



San Francisco Predictable Scheduling and Fair Treatment for Formula Retail Employees Ordinance

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November 2014



Next Generation



Legal Aid Society
Employment Law
Center

Background

Economic and labor force changes since the Great Recession of 2007 have changed the way many American workers support themselves and their families. Today, Americans who would prefer full-time stable work are more likely to work in part-time jobs, and have little control over their work schedules. As employers seek new ways to maximize scheduling efficiency and profit, worker advocate groups have raised concerns about the implications of these scheduling practices on the lives of employees.

This issue brief highlights some of the research on the growth of unstable work schedules, and describes the provisions of recently introduced legislation in San Francisco that seeks to increase predictable scheduling among certain retail and food service workers. San Francisco's is the first such legislation to be introduced at the local level in the nation.

Growing Trend of Unstable Work Schedules

Historically, part-time work was reserved for high-school students or secondary workers trying to earn supplemental income. Since the Great Recession, the largest growth in the job market has occurred among low-wage, part-time jobs, and mid- and high-wage jobs have come back at lower rates.² The number of individuals employed part-time because they cannot find full-time work or because their hours were reduced has nearly doubled nationally, and tripled in California since 2006.³ Additionally, 59 percent of the national workforce is now paid hourly, over half of whom are women.⁴

At the same time, employers have begun to use software to more efficiently schedule work shifts and maximize profit.⁵ Recent research suggests that a majority of hourly and part-time workers experience unpredictable work schedules. This is even more prevalent among those in the retail and food service industry: Nearly two-thirds of food service workers, and half of retail workers receive their work schedules a week or less in advance.⁶ These workers also may experience last-minute changes to their schedules, or be subject to

“on-call” shifts, in which they are notified less than 24 hours before a shift begins whether or not they are required to report to work.⁷

Moreover, part-time workers often experience differential treatment based on their part-time status, typically reflected in their wages and benefits. On average, part-time workers earn a lower hourly wage – 20 percent less for women and 27 percent less for men – than full-time workers with similar personal attributes, including educational background. Part-time workers are also significantly less likely to receive certain benefits, such as health care coverage.⁸

Unpredictable schedules make it difficult for workers to plan for important responsibilities outside of work, such as arranging for child care, fulfilling caregiving duties, taking on a second job, or pursuing educational opportunities.

Taken together, these economic and labor force changes mean that more and more workers – including heads of household – have unstable work schedules. Unpredictable schedules disrupt workers' lives and leave them in a constant state of insecurity about when they will work, and how much they will earn in a given week or month. Working parents are hit the hardest: among working parents with children age 12 or younger, 46 percent of fathers and 32 percent of mothers receive their work schedule one week in advance or less. These working parents also report that their hours in the previous month fluctuated by an average of 40 percent.⁹ Unpredictable schedules make it difficult for workers to plan for important responsibilities outside of work, such as arranging for child care, fulfilling caregiving duties, taking on a second job, or pursuing educational opportunities.¹⁰

Tackling Unpredictable Work Schedules in San Francisco

Although San Francisco currently has the highest minimum wage in the country, it also has one of

Existing California and San Francisco Laws

Several existing laws at the state and local level address common scheduling challenges faced by workers in California:

Reporting Time Pay: This state law requires the employer to compensate the employee if she reports to work as required but is given less than half of her scheduled hours. The employee shall be paid for half of the scheduled work at her regular rate of pay, in the amount of no less than two hours but no more than four hours. Pay is still required even if the employer tells her to report again later that same workday and when she does, she works her usual hours.¹¹

Split-Shift Pay: This state law requires that when there is an unpaid interruption in the workday, longer than a bona fide meal period (meaning usually over an hour), the employee is entitled to one additional hour of pay at the minimum wage in addition to the hours worked that day. But if an employee is paid more than the minimum wage, her daily earnings in excess of minimum wage may be credited to the employers' obligation to pay the split shift premium.¹²

San Francisco Family Friendly Workplace Ordinance: In 2013, San Francisco became the first municipality in the country to pass a law providing employees the "right to request" flexible or predictable work arrangements so that they may attend to parental or caregiver duties. The law also prohibits discrimination against individuals based on their caregiver status and retaliation against employees who exercise their rights under this law.¹³

the highest costs of living in the United States, with particularly high housing costs.¹⁴ Given this mismatch, the income minimum wage workers bring in is insufficient to make ends meet. Nearly a quarter of San Francisco workers are employed part-time.¹⁵ Over the past year, Legal Aid Society-Employment Law Center, Next Generation, and other members of the California Work & Family Coalition collaborated with San Francisco Supervisor David Chiu to convene a task force of business leaders and worker advocates to understand how unpredictable scheduling practices impact workers. Task force members heard testimony from workers, gleaned important lessons from businesses that prioritize predictable scheduling for their employees, and helped explore policy solutions for San Francisco.¹⁶

These efforts led to the introduction of the **Predictable Scheduling and Fair Treatment for Formula Retail Employees Ordinance** by Supervisor Chiu on September 30, 2014.¹⁷ The legislation aims to curb unpredictable scheduling practices and promote equal treatment of part-time workers at "chain" stores. This ordinance was

introduced as part of a larger legislative package known as the **Retail Workers Bill of Rights**.¹⁸ Supervisor Eric Mar introduced the first half of the legislative package in July, which promotes access to more hours and improves worker retention and job security for part-time employees.

Who is affected by the ordinance?

The Predictable Scheduling and Fair Treatment for Formula Retail Employees Ordinance applies to "**formula retail**" businesses, a local definition that includes chain stores with 11 or more locations worldwide. Formula retail businesses include grocery stores, department stores, restaurants, banks, and other retailers. However, this legislation applies to a subset of those businesses, which employ 20 or more individuals in the city of San Francisco, and have 20 or more locations worldwide. The legislation also includes property services contractors that provide janitorial or security services to these businesses.¹⁹

What employee protections are included in the ordinance?²⁰

Initial notification of work schedules and minimum hours: Before a person begins her job, employers must provide a description of her work schedule and an estimate of the minimum hours she is expected to work each month. The employee may request modifications to the proposed work schedule, and the employer must consider and respond to the request.

Advance notice of work schedules: Employers are required to post work schedules at least two weeks in advance in a conspicuous location. Changes to the posted schedule should also be communicated in-person or through appropriate forms of electronic communication (e.g. telephone call, email, or text). Employers are required to retain employee work schedules and payroll records for three years.

Compensation for schedule changes and on-call shifts: If the employer makes changes to the posted schedules, the employee will receive a certain amount of pay in addition to the hours worked, referred to as “**predictability pay**” (See Table 1). Schedule changes include modifications to the date or time of the scheduled shift, and shift cancellations. Employers are also required to

compensate employees who are scheduled to be “on-call” for a particular shift but are not called in to work.²¹

Exceptions: Employers are not required to provide predictability pay under certain circumstances. These exceptions include natural disasters, public utilities failures, voluntary employee shift-trading, and the unexpected unavailability of another employee when the employer did not receive advance notice.

Fair treatment for part-time workers: Part-time employees and full-time employees with the same job shall be paid the same starting hourly rate. Part-time employees must also have the same access to time off, and the same eligibility for promotions as their full-time equivalents.

Notice of employee rights: San Francisco’s Office of Labor Standards Enforcement (OLSE) will provide a notice to employers – translated into all languages spoken by more than 5 percent of the San Francisco workforce – to be posted in a conspicuous location at the workplace to inform employees of their rights under this ordinance.

Retaliation Prohibited: The employer cannot retaliate against an employee for exercising rights under this ordinance.

Table 1: Predictability Pay for Shift Changes, Cancellations, and On-Call

Work Schedule Changes	Predictability Pay
Changes with less than seven days notice but 24 hours or more notice.	One hour of pay in addition to the hours worked.
Changes with less than 24 hours notice.	Two hours of pay for each shift of four hours or less, in addition to the hours worked.
	Four hours of pay for each shift of more than four hours, in addition to the hours worked.
On-call shifts cancelled with less than 24 hours notice.	Two hours of pay for each shift of four hours or less, in addition to the hours worked.
	Four hours of pay for each shift of more than four hours, in addition to the hours worked.

Implementation and Enforcement: OLSE will implement and enforce the ordinance. OLSE may order appropriate relief for violations of this ordinance, including the payment of lost wages by the employer to the employee. Employers who violate this ordinance may also be fined \$50 to be paid to the employee who experienced the violation, and an additional fine paid to the City in an amount no greater than the enforcement costs.

Reporting: Lastly, OLSE will provide an annual, written report to the Board of Supervisors starting on January 31, 2016 until January 31, 2018, and then transition to a biennial report. The report will examine implementation and enforcement of this ordinance and provide recommendations for improvements.

Schedules That Work Act

Predictable scheduling issues are gaining traction across the country. In July 2014, Representatives George Miller and Rosa De Lauro introduced the federal Schedules that Work Act, which promotes fair and predictable work schedules. Senators Tom Harkin and Elizabeth Warren introduced a Senate version of the bill.²²

The Schedules That Work Act contains several key provisions that regulate scheduling practices in the retail, food service, and cleaning industries. San Francisco's ordinance built upon this national model and enhanced key provisions on advance notice and predictability pay to workers (see Table 2).

Case Examples

Below are several hypothetical scenarios that outline how San Francisco's predictable scheduling provisions would work for employers and employees:

Anastasia is a manager at a department store and she schedules work shifts for her employees. One of her employees, John, recently notified her that he will be taking a one-week vacation next month. Anastasia plans next month's work schedules with John's notice in mind, and gave her employees two-weeks' notice of an increase in their work hours to fill John's shifts during the week he is away. Because Anastasia gave advance notice to her employees within the parameters of the ordinance, she does not have to provide predictability pay.

Simon works part-time at a restaurant and has a shift coming up this Friday from 2:00 PM to 10:00 PM. On Friday morning, Simon receives a call from his manager who notifies him that business has been slow today, so his shift has been changed to 6:00 PM to 8:00 PM; his eight hour shift has been reduced to a two hour shift. Because Simon was notified of the change within 24 hours of the shift, he would be entitled to four hours of predictability pay on top of the two hours of work he is scheduled to do on Friday, amounting to six hours of pay.

Sandy works three shifts a week at a coffee shop, and has a shift on Tuesdays from 5:30 AM to 10:30 AM. On Friday, Sandy's manager notifies her that her Tuesday shifts are being reduced: she'll now be scheduled to work 5:30 AM to 7:30 AM on Tuesdays. Because Sandy was notified of this change within seven days of this coming Tuesday's shift, she would be entitled to one hour of predictability pay in addition to the two hours of work she is scheduled to do on Tuesday, amounting to three hours of pay.

Liz is scheduled to be on-call this Saturday from 8:00 PM to midnight. On Saturday morning, she calls her manager to see if she is required to report to work that day. Her manager notified her that she is not required to come in today. Because Liz's shift was on-call but her employer did not call her in to work, she would be entitled to two hours of predictability pay under this ordinance.

Table 2: Advance Notice and Predictability Pay Provisions in the Schedules That Work Act and the San Francisco Predictable Scheduling and Fair Treatment Ordinance

	San Francisco’s Ordinance	Schedules That Work Act
Who’s Covered?	Employees who work for “formula retail” businesses in San Francisco that employ 20 or more employees and have 20 or more locations worldwide. Property services contractors that provide janitorial or security services to these businesses are included.	The provisions in the bill that regulate predictable scheduling apply to retail, food service, or cleaning employees who work for an employer with 15 or more employees.
Initial Notification of Work Schedules and Hours	Prior to the start of employment, employers shall provide employees notice of their work schedules and an estimate of the minimum hours they are expected to work each month.	Prior to the start of employment, employers shall provide employees notice of their work schedules and an estimate of the minimum hours they are expected to work each month.
Advance Notice	Employers are required to post work schedules at least two weeks in advance in a conspicuous location. Changes to the posted schedule should also be communicated in-person or through appropriate forms of electronic communication (e.g. telephone call, email, or text).	Employers are required to post work schedules at least two weeks in advance in a conspicuous location. Changes to the posted schedule should also be communicated in-person or through appropriate forms of electronic communication (e.g. telephone call, email, or text).
Compensation for Schedule Changes	<p>For schedule changes that happen with less than 7 days’ notice but 24 hours or more notice, the employee shall receive one hour of pay.</p> <p>For schedule changes that happen with less than 24 hours’ notice, the employee shall receive two hours of pay for shifts of four hours or less, and four hours of pay for shifts of more than four hours.</p>	For schedule changes that happen with less than 24 hours’ notice, the employee shall receive one hour of pay.
Compensation for On-Call Shifts	If the employer requires the employee to be “on-call” for a particular shift, but no longer needs the employee to come into work for that shift, the employee shall receive two hours of pay for each shift of four hours or less, and four hours of pay for each shift of more than four hours.	If the employer requires the employee to be “on-call” for a particular shift, the employee shall receive one hour of pay, regardless of whether the employee is called in to work.

Notes

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- 2 National Employment Law Project, “Data Brief: The Low-Wage Recovery and Growing Inequality.” (2012).
- 3 Bureau of Labor Statistics, U.S. Department of Labor, “Employment Level – Part-time for Economic Reasons. All industries (2006 – 2013)” available at www.bls.gov/webapps/legacy/cpsatab8.htm. Data provided is seasonally adjusted and includes all industries. National data is reported as annual averages of monthly data; Bureau of Labor Statistics, U.S. Department of Labor, “States: Employed and unemployed persons by full- and part-time status, 1997–2013p annual averages” (2014). Date of contact: June 2014. 2013 data is preliminary and subject to change.
- 4 Bureau of Labor Statistics, U.S. Department of Labor, “Characteristics of Minimum Wage Workers, 2013” (2014).
- 5 Jodi Kantor, “Working Anything but 9 to 5.” *The New York Times*, August 13, 2014.
- 6 Susan J. Lambert, Peter J. Fugiel, and Julia R. Henley, “Precarious Work Schedules among Early-Career Employees in the USA: A National Snapshot” (Chicago: Employment Instability, Family Well-Being, and Social Policy Network, 2014).
- 7 Center for Law and Social Policy, Retail Action Project, and Women Employed, “Tackling Unstable and Unpredictable Work Schedules” (2014).
- 8 Ken Hudson, “No Shortage of ‘Nonstandard’ Jobs: Nearly 30 percent of workers employed in part-time, temping, and other alternative arrangements” (Washington: Economic Policy Institute, 1999).
- 9 Susan J. Lambert and others, “Precarious Work Schedules among Early-Career Employees in the USA: A National Snapshot.”
- 10 For more information on the impact of unpredictable schedules on workers, see Liz Ben-Ishai, Hannah Matthews, and Jodie Levin-Epstein “Scrambling for Stability: The Challenges of Job Schedule Volatility and Child Care” (Washington: Center for Law and Social Policy, 2014), and National Partnership for Women and Families, “Factsheet: Schedules That Work” (2014).
- 11 For more information on California’s reporting time pay law, see “Reporting time pay” at http://www.dir.ca.gov/dlse/faq_reportingtimepay.htm.
- 12 For more information on California’s split-shift pay, see “Cal. Code Regs., tit. 8, § 11040, subd. 2(Q)” available at <https://www.dir.ca.gov/t8/11040.html>.
- 13 For more information on the San Francisco Family Friendly Workplace Ordinance, see “San Francisco – Family Friendly Workplace Ordinance (FFWO)” available at <https://www.las-elc.org/fact-sheets/san-francisco-family-friendly-workplace-ordinance>.
- 14 Urban Land Institute, Terwilliger Center for Workforce Housing, “Bay Area Burden: Examining the Costs and Impact of Housing and Transportation on Bay Area Residents, Their Neighborhoods, and the Environment” (2012).
- 15 U.S. Census Bureau, 2012 American Community Survey, “Table S2303: Work Status in the Past 12 Months, San Francisco County, California” (2012).
- 16 The task force heard best scheduling practices from Zazie, Bi-Rite, and Costco. For more information, see Next Generation, California Work & Family Coalition, “Predictable Scheduling: The Bottom Line of Economic Security” (2014).
- 17 For more information on the San Francisco Predictable Scheduling and Fair Treatment for Formula Retail Employees Ordinance, see “Police Code – Fair Scheduling and Treatment of Formula Retail Employees” available at <https://sfgov.legistar.com/LegislationDetail.aspx?ID=1934159&GUID=F57CC8F9-2969-4210-B84E-91BE76A30F63&Options=Advanced&Search>.
- 18 For more information on the Retail Workers Bill of Rights, see “Retail Workers Bill of Rights” available at www.retailworkerrights.com.
- 19 See Predictable Scheduling and Fair Treatment for Formula Retail Employees, File No. 141024, City and County of San Francisco, Board of Supervisors, introduced on 9/30/2014, available at <https://sfgov.legistar.com/Legislation.aspx>. For more information on formula retail establishments, see Strategic Economics, “San Francisco Formula Retail Economic Analysis” (2014).
- 20 These provisions reflect the introduced version of the San Francisco Predictable Scheduling and Fair Treatment for Formula Retail Employees Ordinance.
- 21 The employer is not required to provide additional compensation if the employee is called in for the on-call shift or if the employer provides the employee with 24 hours or more notice of changes or cancellations to the on-call shift.
- 22 For more information on the Schedules That Work Act, see “The Schedules That Work Act H.R. 5159” available at <http://democrats.edworkforce.house.gov/bill/schedules-work-act> or National Women’s Law Center, “Schedules That Work Act: Section by Section Summary” (2014).