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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.

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

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

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

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-

ered 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)(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.

○