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.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 8, 2019

Ms. DeLauro (for herself, Mr. Lowenthal, Mrs. Napolitano, Mr. Levin of Michigan, Mr. Pascrell, Mrs. Dingell, Ms. Norton, Mr. Pocan, Mr. Serrano, Mr. Cicilline, Mr. Aguilar, Mr. Grijalva, Ms. Omar, Mr. Kildee, Ms. Eshoo, Ms. Lee of California, Ms. Schakowsky, Mr. Espallardo, Mr. Hastings, Mr. Khanna, Mr. Larson of Connecticut, Mr. Ryan, Mrs. Torres of California, Mr. Danny K. Davis of Illinois, Mrs. Watson Coleman, Mr. Smith of Washington, Mrs. Carolyn B. Maloney of New York, Mrs. Beatty, Mr. DeSaulnier, Ms. Bonamici, Ms. Jayapal, Miss Rice of New York, Mr. McGovern, Mr. García of Illinois, Mr. Pallone, Ms. McCollum, Mr. Tonko, Mr. Kennedy, Mr. Langevin, Ms. Pingree, and Ms. Roybal-Allard) introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committees on House Administration, Oversight and 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

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 emp-
ployees in certain occupations with evidence of unpredictable and unstable scheduling practices that negatively affect employees, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; FINDINGS.

(a) Short Title.—This Act may be cited as the “Schedules That Work Act”.

(b) Findings.—Congress finds the following:

(1) The vast majority of the United States workforce today is juggling responsibilities at home and at work. Women are primary breadwinners or co-breadwinners in 64 percent of families in the United States.

(2) Despite the dual responsibilities of today’s workforce, both hourly and salaried workers often have little ability to make changes to their work schedules when those changes are needed to accommodate family responsibilities.

(3)(A) Mothers working in low-wage jobs are more likely to be the primary or sole breadwinner for their families than mothers working in higher-wage jobs. For example, nearly 7 in 10 mothers in the one-fifth of households in the United States with the lowest incomes bring home all or most of their fami-
lies’ income, compared to less than one-third of their
counterparts in the highest-income quintile.

(B) At the same time, low-wage workers have
the least control over their work schedules and the
most unpredictable schedules. Across industries,
more than half (55 percent) of low-paid hourly work-
ers report that they receive a week or less of notice
of their work schedules, and nearly two-thirds (65
percent) report that their employer controls the tim-
ing of their work hours. In some industries, “just-
in-time” scheduling practices, which base workers’
schedules on perceived consumer demand to mini-
mize labor costs, are particularly common. Employ-
ers using these practices often post work schedules
with little notice, vary work hours widely from week
to week, cancel shifts at the last minute, and sched-
ule employees for “on call” shifts (requiring an em-
ployee to call in to work to find out whether the em-
ployee will have to work later that day) or
“clopening” shifts (requiring an employee to work a
closing shift at night followed by an opening shift a
few hours later). For example, surveys of nearly
30,000 hourly workers employed by the 80 largest
retail and food service chains in the United States
show that—
(i) about two-thirds of hourly retail and food service workers receive their work schedules with less than 2 weeks’ advance notice;

(ii) more than one in 4 hourly retail and food service workers have been scheduled for on-call shifts, and half have worked “clopening” shifts; and

(iii) only one in 5 hourly retail and food service workers report working a regular daytime schedule.

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

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

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

(C) pursue workforce training;

(D) get or keep a second job, which many workers need to make ends meet;

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

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

(5) A growing body of research demonstrates
that unstable and unpredictable work schedules have
significant detrimental impacts on sleep quality,
mental health, and happiness, and are associated
with unstable child care arrangements and negative
health and behavioral outcomes for children. These
work schedules—and the work-family conflict they
produce—are also associated with higher rates of
turnover, which creates further instability for em-
ployers and workers. Workers of color are also more
likely than their White counterparts, even compared
to White coworkers at the same company, to experi-
ence unstable work schedules. For example:

(A) Unstable work schedules lead to more
household economic strain and time conflicts,
and hurt the well-being of parents. While
household economic strain, time conflicts, and
the well-being of parents may all negatively im-
pact the health and behavior of a child, a par-
ent’s well-being is the most significant factor in
determining the behavior and health outcomes
of a child. The more severe the work schedule
instability, the worse the child’s behavior and health outcomes.

(B) The exposure of a parent to on-call shifts and last-minute shift changes are associated with more unstable child care arrangements and with the use of siblings to provide care.

(C) Work schedule instability causes more work-family conflict, which increases the chance that a worker will be forced to leave his or her job. This turnover is associated with downward mobility of the worker’s earnings.

(D)(i) Relative to White workers, workers of color are more likely to—

(I) have cancelled shifts;

(II) have on-call shifts;

(III) be involuntary part-time workers;

(IV) have trouble getting time off;

and

(V) work “clopening” shifts, as described in paragraph (3)(B).

(ii) The statistics described in clause (i) remain true after controlling for demographics, human capital, worker power, firm segregation,
and discordance with the race or ethnicity of
the worker and the manager. Race gaps in job
quality are greater for women of color.

(E) Workers who receive shorter advanced
notice, those who work on-call shifts, those who
experience last minute shift cancellation and
timing changes, and those with more volatile
work hours are more likely to experience hun-
ger, residential hardships, and more overall eco-

(6) Unpredictable and unstable work schedules
are common in a wide range of occupations, with
evidence of particular concentration in food service,
retail, cleaning, hospitality, and warehouse occupa-
tions. These occupations are critically important to
the United States economy.

(7) Employers that have implemented fair work
scheduling policies that allow workers to have more
control over their work schedules, and provide more
predictable and stable schedules, have experienced
significant benefits, including reductions in absentee-
ism and workforce turnover, and increased worker
morale and engagement. For example, when Gap
Inc. piloted strategies to make work schedules more
stable and predictable for employees, the Gap Inc.
stores that implemented these strategies experienced higher productivity, and a 7-percent increase in sales, compared to those Gap Inc. stores that did not implement these strategies.

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

SEC. 2. DEFINITIONS.

As used in this Act:

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

(A) the identifiable burden of additional costs to an employer, including the cost of productivity loss, retraining or hiring employees, or transferring employees from one facility to another facility;

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

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

(D) a significant detrimental effect on business performance;
(E) insufficiency of work during the periods an employee proposes to work;

(F) the need to balance competing scheduling requests when it is not possible to grant all such requests without a significant detrimental effect on the employer’s ability to meet organizational needs; or

(G) such other reason as may be specified by the Secretary of Labor (or the corresponding administrative officer specified in section 9).

(2) CAREER-RELATED EDUCATIONAL OR TRAINING PROGRAM.—The term “career-related educational or training program” means an educational or training program or program of study offered by a public, private, or nonprofit career and technical education school, institution of higher education, or other entity that provides academic education, career and technical education, or training (including remedial education or English as a second language, as appropriate), that is a program that leads to a recognized postsecondary credential (as identified under section 122(d) of the Workforce Innovation and Opportunity Act (29 U.S.C. 3152(d)), and provides career awareness information. The term includes a program allowable under the Workforce Innovation
and Opportunity Act (29 U.S.C. 3101 et seq.), the
Carl D. Perkins Career and Technical Education
Act of 2006 (20 U.S.C. 2301 et seq.), or the Higher
Education Act of 1965 (20 U.S.C. 1001 et seq.),
without regard to whether or not the program is
funded under the corresponding Act.

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

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

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

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

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

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

(A) under age 18; or
(B) age 18 or older and incapable of self-care because of a mental or physical disability.

(5) Commerce terms.—The terms “commerce” and “industry or activity affecting commerce” have the meanings given the terms in section 101 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611).

(6) Covered employer.—

(A) In general.—The term “covered employer”—

(i) means any person engaged in commerce or in any industry or activity affecting commerce who employs 15 or more employees (described in paragraph (9)(A));

(ii) includes any person who acts, directly or indirectly, in the interest of such an employer to any of the employees (described in paragraph (9)(A)) of such employer;

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

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

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

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

(7) DOMESTIC PARTNER.—The term “domestic partner” means the individual recognized as being in a relationship with an employee under any domestic partnership, civil union, or similar law of the State or political subdivision of a State in which the employee resides.
(8) EMPLOY.—The term “employ” has the meaning given the term in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

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

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

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

(C) a covered employee, as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301), other than an applicant for employment;

(D) a covered employee, as defined in section 411(c) of title 3, United States Code;

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

(F) an employee of the Library of Congress; or

(G) an employee of the Government Accountability Office.
(10) **EMPLOYER.**—The term “employer” means a person—

(A) who is—

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

(ii) an entity employing a State employee described in section 304(a) of the Government Employee Rights Act of 1991;

(iii) an employing office, as defined in section 101 of the Congressional Accountability Act of 1995;

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

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

(vi) the Librarian of Congress; or

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

(B) who is engaged in commerce (including government), in the production of goods for commerce, or in an enterprise engaged in com-
merce (including government) or in the production of goods for commerce.

(11) FAMILY RELATIONSHIP.—The term “family relationship” means a relationship with—

(A) a child, spouse, domestic partner, parent, grandchild, grandparent, sibling, or parent of a spouse or domestic partner; or

(B) any individual related to the employee involved by blood or affinity, whose close association with the employee is the equivalent of a family relationship described in subparagraph (A).

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

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

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

(15) HOSPITALITY ESTABLISHMENT.—The term “hospitality establishment” means a hotel, motel, inn, or similar transient lodging establishment.
(16) NONEXEMPT EMPLOYEE.—The term “non-exempt employee” means an employee who is not employed in a bona fide executive, administrative, or professional capacity, as defined for purposes of section 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(1)).

(17) ON-CALL SHIFT.—The term “on-call shift” means any time during which an employer requires an employee to—

(A) be available to work; and

(B) contact the employer or the designee of the employer, or wait to be contacted by the employer or designee, to determine whether the employee is required to report to work at that time.

(18) PARENT.—The term “parent” means a biological or adoptive parent, a stepparent, or a person who stood in a parental relationship to an employee when the employee was a child.

(19) PARENTAL RELATIONSHIP.—The term “parental relationship” means a relationship in which a person assumed the obligations incident to parenthood for a child and discharged those obligations before the child reached adulthood.
(20) Retail, food service, cleaning, hospitality, or warehouse employee.—The term “retail, food service, cleaning, hospitality, or warehouse employee” means a nonexempt employee who is employed in a hospitality establishment, in a warehouse establishment, or in any of the following occupations, as described by the Bureau of Labor Statistics Standard Occupational Classification System (as in effect on the day before the date of enactment of this Act):

(A) Retail sales occupations consisting of occupations described in 41–1010 and 41–2000, and all subdivisions thereof, of such System, which includes first-line supervisors of sales workers, cashiers, gambling change persons and booth cashiers, counter and rental clerks, parts salespersons, and retail salespersons.

(B) Food preparation and serving related occupations as described in 35–0000, and all subdivisions thereof, of such System, which includes supervisors of food preparation and serving workers, cooks and food preparation workers, food and beverage serving workers, and
other food preparation and serving related workers.

(C) Building cleaning occupations as described in 37–2011, 37–2012, and 37–2019 of such System, which includes janitors and cleaners, maids and housekeeping cleaners, and building cleaning workers.

(21) Secretary.—The term “Secretary” means the Secretary of Labor.

(22) Secretary’s designated employee.—The term “Secretary’s designated employee” means an employee employed in an occupation, other than a retail, food service, cleaning, hospitality, or warehouse occupation, that is designated by the Secretary under section 9(a)(2) as appropriate for coverage under section 4.

(23) Serious health condition.—The term “serious health condition” has the meaning given the term in section 101 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611).

(24) Sibling.—The term “sibling” means a brother or sister, whether related by half blood, whole blood, or adoption, or as a stepsibling.
(25) **Split shift.**—The term “split shift” means a schedule of daily hours in which the hours worked are not consecutive, except that—

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

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

(26) **Spouse.**—

(A) **In general.**—The term “spouse” means a person with whom an individual entered into—

(i) a marriage as defined or recognized under State law in the State in which the marriage was entered into; or

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

(B) **Same-Sex or Common Law Marriage.**—Such term includes an individual in a same-sex or common law marriage that meets the requirements of subparagraph (A).
(27) STATE.—The term “State” has the meaning given the term in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

(28) WAREHOUSE ESTABLISHMENT.—The term “warehouse establishment” means any business that engages primarily in the storage of goods, wares, or commodities for hire or compensation, and, in connection with such storage, may include the loading, packing, sorting, stacking, wrapping, distribution, or delivery of those goods, wares, or commodities.

(29) WORK SCHEDULE.—The term “work schedule” means all of an employee’s regular work shifts and on-call shifts, including specific start and end times for each shift, during a consecutive 7-day period.

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

(31) WORK SHIFT.—The term “work shift” means the specific hours of the workday during which an employee works.
SEC. 3. RIGHT TO REQUEST AND RECEIVE A FLEXIBLE, PREDICTABLE, OR STABLE WORK SCHEDULE.

(a) Right To Request.—An employee may apply to the employee’s employer to request a change in the terms and conditions of employment as they relate to—

(1) the number of hours the employee is required to work or be on call for work;

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

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

(4) the amount of notification the employee receives of work schedule assignments; and

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

(b) Employer Obligation To Engage In An Interactive Process.—

(1) In General.—If an employee applies to the employee’s employer to request a change in the terms and conditions of employment as set forth in subsection (a), the employer shall engage in a timely, good faith interactive process with the employee that includes a discussion of potential schedule changes that would meet the employee’s needs.

(2) Result.—Such process shall result in—
(A) either granting or denying the request;

(B) in the event of a denial, considering alternatives to the proposed change that might meet the employee’s needs and granting or denying a request for an alternative change in the terms and conditions of employment as set forth in subsection (a); and

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

(3) INFORMATION.—If information provided by the employee making a request under this section requires clarification, the employer shall explain what further information is needed and give the employee reasonable time to produce the information.

(e) REQUESTS RELATED TO CAREGIVING, ENROLLMENT IN EDUCATION OR TRAINING, OR A SECOND JOB.—If an employee makes a request for a change in the terms and conditions of employment as set forth in subsection (a) because of a serious health condition of the employee, due to the employee’s responsibilities as a caregiver, or due to the employee’s enrollment in a career-related educational or training program, or if an employee makes a request for such a change for a reason related to a second job, the employer shall grant the request, unless the em-
employer has a bona fide business reason for denying the request.

(d) Other Requests.—If an employee makes a request for a change in the terms and conditions of employment as set forth in subsection (a), for a reason other than those reasons set forth in subsection (c), the employer may deny the request for any reason that is not unlawful. If the employer denies such a request, the employer shall provide the employee with the reason for the denial, including whether any such reason is a bona fide business reason.

SEC. 4. Requirements for Predictability Pay, Split Shift Pay, and Advance Notice of Work Schedules for Retail, Food Service, Cleaning, Hospitality, Warehouse, or Secretary’s Designated Employees.

(a) Advance Notice Requirement.—

(1) Initial Schedule.—On or before the first day of work for a new retail, food service, cleaning, hospitality, or warehouse employee, or Secretary’s designated employee, the employer shall inform the employee of the work schedule of the employee and the minimum number of expected work hours the employee will be assigned to work per month.

(2) Providing Notice of New Schedules.—
(A) In general.—Except as provided in subsection (b)(2), if the work schedule of a retail, food service, cleaning, hospitality, or warehouse employee, or Secretary’s designated employee, changes from the work schedule of which the employee was informed pursuant to paragraph (1), the employer shall provide the employee with the new work schedule of the employee not less than 14 days before the first day of the new work schedule. Such a change shall include a change in the number of hours of work for which an employee is assigned.

(B) Compensation for failure to provide timely notice.—An employer that violates subparagraph (A) shall compensate each affected employee in the amount of $75 per day that the new work schedule is not provided.

(3) Notifications in writing.—The notifications of the work schedules required under paragraphs (1) and (2) shall be made to the employee involved in writing.

(4) Schedule posting requirement.—

(A) In general.—Every employer employing any retail, food service, cleaning, hospitality, or warehouse employee, or Secretary’s
designated employee, shall post a copy of the
work schedule of each such employee and keep
it posted in a conspicuous place in every estab-
ishment where such employee is employed so as
to permit the employee involved to observe read-
ily the copy. Availability of that schedule by
electronic means accessible to all retail, food
service, cleaning, hospitality, or warehouse em-
ployees, or Secretary’s designated employees, of
that employer shall be considered compliance
with this subparagraph.

(B) RIGHT TO DECLINE.—A retail, food
service, cleaning, hospitality, or warehouse em-
ployee, or Secretary’s designated employee, may
decline to work any hours not included in the
work schedule posted under subparagraph (A)
as work hours for the employee.

(C) CONSENT.—If a retail, food service,
cleaning, hospitality, or warehouse employee, or
Secretary’s designated employee, voluntarily
consents to work any hours not posted under
subparagraph (A), such consent must be re-
corded in writing.
(5) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to prohibit an employer from—

(A) providing greater advance notice of the work schedule of a retail, food service, cleaning, hospitality, or warehouse employee, or Secretary’s designated employee, than is required under this subsection; or

(B) using any means, in addition to the written means required under paragraph (3), of notifying a retail, food service, cleaning, hospitality, or warehouse employee, or Secretary’s designated employee, of the work schedule of the employee.

(b) PREDICTABILITY FOR WORK SCHEDULE CHANGES MADE WITH LESS THAN 14 DAYS’ NOTICE.—

(1) IN GENERAL.—An employer may, subject to subsection (a) and paragraph (2), make changes as needed to the work schedule of a retail, food service, cleaning, hospitality, or warehouse employee, or Secretary’s designated employee, including by offering additional hours of work in addition to those scheduled pursuant to the requirements under subsection (a).
(2) Predictability pay.—Except as provided in paragraph (3), for each employer-initiated change to a work schedule provided to an employee under subsection (a) that occurs less than 14 days prior to the first day on which the change is to take effect, the employer shall be required to provide the affected employee with pay (referred to in this subsection as “predictability pay”) at the following rates:

(A) One hour at the employee’s regular rate of pay if such change is an addition to the hours the employee is scheduled to work under subsection (a) or if the employer changes the date, time, or location of the work shift with no loss of hours.

(B) Not less than one-half times the employee’s regular rate of pay per hour for any hour that the employee is scheduled to work under subsection (a) and does not work due to the employer subtracting or canceling such scheduled hours of work.

(3) Exceptions to predictability pay.—An employer shall not be required to pay predictability pay under paragraph (2), or to obtain written con-
sent pursuant to subsection (a)(5), under any of the following circumstances:

(A) A retail, food service, cleaning, hospitality, or warehouse employee, or Secretary’s designated employee, requests a shift change in writing, including through the use of sick leave, vacation leave, or any other leave policy offered by the employer.

(B) A schedule change is the result of a mutually agreed upon shift trade or coverage arrangement between retail, food service, cleaning, hospitality, or warehouse employees, or Secretary’s designated employees, subject to any policy of the employer regarding required conditions for employees to exchange shifts.

(C) The employer’s operations cannot begin or continue due to—

(i) a threat to the property of an employee or the employer;

(ii) the failure of a public utility or the shutdown of public transportation;

(iii) a fire, flood, or other natural disaster;

(iv) a state of emergency declared by the President of the United States or by
the governor of the State, or the mayor of
the city, in which the operations are lo-
cated; or

(v) a severe weather condition that
poses a threat to employee safety.

(c) SPLIT SHIFT PAY REQUIREMENT.—An employer
shall pay a retail, food service, cleaning, hospitality, or
warehouse employee, or Secretary’s designated employee,
for one additional hour at the employee’s regular rate of
pay for each day during which the employee works a split
shift.

(d) PAY STUB TRANSPARENCY.—Any pay provided
to an employee pursuant to subsection (a), (b), or (c) (re-
ferred to in this subsection as “additional pay’’) shall be
included in the employee’s regular paycheck. The employer
shall identify, in the corresponding written wage statement
or pay stub, the total number of hours of additional pay
provided for the pay period involved and whether the addi-
tional pay was due to the requirements of subsection (a),
the requirements of subsection (b), or the requirements
of subsection (c).

SEC. 5. RIGHT TO REST BETWEEN WORK SHIFTS.

(a) In General.—An employee employed by a cov-
ered employer may decline, without penalty, to work any
work shift or on-call shift that is scheduled or otherwise
occurs—

(1) less than 11 hours after the end of the work
shift or on-call shift for the previous day; or

(2) during the 11 hours following the end of a
work shift or on-call shift that spanned 2 days.

(b) CONSENT.—An employee employed by a covered
employer may—

(1) consent to work a shift described in sub-
section (a) in writing, either for each such shift or
for multiple shifts; and

(2) may revoke such consent in writing at any
time during employment.

(e) COMPENSATION.—For each instance that an em-
ployee employed by a covered employer works a shift de-
scribed in subsection (a), the covered employer shall com-
pensate the employee at one and one-half times the em-
pLOYEE’S scheduled rate of pay for the hours worked that
are less than 11 hours apart from the hours worked dur-
ing the previous shift.

SEC. 6. PROHIBITED ACTS.

(a) INTERFERENCE WITH RIGHTS.—It shall be un-
lawful for any employer to interfere with, restrain, or deny
the exercise or the attempt to exercise, any right of—

(1) an employee as set forth in section 3;
(2) a retail, food service, cleaning, hospitality, or warehouse employee, or Secretary’s designated employee, as set forth in section 4; or

(3) an employee of a covered employer as set forth in section 5.

(b) Retaliation Prohibited.—It shall be unlawful for any employer to discharge, threaten to discharge, demote, suspend, reduce work hours of, or take any other adverse employment action against any employee in retaliation for exercising the rights of an employee under this Act or opposing any practice made unlawful by this Act. For purposes of section 3, such retaliation shall include taking an adverse employment action against any employee on the basis of that employee’s request for a change in work schedule, or because of an employee’s eligibility or perceived eligibility to request or receive a change in the terms and conditions of employment, as described in such section, on the basis of a reason set forth in section 3(c).

(c) Interference With Proceedings or Inquiries.—It shall be unlawful for any person to discharge or in any other manner discriminate against any individual because such individual—
(1) has filed any charge, or has instituted or
caued to be instituted any proceeding, under or re-
lated to this Act;

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

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

SEC. 7. REMEDIES AND ENFORCEMENT.

(a) INVESTIGATIVE AUTHORITY.—

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

(2) OBLIGATION TO KEEP AND PRESERVE
RECORDS.—Each employer shall make, keep, and
preserve records pertaining to compliance with this
Act in accordance with regulations issued by the
Secretary under section 9.

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

(4) SUBPOENA POWERS.—For the purposes of
any investigation provided for in this section, the
Secretary shall have the subpoena authority provided
for under section 9 of the Fair Labor Standards Act

(b) CIVIL ACTION BY EMPLOYEES.—

(1) LIABILITY.—Any employer who violates a
section 6(a) (with respect to a right set forth in sub-
section (a), (b), or (c) of section 4), section 5, or
subsection (b) or (e) of section 6 (each such provi-
sion referred to in this section as a “covered provi-
sion”) shall be liable to any employee affected for—

(A) damages equal to the amount of—

(i) any wages, salary, employment
benefits (as defined in section 101 of the
Family and Medical Leave Act of 1993 (29
U.S.C. 2611)), or other compensation de-
nied, lost, or owed to such employee by
reason of the violation; or
(ii) in a case in which wages, salary, employment benefits (as so defined), or other compensation have not been denied, lost, or owed to the employee, any actual monetary losses sustained by the employee as a direct result of the violation;

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

(C) an additional amount as liquidated damages equal to the sum of the amount described in subparagraph (A) and the interest described in subparagraph (B), except that if an employer who has violated a covered provision proves to the satisfaction of the court that the act or omission which violated the covered provision was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of a covered provision, such court may, in the discretion of the court, reduce the amount of liability to the amount and interest determined under subparagraphs (A) and (B), respectively; and
(D) such equitable relief as may be appropriate, including employment, reinstatement, and promotion.

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

(A) the employees; or

(B) the employees and other employees similarly situated.

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

(4) LIMITATIONS.—The right provided by paragraph (2) to bring an action by or on behalf of any employee shall terminate on the filing of a complaint by the Secretary in an action under subsection (c)(4) in which a recovery is sought of the damages described in paragraph (1)(A) owing to an employee by an employer liable under paragraph (1) unless the
action described is dismissed without prejudice on
motion of the Secretary.

(c) ACTIONS BY THE SECRETARY.—

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

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

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

(A) section 4 or 5 shall be subject to a civil
penalty in an amount to be determined by the
Secretary, but not to exceed $100 per violation;
and

(B) subsection (b) or (c) of section 6 shall
be subject to a civil penalty in an amount to be
determined by the Secretary, but not to exceed
$1,100 per violation.

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

(A) restrain violations of this Act;

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

(C) in the case of a violation of a covered
provision, recover the damages and interest des-
dcribed in subparagraphs (A) through (C) of
subsection (b)(1).

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

(2) WILLFUL VIOLATION.—In the case of such action brought for a willful violation of section 6, such action may be brought within 3 years of the date of the last event constituting the alleged violation for which such action is brought.

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

(e) OTHER ADMINISTRATIVE OFFICERS.—

(1) BOARD.—In the case of employees described in section 2(9)(C), the authority of the Secretary under this Act shall be exercised by the Board of Directors of the Office of Compliance.

(2) PRESIDENT; MERIT SYSTEMS PROTECTION BOARD.—In the case of employees described in section 2(9)(D), the authority of the Secretary under this Act shall be exercised by the President and the Merit Systems Protection Board.
(3) Office of Personnel Management.—In the case of employees described in section 2(9)(E), the authority of the Secretary under this Act shall be exercised by the Office of Personnel Management.

(4) Librarian of Congress.—In the case of employees of the Library of Congress, the authority of the Secretary under this Act shall be exercised by the Librarian of Congress.

(5) Comptroller General.—In the case of employees of the Government Accountability Office, the authority of the Secretary under this Act shall be exercised by the Comptroller General of the United States.

SEC. 8. NOTICE AND POSTING.

(a) In General.—Each employer shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees and applicants for employment are customarily posted, a notice, to be prepared or approved by the Secretary (or the corresponding administrative officer specified in section 9) setting forth excerpts from, or summaries of, the pertinent provisions of this Act and information pertaining to the filing of a complaint under this Act.
(b) **Penalty.**—Any employer that willfully violates this section may be assessed a civil money penalty not to exceed $100 for each separate offense.

SEC. 9. **Regulations.**

(a) **Secretary of Labor.**—

(1) **In general.**—Except as provided in subsections (b) through (f), not later than 180 days after the date of enactment of this Act, the Secretary shall issue such regulations as may be necessary to implement this Act.

(2) **Regulations regarding additional occupations to be covered.**—

   (A) **In general.**—In carrying out paragraph (1), the Secretary shall issue regulations, for purposes of defining Secretary’s designated employees under section 2(22), that specify a process the Secretary will follow to identify and designate occupations in addition to retail, food service, cleaning, hospitality, or warehouse occupations that are appropriate for coverage under section 4. Nonexempt employees in occupations designated under this subparagraph shall be considered to be Secretary’s designated employees for purposes of this Act.
(B) CRITERIA.—The regulations shall pro-
vide that the Secretary shall so designate an
additional occupation—

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

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

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

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

(C) DATA REVIEW.—In issuing the regu-
lations, the Secretary shall specify the process by
which the Department of Labor will review data
from stakeholders, and data collected or gen-
erated by the Department, in making those des-
ignations.

(b) BOARD.—

(1) IN GENERAL.—Not later than 180 days
after the date of enactment of this Act, the Board
of Directors of the Office of Compliance shall issue such regulations as may be necessary to implement this Act with respect to employees described in section 2(9)(C). The procedures applicable to regulations of the Board issued for the implementation of the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.), prescribed in section 304 of that Act (2 U.S.C. 1384), shall be the procedures applicable to regulations issued under this subsection.

(2) **CONSIDERATION.**—In prescribing the regulations, the Board shall take into consideration the enforcement and remedies provisions concerning the Board, and applicable to rights and protections under the Family and Medical Leave Act of 1993 (29 U.S.C. 2611 et seq.), under the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.).

(3) **MODIFICATIONS.**—The regulations issued under paragraph (1) to implement this Act shall be the same as substantive regulations issued by the Secretary to implement this Act, except to the extent that the Board may determine, for good cause shown and stated together with the regulations issued by the Board, that a modification of such substantive regulations would be more effective for
the implementation of the rights and protections
under this Act.

(c) President.—

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

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

(3) Modifications.—The regulations issued
under paragraph (1) to implement this Act shall be
the same as substantive regulations issued by the
Secretary to implement this Act, except to the extent
that the President may determine, for good cause
shown and stated together with the regulations
issued by the President, that a modification of such
substantive regulations would be more effective for
the implementation of the rights and protections
under this Act.
(d) OFFICE OF PERSONNEL MANAGEMENT.—

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

(2) CONSIDERATION.—In prescribing the regulations, the Office shall take into consideration the enforcement and remedies provisions concerning the Office under subchapter V of chapter 63 of title 5, United States Code.

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

(e) LIBRARIAN OF CONGRESS.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Librar-
ian of Congress shall issue such regulations as may
be necessary to implement this Act with respect to
employees of the Library of Congress.

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

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

(f) COMPTROLLER GENERAL.—

(1) IN GENERAL.—Not later than 180 days
after the date of enactment of this Act, the Compt-
troller General shall issue such regulations as may
be necessary to implement this Act with respect to
employees of the Government Accountability Office.
(2) CONSIDERATION.—In prescribing the regulations, the Comptroller General shall take into consideration the enforcement and remedies provisions concerning the Comptroller General under title I of the Family and Medical Leave Act of 1993.

(3) MODIFICATIONS.—The regulations issued under paragraph (1) to implement this Act shall be the same as substantive regulations issued by the Secretary to implement this Act, except to the extent that the Comptroller General may determine, for good cause shown and stated together with the regulations issued by the Comptroller General, that a modification of such substantive regulations would be more effective for the implementation of the rights and protections under this Act.

SEC. 10. RESEARCH, EDUCATION, AND TECHNICAL ASSISTANCE PROGRAM AND SURVEYS.

(a) IN GENERAL.—The Secretary shall provide information and technical assistance to employers, labor organizations, and the general public concerning compliance with this Act.

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

(1) the Secretary, acting through the Administrator of the Wage and Hour Division of the Depart-
ments of Labor, shall issue guidance on compliance with this Act regarding providing a flexible, predictable, or stable work environment through changes in the terms and conditions of employment as provided in section 3(a); and

(2) the Secretary shall carry on a continuing program of research, education, and technical assistance, including—

(A)(i) conducting pilot programs that implement fairer work schedules, including by promoting cross training, providing 3 weeks or more advance notice of schedules, providing employees with a minimum number of hours of work, and using electronic workforce management systems to provide more flexible, predictable, and stable schedules for employees; and

(ii) evaluating the results of such pilot programs for employees, employee’s families, and employers;

(B) publishing and otherwise making available to employers, labor organizations, professional associations, educational institutions, the various communication media, and the general public the findings of studies regarding fair
work scheduling policies and other materials for
promoting compliance with this Act;

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

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

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

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

       (A) the magnitude of fluctuation in the
number of hours the employee is scheduled to
work on a daily, weekly, or monthly basis;

       (B) the extent of advance notice an em-
employee receives of the employee’s work schedule;
and

       (C) the extent to which an employee has
input in the employee’s work schedule; and
(2) conduct at regular intervals the Contingent Worker Supplement, the Work Schedules and Work at Home Supplement, and other relevant supplements (as determined by the Secretary), to the Current Population Survey.

SEC. 11. RIGHTS RETAINED BY EMPLOYEES.

This Act provides minimum requirements and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, requirement, policy, or standard that provides for greater rights for employees than are required in this Act.

SEC. 12. EXEMPTION.

This Act shall not apply to any employee covered by a valid collective bargaining agreement if—

(1) the terms of the collective bargaining agreement include terms that govern work scheduling practices; and

(2) the provisions of this Act are expressly waived in such collective bargaining agreement.

SEC. 13. EFFECT ON OTHER LAW.

(a) IN GENERAL.—Nothing in this Act shall be construed as superseding, or creating or imposing any requirement in conflict with, any Federal, State, or local regulation or other law (including the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), the Fam-

(b) RELATIONSHIP TO COLLECTIVE BARGAINING RIGHTS.—Nothing in this Act (including section 12) shall be construed to diminish or impair the rights of an employee under any valid collective bargaining agreement.