.), or the Higher  
8 Education Act of 1965 (20 U.S.C. 1001 et seq.),  
9 without regard to whether or not the program is  
10 funded under the corresponding Act.

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

14 (A) ongoing care or education, including  
15 responsibility for securing the ongoing care or  
16 education, of a child; or

17 (B) ongoing care, including responsibility  
18 for securing the ongoing care, of—

19 (i) a person with a serious health con-  
20 dition who is in a family relationship with  
21 the individual; or

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

24 (4) CHILD.—The term “child” means a biologi-  
25 cal, adopted, or foster child, a stepchild, a legal



1 ward, or a child of a person standing in loco  
2 parentis to that child, who is—

3 (A) under age 18; or

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

6 (5) COMMERCE TERMS.—The terms “com-  
7 merce” and “industry or activity affecting com-  
8 merce” have the meanings given the terms in section  
9 101 of the Family and Medical Leave Act of 1993  
10 (29 U.S.C. 2611).

11 (6) COVERED EMPLOYER.—

12 (A) IN GENERAL.—The term “covered em-  
13 ployer”—

14 (i) means any person engaged in com-  
15 merce or in any industry or activity affect-  
16 ing commerce who employs 15 or more em-  
17 ployees (described in paragraph (9)(A));

18 (ii) includes any person who acts, di-  
19 rectly or indirectly, in the interest of such  
20 an employer to any of the employees (de-  
21 scribed in paragraph (9)(A)) of such em-  
22 ployer;

23 (iii) includes any successor in interest  
24 of such an employer; and

1 (iv) includes an agency described in  
2 subparagraph (A)(iii) of section 101(4) of  
3 the Family and Medical Leave Act of 1993  
4 (29 U.S.C. 2611(4)), to which subpara-  
5 graph (B) of such section shall apply.

6 (B) RULE.—For purposes of determining  
7 the number of employees who work for a person  
8 described in subparagraph (A)(i), all employees  
9 (described in paragraph (9)(A)) performing  
10 work for compensation on a full-time, part-time,  
11 or temporary basis shall be counted, except that  
12 if the number of such employees who perform  
13 work for such a person for compensation fluctuates,  
14 the number may be determined for a  
15 calendar year based upon the average number  
16 of such employees who performed work for the  
17 person for compensation during the preceding  
18 calendar year.

19 (C) PERSON.—In this paragraph, the term  
20 “person” has the meaning given the term in  
21 section 3 of the Fair Labor Standards Act of  
22 1938 (29 U.S.C. 203).

23 (7) DOMESTIC PARTNER.—The term “domestic  
24 partner” means the individual recognized as being in  
25 a relationship with an employee under any domestic

1 partnership, civil union, or similar law of the State  
2 or political subdivision of a State in which the em-  
3 ployee resides.

4 (8) EMPLOY.—The term “employ” has the  
5 meaning given the term in section 3 of the Fair  
6 Labor Standards Act of 1938 (29 U.S.C. 203).

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

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

13 (B) a State employee described in section  
14 304(a) of the Government Employee Rights Act  
15 of 1991 (42 U.S.C. 2000e–16c(a));

16 (C) a covered employee, as defined in sec-  
17 tion 101 of the Congressional Accountability  
18 Act of 1995 (2 U.S.C. 1301), other than an ap-  
19 plicant for employment;

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

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

1 (F) an employee of the Library of Con-  
2 gress; or

3 (G) an employee of the Government Ac-  
4 countability Office.

5 (10) EMPLOYER.—The term “employer” means  
6 a person—

7 (A) who is—

8 (i) a covered employer, as defined in  
9 paragraph (6), who is not described in any  
10 of clauses (ii) through (vii);

11 (ii) an entity employing a State em-  
12 ployee described in section 304(a) of the  
13 Government Employee Rights Act of 1991;

14 (iii) an employing office, as defined in  
15 section 101 of the Congressional Account-  
16 ability Act of 1995;

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

20 (v) an employing agency covered  
21 under subchapter V of chapter 63 of title  
22 5, United States Code;

23 (vi) the Librarian of Congress; or

24 (vii) the Comptroller General of the  
25 United States; and

1 (B) who is engaged in commerce (including  
2 government), in the production of goods for  
3 commerce, or in an enterprise engaged in com-  
4 merce (including government) or in the produc-  
5 tion of goods for commerce.

6 (11) FAMILY RELATIONSHIP.—The term “fam-  
7 ily relationship” means a relationship with—

8 (A) a child, spouse, domestic partner, par-  
9 ent, grandchild, grandparent, sibling, or parent  
10 of a spouse or domestic partner; or

11 (B) any individual related to the employee  
12 involved by blood or affinity, whose close asso-  
13 ciation with the employee is the equivalent of a  
14 family relationship described in subparagraph  
15 (A).

16 (12) GRANDCHILD.—The term “grandchild”  
17 means the child of a child.

18 (13) GRANDPARENT.—The term “grandparent”  
19 means the parent of a parent.

20 (14) MINIMUM NUMBER OF EXPECTED WORK  
21 HOURS.—The term “minimum number of expected  
22 work hours” means the minimum number of hours  
23 an employee will be assigned to work on a weekly or  
24 monthly basis.

1           (15) NONEXEMPT EMPLOYEE.—The “non-  
2 exempt employee” means an employee who is not  
3 employed in a bona fide executive, administrative, or  
4 professional capacity, as defined for purposes of sec-  
5 tion 13(a)(1) of the Fair Labor Standards Act of  
6 1938 (29 U.S.C. 213(a)(1)).

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

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

16           (18) PART-TIME EMPLOYEE.—The term “part-  
17 time employee” means an individual who works  
18 fewer than 30 hours per week on average during any  
19 1-month period.

20           (19) RETAIL, FOOD SERVICE, OR CLEANING EM-  
21 PLOYEE.—The term “retail, food service, or cleaning  
22 employee” means an individual nonexempt employee  
23 who is employed in any of the following occupations,  
24 as described by the Bureau of Labor Statistics  
25 Standard Occupational Classification System (as in

1 effect on the day before the date of enactment of  
2 this Act):

3 (A) Retail sales occupations consisting of  
4 occupations described in 41–1010 and 41–  
5 2000, and all subdivisions thereof, of such Sys-  
6 tem, which includes first-line supervisors of  
7 sales workers, cashiers, gaming change persons  
8 and booth cashiers, counter and rental clerks,  
9 parts salespersons, and retail salespersons.

10 (B) Food preparation and serving related  
11 occupations as described in 35–0000, and all  
12 subdivisions thereof, of such System, which in-  
13 cludes supervisors of food preparation and serv-  
14 ing workers, cooks and food preparation work-  
15 ers, food and beverage serving workers, and  
16 other food preparation and serving related  
17 workers.

18 (C) Building cleaning occupations as de-  
19 scribed in 37–2011, 37–2012 and 37–2019 of  
20 such System, which includes janitors and clean-  
21 ers, maids and housekeeping cleaners, and  
22 building cleaning workers.

23 (20) SECRETARY.—The term “Secretary”  
24 means the Secretary of Labor.

1           (21) SERIOUS HEALTH CONDITION.—The term  
2           “serious health condition” has the meaning given  
3           the term in section 101 of the Family and Medical  
4           Leave Act of 1993 (29 U.S.C. 2611).

5           (22) SIBLING.—The term “sibling” means a  
6           brother or sister, whether related by half blood,  
7           whole blood, or adoption, or as a stepsibling.

8           (23) SPLIT SHIFT.—The term “split shift”  
9           means a schedule of daily hours in which the hours  
10          worked are not consecutive, except that—

11           (A) a schedule in which the total time out  
12          for meals does not exceed one hour shall not be  
13          treated as a split shift; and

14           (B) a schedule in which the break in the  
15          employee’s work shift is requested by the em-  
16          ployee shall not be treated as a split shift.

17          (24) SPOUSE.—

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

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

24           (ii) in the case of a marriage entered  
25          into outside of any State, a marriage that



1 is recognized in the place where entered  
2 into and could have been entered into in at  
3 least 1 State.

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

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

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

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

22 (28) WORK SHIFT.—The term “work shift”  
23 means the specific hours of the workday during  
24 which an employee works.

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

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

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

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

10 (3) the location where the employee is required  
11 to work;

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

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

17 (b) **EMPLOYER OBLIGATION TO ENGAGE IN AN**  
18 **INTERACTIVE PROCESS.**—

19 (1) **IN GENERAL.**—If an employee applies to the  
20 employee’s employer to request a change in the  
21 terms and conditions of employment as set forth in  
22 subsection (a), the employer shall engage in a time-  
23 ly, good faith interactive process with the employee  
24 that includes a discussion of potential schedule  
25 changes that would meet the employee’s needs.

26 (2) **RESULT.**—Such process shall result in—

1 (A) either granting or denying the request;

2 (B) in the event of a denial, considering al-  
3 ternatives to the proposed change that might  
4 meet the employee's needs and granting or de-  
5 nying a request for an alternative change in the  
6 terms and conditions of employment as set  
7 forth in subsection (a); and

8 (C) in the event of a denial, stating the  
9 reason for denial, including whether any such  
10 reason is a bona fide business reason.

11 (3) INFORMATION.—If information provided by  
12 the employee making a request under this section re-  
13 quires clarification, the employer shall explain what  
14 further information is needed and give the employee  
15 reasonable time to produce the information.

16 (c) REQUESTS RELATED TO CAREGIVING, ENROLL-  
17 MENT IN EDUCATION OR TRAINING, OR A SECOND JOB.—

18 If an employee makes a request for a change in the terms  
19 and conditions of employment as set forth in subsection  
20 (a) because of a serious health condition of the employee,  
21 due to the employee's responsibilities as a caregiver, or  
22 due to the employee's enrollment in a career-related edu-  
23 cational or training program, or if a part-time employee  
24 makes a request for such a change for a reason related  
25 to a second job, the employer shall grant the request, un-

1 less the employer has a bona fide business reason for deny-  
 2 ing the request.

3 (d) OTHER REQUESTS.—If an employee makes a re-  
 4 quest for a change in the terms and conditions of employ-  
 5 ment as set forth in subsection (a), for a reason other than  
 6 those reasons set forth in subsection (c), the employer may  
 7 deny the request for any reason that is not unlawful. If  
 8 the employer denies such a request, the employer shall  
 9 provide the employee with the reason for the denial, in-  
 10 cluding whether any such reason is a bona fide business  
 11 reason.

12 **SEC. 4. REQUIREMENTS FOR REPORTING TIME PAY, SPLIT**  
 13 **SHIFT PAY, AND ADVANCE NOTICE OF WORK**  
 14 **SCHEDULES FOR RETAIL, FOOD SERVICE,**  
 15 **CLEANING, OR SECRETARY'S DESIGNATED**  
 16 **EMPLOYEES.**

17 (a) REPORTING TIME PAY REQUIREMENT.—An em-  
 18 ployer shall pay a retail, food service, or cleaning employee  
 19 or a designated employee, in an additional occupation des-  
 20 ignated by the Secretary, under section 8(a)(2) as appro-  
 21 priate for coverage under this Act (referred to in this Act  
 22 as “a retail, food service, cleaning, or Secretary’s des-  
 23 ignated employee”)—

24 (1) for at least 4 hours at the regular rate of  
 25 pay of the employee involved for each day on which

1 the retail, food service, cleaning, or Secretary's des-  
2 igned employee reports for work, as required by  
3 the employer, but is given less than four hours of  
4 work, except that if the employee's scheduled hours  
5 for a day are less than 4 hours, such employee shall  
6 be paid for the scheduled hours of the employee in-  
7 volved for that day if given less than the scheduled  
8 hours of work; and

9 (2) for at least 1 hour at the regular rate of  
10 pay of the employee involved for each day the retail,  
11 food service, cleaning, or Secretary's designated em-  
12 ployee is given specific instructions to contact the  
13 employer of the employee involved, or wait to be con-  
14 tacted by the employer, less than 24 hours in ad-  
15 vance of the start of a potential work shift to deter-  
16 mine whether the employee must report to work for  
17 such shift.

18 (b) SPLIT SHIFT PAY REQUIREMENT.—An employer  
19 shall pay a retail, food service, cleaning, or Secretary's  
20 designated employee for one additional hour at the em-  
21 ployee's regular rate of pay for each day during which the  
22 employee works a split shift.

23 (c) ADVANCE NOTICE REQUIREMENT.—

24 (1) INITIAL SCHEDULE.—On or before a new  
25 retail, food service, cleaning, or Secretary's des-

1       ignated employee's first day of work, the employer  
2       shall inform the employee in writing of the work  
3       schedule of the employee involved and the minimum  
4       number of expected work hours the employee will be  
5       assigned to work per month.

6               (2) PROVIDING NOTICE OF NEW SCHEDULES.—

7       Except as provided in paragraph (3), if a retail, food  
8       service, cleaning, or Secretary's designated employ-  
9       ee's work schedule changes from the work schedule  
10      of which the employee was informed pursuant to  
11      paragraph (1), the employer shall provide the em-  
12      ployee with the new work schedule of the employee  
13      involved not less than 14 days before the first day  
14      of the new work schedule. If the expected minimum  
15      number of work hours that a retail, food service,  
16      cleaning, or Secretary's designated employee will be  
17      assigned changes from the number of which the em-  
18      ployee involved was informed pursuant to paragraph  
19      (1), the employer shall also provide notification of  
20      that change, not less than 14 days in advance of the  
21      first day this change will go into effect. Nothing in  
22      this subsection shall be construed to prohibit an em-  
23      ployer from providing greater advance notice of a re-  
24      tail, food service, cleaning, or Secretary's designated

1 employee's work schedule than is required under this  
2 section.

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

16 (4) NOTIFICATIONS IN WRITING.—The notifica-  
17 tions required under paragraphs (1) and (2) shall be  
18 made to the employee involved in writing. Nothing  
19 in this subsection shall be construed as prohibiting  
20 an employer from using any additional means of no-  
21 tifying a retail, food service, cleaning, or Secretary's  
22 designated employee of the work schedule of the em-  
23 ployee involved.

24 (5) SCHEDULE POSTING REQUIREMENT.—Every  
25 employer employing any retail, food service, clean-

1       ing, or Secretary’s designated employee, subject to  
2       this Act shall post the schedule and keep it posted  
3       in a conspicuous place in every establishment where  
4       such employee is employed so as to permit the em-  
5       ployee involved to observe readily a copy. Availability  
6       of that schedule by electronic means accessible by all  
7       retail, food service, cleaning, or Secretary’s des-  
8       ignated employees, of that employer shall be consid-  
9       ered compliance with this subsection.

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

19           (d) PAY STUB TRANSPARENCY.—Any pay provided  
20       to an employee pursuant to subsection (a), (b), or (c)(3)  
21       (referred to in this paragraph as “additional pay”) shall  
22       be included in the employee’s regular paycheck. The em-  
23       ployer shall identify, in the corresponding written wage  
24       statement or pay stub, the total number of hours of addi-  
25       tional pay provided for the pay period involved and wheth-



1 er the additional pay was due to the requirements of sub-  
2 section (a)(1), the requirements of subsection (a)(2), the  
3 requirements of subsection (b), or the requirements of  
4 subsection (c)(3).

5 (e) EXCEPTION.—The requirements in subsections  
6 (a) through (d) shall not apply during periods when reg-  
7 ular operations of the employer are suspended due to  
8 events beyond the employer’s control.

9 **SEC. 5. PROHIBITED ACTS.**

10 (a) INTERFERENCE WITH RIGHTS.—It shall be un-  
11 lawful for any employer to interfere with, restrain, or deny  
12 the exercise or the attempt to exercise, any right of an  
13 employee as set forth in section 3 or of a retail, food serv-  
14 ice, cleaning, or Secretary’s designated employee as set  
15 forth in section 4.

16 (b) RETALIATION PROHIBITED.—It shall be unlawful  
17 for any employer to discharge, threaten to discharge, de-  
18 mote, suspend, reduce work hours of, or take any other  
19 adverse employment action against any employee in retal-  
20 iation for exercising the rights of an employee under this  
21 Act or opposing any practice made unlawful by this Act.  
22 For purposes of section 3, such retaliation shall include  
23 taking an adverse employment action against any em-  
24 ployee on the basis of that employee’s eligibility or per-  
25 ceived eligibility to request or receive a change in the

1 terms and conditions of employment, as described in such  
 2 section, on the basis of a reason set forth in section 3(c).

3 (c) INTERFERENCE WITH PROCEEDINGS OR INQUIR-  
 4 IES.—It shall be unlawful for any person to discharge or  
 5 in any other manner discriminate against any individual  
 6 because such individual—

7 (1) has filed any charge, or has instituted or  
 8 caused to be instituted any proceeding, under or re-  
 9 lated to this Act;

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

13 (3) has testified, or is about to testify, in any  
 14 inquiry or proceeding relating to any right provided  
 15 under this Act.

16 **SEC. 6. REMEDIES AND ENFORCEMENT.**

17 (a) INVESTIGATIVE AUTHORITY.—

18 (1) IN GENERAL.—To ensure compliance with  
 19 this Act, or any regulation or order issued under  
 20 this Act, the Secretary shall have, subject to para-  
 21 graph (3), the investigative authority provided under  
 22 section 11(a) of the Fair Labor Standards Act of  
 23 1938 (29 U.S.C. 211(a)).

24 (2) OBLIGATION TO KEEP AND PRESERVE  
 25 RECORDS.—Each employer shall make, keep, and

1 preserve records pertaining to compliance with this  
2 Act in accordance with regulations issued by the  
3 Secretary under section 8.

4 (3) REQUIRED SUBMISSIONS GENERALLY LIM-  
5 ITED TO AN ANNUAL BASIS.—The Secretary shall  
6 not under the authority of this subsection require  
7 any employer to submit to the Secretary any books  
8 or records more than once during any 12-month pe-  
9 riod, unless the Secretary has reasonable cause to  
10 believe there may exist a violation of this Act or any  
11 regulation or order issued pursuant to this Act, or  
12 is investigating a charge pursuant to subsection (c).

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

18 (b) CIVIL ACTION BY EMPLOYEES.—

19 (1) LIABILITY.—Any employer who violates sec-  
20 tion 5(a) (with respect to a right set forth in sub-  
21 section (a), (b), or (c)(3) of section 4) or subsection  
22 (b) or (c) of section 5 (referred to in this section as  
23 a “covered provision”) shall be liable to any em-  
24 ployee affected for—

25 (A) damages equal to the amount of—

1 (i) any wages, salary, employment  
2 benefits (as defined in section 101 of the  
3 Family and Medical Leave Act of 1993 (29  
4 U.S.C. 2611)), or other compensation de-  
5 nied, lost, or owed to such employee by  
6 reason of the violation; or

7 (ii) in a case in which wages, salary,  
8 employment benefits (as so defined), or  
9 other compensation have not been denied,  
10 lost, or owed to the employee, any actual  
11 monetary losses sustained by the employee  
12 as a direct result of the violation;

13 (B) interest on the amount described in  
14 subparagraph (A) calculated at the prevailing  
15 rate;

16 (C) an additional amount as liquidated  
17 damages equal to the sum of the amount de-  
18 scribed in subparagraph (A) and the interest  
19 described in subparagraph (B), except that if  
20 an employer who has violated a covered provi-  
21 sion proves to the satisfaction of the court that  
22 the act or omission which violated the covered  
23 provision was in good faith and that the em-  
24 ployer had reasonable grounds for believing that  
25 the act or omission was not a violation of a cov-

1           ered provision, such court may, in the discretion  
2           of the court, reduce the amount of liability to  
3           the amount and interest determined under sub-  
4           paragraphs (A) and (B), respectively; and

5                   (D) such equitable relief as may be appro-  
6           priate, including employment, reinstatement,  
7           and promotion.

8           (2) RIGHT OF ACTION.—An action to recover  
9           the damages or equitable relief set forth in para-  
10          graph (1) may be maintained against any employer  
11          (including a public agency) in any Federal or State  
12          court of competent jurisdiction by any one or more  
13          employees for and on behalf of—

14                   (A) the employees; or

15                   (B) the employees and other employees  
16          similarly situated.

17          (3) FEES AND COSTS.—The court in such an  
18          action shall, in addition to any judgment awarded to  
19          the plaintiff, allow a reasonable attorney's fee, rea-  
20          sonable expert witness fees, and other costs of the  
21          action to be paid by the defendant.

22          (4) LIMITATIONS.—The right provided by para-  
23          graph (2) to bring an action by or on behalf of any  
24          employee shall terminate on the filing of a complaint  
25          by the Secretary in an action under subsection (c)(3)

1 in which a recovery is sought of the damages de-  
2 scribed in paragraph (1)(A) owing to an employee by  
3 an employer liable under paragraph (1) unless the  
4 action described is dismissed without prejudice on  
5 motion of the Secretary.

6 (c) ACTIONS BY THE SECRETARY.—

7 (1) ADMINISTRATIVE ACTION.—The Secretary  
8 shall receive, investigate, and attempt to resolve  
9 complaints of violations of this Act in the same man-  
10 ner that the Secretary receives, investigates, and at-  
11 tempts to resolve complaints of violations of sections  
12 6 and 7 of the Fair Labor Standards Act of 1938  
13 (29 U.S.C. 206 and 207), and may issue an order  
14 making determinations, and assessing a civil penalty  
15 described in paragraph (3) (in accordance with para-  
16 graph (3)), with respect to such an alleged violation.

17 (2) ADMINISTRATIVE REVIEW.—An affected  
18 person who takes exception to an order issued under  
19 paragraph (1) may request review of and a decision  
20 regarding such an order by an administrative law  
21 judge. In reviewing the order, the administrative law  
22 judge may hold an administrative hearing con-  
23 cerning the order, in accordance with the require-  
24 ments of sections 554, 556, and 557 of title 5,  
25 United States Code. Such hearing shall be conducted

1 expeditiously. If no affected person requests such re-  
2 view within 60 days after the order is issued under  
3 paragraph (1), the order shall be considered to be a  
4 final order that is not subject to judicial review.

5 (3) CIVIL PENALTY.—An employer who willfully  
6 and repeatedly violates—

7 (A) paragraph (1), (2), (4), or (5) of sec-  
8 tion 4(c), or section 4(d), shall be subject to a  
9 civil penalty in an amount to be determined by  
10 the Secretary, but not to exceed \$100 per viola-  
11 tion; and

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

16 (4) CIVIL ACTION.—The Secretary may bring  
17 an action in any court of competent jurisdiction on  
18 behalf of aggrieved employees to—

19 (A) restrain violations of this Act;

20 (B) award such equitable relief as may be  
21 appropriate, including employment, reinstatement,  
22 and promotion; and

23 (C) in the case of a violation of a covered  
24 provision, recover the damages and interest de-

1           scribed in subparagraphs (A) through (C) of  
2           subsection (b)(1).

3           (d) LIMITATION.—

4           (1) IN GENERAL.—Except as provided in para-  
5           graph (2), an action may be brought under this sec-  
6           tion not later than 2 years after the date of the last  
7           event constituting the alleged violation for which the  
8           action is brought.

9           (2) WILLFUL VIOLATION.—In the case of such  
10          action brought for a willful violation of section 5,  
11          such action may be brought within 3 years of the  
12          date of the last event constituting the alleged viola-  
13          tion for which such action is brought.

14          (3) COMMENCEMENT.—In determining when an  
15          action is commenced by the Secretary under this  
16          section for the purposes of this subsection, it shall  
17          be considered to be commenced on the date when the  
18          complaint is filed.

19          (e) OTHER ADMINISTRATIVE OFFICERS.—

20          (1) BOARD.—In the case of employees described  
21          in section 2(9)(C), the authority of the Secretary  
22          under this Act shall be exercised by the Board of Di-  
23          rectors of the Office of Compliance.

24          (2) PRESIDENT; MERIT SYSTEMS PROTECTION  
25          BOARD.—In the case of employees described in sec-



1       tion 2(9)(D), the authority of the Secretary under  
2       this Act shall be exercised by the President and the  
3       Merit Systems Protection Board.

4               (3) OFFICE OF PERSONNEL MANAGEMENT.—In  
5       the case of employees described in section 2(9)(E),  
6       the authority of the Secretary under this Act shall  
7       be exercised by the Office of Personnel Management.

8               (4) LIBRARIAN OF CONGRESS.—In the case of  
9       employees of the Library of Congress, the authority  
10      of the Secretary under this Act shall be exercised by  
11      the Librarian of Congress.

12              (5) COMPTROLLER GENERAL.—In the case of  
13      employees of the Government Accountability Office,  
14      the authority of the Secretary under this Act shall  
15      be exercised by the Comptroller General of the  
16      United States.

17 **SEC. 7. NOTICE AND POSTING.**

18       (a) IN GENERAL.—Each employer shall post and  
19      keep posted, in conspicuous places on the premises of the  
20      employer where notices to employees and applicants for  
21      employment are customarily posted, a notice, to be pre-  
22      pared or approved by the Secretary (or the corresponding  
23      administrative officer specified in section 8) setting forth  
24      excerpts from, or summaries of, the pertinent provisions

1 of this Act and information pertaining to the filing of a  
2 complaint under this Act.

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

6 **SEC. 8. REGULATIONS.**

7 (a) SECRETARY OF LABOR.—

8 (1) IN GENERAL.—Except as provided in sub-  
9 sections (b) through (f), not later than 180 days  
10 after the date of enactment of this Act, the Sec-  
11 retary shall issue such regulations as may be nec-  
12 essary to implement this Act.

13 (2) REGULATIONS REGARDING ADDITIONAL OC-  
14 CUPATIONS TO BE COVERED.—

15 (A) IN GENERAL.—In carrying out para-  
16 graph (1), the Secretary shall issue regulations  
17 that specify a process the Secretary will follow  
18 to identify and designate additional occupa-  
19 tions, for purposes of section 4(a), that are ap-  
20 propriate for coverage under this Act. Non-  
21 exempt employees in such occupations shall be  
22 considered to be designated employees for pur-  
23 poses of this Act.

1 (B) CRITERIA.—The regulations shall pro-  
2 vide that the Secretary shall so designate an  
3 additional occupation—

4 (i) in which not less than 10 percent  
5 of workers employed in the occupation gen-  
6 erally—

7 (I) receive advance notice of their  
8 work schedules less than 14 days be-  
9 fore the first day of the work sched-  
10 ules; or

11 (II) experience fluctuations in the  
12 number of hours the employees are  
13 scheduled to work on a daily, weekly,  
14 or monthly basis; or

15 (ii) for which the Secretary deter-  
16 mines such designation is appropriate.

17 (C) DATA REVIEW.—In issuing the regula-  
18 tions, the Secretary shall specify the process by  
19 which the Department of Labor will review data  
20 from stakeholders, and data collected or gen-  
21 erated by the Department, in making those des-  
22 ignations.

23 (b) BOARD.—

24 (1) IN GENERAL.—Not later than 180 days  
25 after the date of enactment of this Act, the Board

1 of Directors of the Office of Compliance shall issue  
2 such regulations as may be necessary to implement  
3 this Act with respect to employees described in sec-  
4 tion 2(9)(C). The procedures applicable to regula-  
5 tions of the Board issued for the implementation of  
6 the Congressional Accountability Act of 1995 (2  
7 U.S.C. 1301 et seq.), prescribed in section 304 of  
8 that Act (2 U.S.C. 1384), shall be the procedures  
9 applicable to regulations issued under this sub-  
10 section.

11 (2) CONSIDERATION.—In prescribing the regu-  
12 lations, the Board shall take into consideration the  
13 enforcement and remedies provisions concerning the  
14 Board, and applicable to rights and protections  
15 under the Family and Medical Leave Act of 1993  
16 (29 U.S.C. 2611 et seq.), under the Congressional  
17 Accountability Act of 1995 (2 U.S.C. 1301 et seq.).

18 (3) MODIFICATIONS.—The regulations issued  
19 under paragraph (1) to implement this Act shall be  
20 the same as substantive regulations issued by the  
21 Secretary to implement this Act, except to the extent  
22 that the Board may determine, for good cause  
23 shown and stated together with the regulations  
24 issued by the Board, that a modification of such  
25 substantive regulations would be more effective for

1 the implementation of the rights and protections  
2 under this Act.

3 (c) PRESIDENT.—

4 (1) IN GENERAL.—Not later than 180 days  
5 after the date of enactment of this Act, the Presi-  
6 dent shall issue such regulations as may be nec-  
7 essary to implement this Act with respect to employ-  
8 ees described in section 2(9)(D).

9 (2) CONSIDERATION.—In prescribing the regu-  
10 lations, the President shall take into consideration  
11 the enforcement and remedies provisions concerning  
12 the President and the Merit Systems Protection  
13 Board, and applicable to rights and protections  
14 under the Family and Medical Leave Act of 1993,  
15 under chapter 5 of title 3, United States Code.

16 (3) MODIFICATIONS.—The regulations issued  
17 under paragraph (1) to implement this Act shall be  
18 the same as substantive regulations issued by the  
19 Secretary to implement this Act, except to the extent  
20 that the President may determine, for good cause  
21 shown and stated together with the regulations  
22 issued by the President, that a modification of such  
23 substantive regulations would be more effective for  
24 the implementation of the rights and protections  
25 under this Act.

1 (d) OFFICE OF PERSONNEL MANAGEMENT.—

2 (1) IN GENERAL.—Not later than 180 days  
3 after the date of enactment of this Act, the Office  
4 of Personnel Management shall issue such regula-  
5 tions as may be necessary to implement this Act  
6 with respect to employees described in section  
7 2(9)(E).

8 (2) CONSIDERATION.—In prescribing the regu-  
9 lations, the Office shall take into consideration the  
10 enforcement and remedies provisions concerning the  
11 Office under subchapter V of chapter 63 of title 5,  
12 United States Code.

13 (3) MODIFICATIONS.—The regulations issued  
14 under paragraph (1) to implement this Act shall be  
15 the same as substantive regulations issued by the  
16 Secretary to implement this Act, except to the extent  
17 that the Office may determine, for good cause shown  
18 and stated together with the regulations issued by  
19 the Office, that a modification of such substantive  
20 regulations would be more effective for the imple-  
21 mentation of the rights and protections under this  
22 Act.

23 (e) LIBRARIAN OF CONGRESS.—

24 (1) IN GENERAL.—Not later than 180 days  
25 after the date of enactment of this Act, the Librar-

1       ian of Congress shall issue such regulations as may  
2       be necessary to implement this Act with respect to  
3       employees of the Library of Congress.

4           (2) CONSIDERATION.—In prescribing the regu-  
5       lations, the Librarian shall take into consideration  
6       the enforcement and remedies provisions concerning  
7       the Librarian of Congress under title I of the Fam-  
8       ily and Medical Leave Act of 1993 (29 U.S.C. 2611  
9       et seq.).

10          (3) MODIFICATIONS.—The regulations issued  
11       under paragraph (1) to implement this Act shall be  
12       the same as substantive regulations issued by the  
13       Secretary to implement this Act, except to the extent  
14       that the Librarian may determine, for good cause  
15       shown and stated together with the regulations  
16       issued by the Librarian, that a modification of such  
17       substantive regulations would be more effective for  
18       the implementation of the rights and protections  
19       under this Act.

20       (f) COMPTROLLER GENERAL.—

21           (1) IN GENERAL.—Not later than 180 days  
22       after the date of enactment of this Act, the Comp-  
23       troller General shall issue such regulations as may  
24       be necessary to implement this Act with respect to  
25       employees of the Government Accountability Office.

1           (2) CONSIDERATION.—In prescribing the regu-  
2           lations, the Comptroller General shall take into con-  
3           sideration the enforcement and remedies provisions  
4           concerning the Comptroller General under title I of  
5           the Family and Medical Leave Act of 1993.

6           (3) MODIFICATIONS.—The regulations issued  
7           under paragraph (1) to implement this Act shall be  
8           the same as substantive regulations issued by the  
9           Secretary to implement this Act, except to the extent  
10          that the Comptroller General may determine, for  
11          good cause shown and stated together with the regu-  
12          lations issued by the Comptroller General, that a  
13          modification of such substantive regulations would  
14          be more effective for the implementation of the  
15          rights and protections under this Act.

16 **SEC. 9. RESEARCH, EDUCATION, AND TECHNICAL ASSIST-**  
17 **ANCE PROGRAM AND SURVEYS.**

18          (a) IN GENERAL.—The Secretary shall provide infor-  
19          mation and technical assistance to employers, labor orga-  
20          nizations, and the general public concerning compliance  
21          with this Act.

22          (b) PROGRAM.—In order to achieve the objectives of  
23          this Act—

24                  (1) the Secretary, acting through the Adminis-  
25          trator of the Wage and Hour Division of the Depart-



1       ment of Labor, shall issue guidance on compliance  
2       with this Act regarding providing a flexible, predict-  
3       able, or stable work environment through changes in  
4       the terms and conditions of employment as provided  
5       in section 3(a); and

6               (2) the Secretary shall carry on a continuing  
7       program of research, education, and technical assist-  
8       ance, including—

9                       (A)(i) conducting pilot programs that im-  
10       plement fairer work schedules, including by pro-  
11       moting cross training, providing three weeks or  
12       more advance notice of schedules, providing em-  
13       ployees with a minimum number of hours of  
14       work, and using computerized scheduling soft-  
15       ware to provide more flexible, predictable, and  
16       stable schedules for employees; and

17                      (ii) evaluating the results of such pilot pro-  
18       grams for employees, employee’s families, and  
19       employers;

20                      (B) publishing and otherwise making avail-  
21       able to employers, labor organizations, profes-  
22       sional associations, educational institutions, the  
23       various communication media, and the general  
24       public the findings of studies regarding fair

1 work scheduling policies and other materials for  
2 promoting compliance with this Act;

3 (C) sponsoring and assisting State and  
4 community informational and educational pro-  
5 grams; and

6 (D) providing technical assistance to em-  
7 ployers, labor organizations, professional asso-  
8 ciations, and other interested persons on means  
9 of achieving and maintaining compliance with  
10 the provisions of this Act.

11 (c) CURRENT POPULATION SURVEY.—The Secretary,  
12 acting through the Commissioner of the Bureau of Labor  
13 Statistics, and the Director of the Bureau of the Census  
14 shall—

15 (1) include in the Current Population Survey  
16 questions on—

17 (A) the amount of fluctuation in the num-  
18 ber of hours the employee is scheduled to work  
19 on a daily, weekly or monthly basis;

20 (B) the extent of advance notice an em-  
21 ployee receives of the employee's work schedule;  
22 and

23 (C) the extent to which an employee has  
24 input in the employee's work schedule; and

1           (2) conduct at regular intervals the Contingent  
2           Worker Supplement, the Work Schedules and Work  
3           at Home Supplement, and other relevant supple-  
4           ments (as determined by the Secretary), to the Cur-  
5           rent Population Survey.

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

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

12   **SEC. 11. EXEMPTION.**

13          This Act shall not apply to any employee covered by  
14          a bona fide collective bargaining agreement if the terms  
15          of the collective bargaining agreement include terms that  
16          govern work scheduling practices.

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

18          (a) IN GENERAL.—Nothing in this Act shall be con-  
19          strued as superseding, or creating or imposing any re-  
20          quirement in conflict with, any Federal, State, or local  
21          regulation or other law (including the Americans with Dis-  
22          abilities Act of 1990 (42 U.S.C. 12101 et seq.), the Fam-  
23          ily and Medical Leave Act of 1993 (29 U.S.C. 2611 et  
24          seq.), the National Labor Relations Act (29 U.S.C. 151  
25          et seq.), the Fair Labor Standards Act of 1938 (29 U.S.C.

1 201 et seq.), and title VII of the Civil Rights Act of 1964  
2 (42 U.S.C. 2000e et seq.).

3 (b) RELATIONSHIP TO COLLECTIVE BARGAINING  
4 RIGHTS.—Nothing in this Act shall be construed to dimin-  
5 ish or impair the rights of an employee under any valid  
6 collective bargaining agreement.

○