

Flexible Workplace Solutions for Low-Wage Hourly Workers: A Framework for a National Conversation

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Workplace Flexibility 2010, based at Georgetown Law, is a policy initiative supporting the development of a comprehensive national policy on workplace flexibility. Through its efforts, Workplace Flexibility 2010 has helped set the stage for a robust national dialogue on how to restructure the workplace to meet the needs of today's workforce.

Workplace Flexibility 2010 is part of the Alfred P. Sloan Foundation's National Initiative on Workplace Flexibility. The National Initiative is a collaborative effort leveraging innovative business practice, academic research and public policy in order to make workplace flexibility a standard of the American workplace.

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INTRODUCTION

How to make ends meet? Answering this question is an ongoing struggle for many American families. Today, making ends meet is not just about money. It's also about time. It's about getting children off to school or child care, trying to arrange back-up child care when plans fall through, taking the car to the mechanic, catching the bus or the subway to work, caring for an elderly parent, keeping a doctor's appointment, attending a class to learn new job skills, and going to a parent-teacher conference. It's about doing all of these things, and still getting a job done.

Meeting the demands of everyday life while holding down a job has been a kitchen table issue for decades. There have always been families who struggle, but what used to be an issue for some families or some communities or certain industries now affects all of us. These days, most of us are negotiating demands at work and demands at home, and few of us have the flexibility at work that we need to do both. For low-wage workers, who are the focus of this report, the daily struggle is often a whole lot harder. These workers are least likely to have flexibility at work, and least likely to be able to pay someone to take care of their obligations outside of work.¹

There is a growing recognition among businesses, employees, and government that the overall demographics and needs of the workforce have changed, with significant implications for employers, families, and communities.² In most of today's American families, both women and men work, leaving no one at home to take care of daily tasks. While in 1970 two-thirds of married couples had one spouse at home,³ women are now breadwinners or co-breadwinners in over two-thirds of households and represent nearly half of all American workers.⁴ Women in low-income families have worked outside the home in significant numbers far longer, with many low-income women entering the paid workforce during the Industrial Revolution.⁵ In today's working families, 18% of working parents are single parents.⁶

Women's entry into the workforce is only one of several changes affecting the demographics and caregiving responsibilities of our workforce.⁷ Our aging population is living and working longer.⁸ Roughly 40% of employed people in the United States report that within the past five years, they have provided "special attention or care for a relative or in-law 65 years old or older."⁹ The modern workforce also includes increasing numbers of workers with health problems.¹⁰ Advances in medicine and technology have allowed a greater number of people with disabilities to maintain employment.¹¹ Health problems, aging, disability, and caregiving can all give rise to the need for greater flexibility at work.

Yet most workplaces have not caught up with the realities of the modern workforce.¹² The mismatch between workplace expectations and the realities of life has inspired legions of research and analysis. Experts have found that this mismatch has a negative impact on workers' psychological and mental health, child well-being, marriages, and employment outcomes.¹³

In response to this conflict, some employers have taken new approaches to work, implementing flexible work arrangements (FWAs) that make it easier for their employees to be good workers and succeed in the rest of their lives. Many of these employers have found that implementing FWAs has led to significant improvements in their bottom line.¹⁴

But we have not yet seen a large-scale normative shift in the way work is organized. Less than half of employers provide all, or even most, of their employees with FWAs.¹⁵ Low-wage workers are even less likely than other workers to have access to most forms of flexibility.¹⁶

Although access to flexibility is still quite limited, there is a growing body of research, advocacy, and promising business practice addressing scheduling practices and flexibility in low-wage jobs and increasing awareness of the benefits to employers associated with providing flexibility. In just the past five years, a significant number of reports and scholarly articles have been published on the importance of FWAs for low-wage workers and their employers.¹⁷

The recent research and reports have raised the profile of these issues to some degree, but policymakers, advocates, and employers are still far from a shared understanding of the types of scheduling challenges low-wage hourly workers face, the FWAs that are responsive to these challenges, and how to implement them. Though some employers have implemented FWAs for their middle and high-wage workers, many are unaware of the range of FWA options for their low-wage workers. Policymakers lack a framework with which to conceptualize the different types of scheduling challenges low-wage workers face and responses to these challenges.

This report brings new insight to a dynamic field of study, advocacy, and business practice that places low-wage workers squarely in the national conversation on workplace flexibility. The scholarship in this area to date has skillfully illuminated the challenges facing workers in jobs requiring nonstandard hours and the disparities in access to flexibility among low-wage and higher-wage workers. For example, we know from existing research that low-wage workers are far more likely to work nonstandard schedules and part-time schedules than other workers, and have less access to flexibility than their higher-wage counterparts.¹⁸

This report adds to the scholarship in this area by drilling down to examine low-wage hourly workers' flexibility needs through the lenses of standard (Monday through Friday daytime schedules) and nonstandard work schedules (anything other than a Monday through Friday daytime schedule) and part-time and full-time work. Examining the scheduling challenges facing these workers at close range, we find tremendous variation within a workforce often considered to be homogeneous.

For this report, we undertook new data analysis and drew on existing research. Through this process, we identified three different types of scheduling challenges — rigidity, unpredictability, and instability — that often play out differently for workers on standard and nonstandard, part-time and full-time schedules. We hope that our findings will both broaden and refine the conversation on flexible work arrangements for low-wage hourly workers.

Scheduling Challenges Defined

- **Rigidity** — Lack of control over the scheduling of work hours, including overtime or extra work hours; lack of input into starting and quitting times; and lack of control over break times.
- **Unpredictability** — Having schedules assigned with little or no advance notice or being required to work overtime or extra hours with little or no notice.¹⁹
- **Instability** — Fluctuations in work hours by week, time of day, and length of shift; being subject to reductions in work hours when work is slow; and involuntary part-time work.

Using these definitions, we analyzed the 2008 National Study of the Changing Workforce (2008 NSCW) to determine the prevalence of these problems for low-wage hourly workers. (For more on the 2008 NSCW, see page 10 of this report.)

Our work expands on research by Dr. Susan Lambert and Dr. Julia Henly at the University of Chicago that identified several dimensions for intervention into scheduling practices, including flexibility, predictability, and stability.²⁰ We expand on this work by examining the importance of each of these dimensions to workers in jobs requiring both standard and nonstandard hours and workers on part-time and full-time schedules, and by modifying the definitions of these terms to more specifically address the range of scheduling challenges facing these workers.

Providing “flexibility” for low-wage hourly workers requires a willingness to rethink traditional scheduling practices for workers on a wide range of schedules. For some workers, this might mean loosening up rigid scheduling practices by giving workers more *meaningful input into their work schedules* without jeopardizing their jobs. For other workers, it might mean making scheduling practices that are already very loose — in the sense that the timing and amount of work varies dramatically from week to week at the employer’s discretion — more *predictable* and *stable*, while also providing them with opportunities for meaningful input into their work schedules.²¹

In this report, we focus on flexible work arrangements that can improve scheduling for low-wage hourly workers in each of these areas. Examples of flexible work arrangements include shift-swapping, team scheduling, self-scheduling, honoring worker preferences to work certain shifts or certain days, and seeking volunteers first for overtime. These and many other flexible work arrangements will be discussed in this report. Time off policy, another key aspect of workplace flexibility for low-wage hourly workers, is discussed in Workplace Flexibility 2010’s recent report, Family Security Insurance: A New Foundation for Economic Security.

A large proportion of low-wage hourly workers — whether working standard or nonstandard schedules, full-time or part-time — experience rigid, unpredictable, or unstable scheduling practices.

Key Findings

- 1:** Half of low-wage hourly workers work standard schedules, while the other half work nonstandard schedules.
- 2:** One in two part-time workers in a job requiring standard hours and almost one in four part-time workers in a job requiring nonstandard hours would prefer to be working full-time.
- 3:** There are three key scheduling challenges — **rigidity, unpredictability, and instability** — affecting low-wage hourly workers in jobs requiring both standard and nonstandard and part-time and full-time hours.
- 4:** Flexible workplace solutions — **opportunities for meaningful input into work schedules, more predictable work schedules, and more stable work schedules** — can be implemented to address each of these three challenges.

To illustrate:

- Nearly half of low-wage hourly workers experience one or more of the major forms of rigid scheduling practices — lack of control in scheduling of work hours including overtime and extra work hours, inability to choose starting and quitting times, or inability to decide when to take breaks.²²
- As one measure of unpredictability, between 20 and 30% of low-wage hourly workers are regularly required to work overtime or extra hours with little or no notice. Of full-time workers in jobs requiring standard hours who are regularly required to work overtime or extra hours with little or no notice, 58% reported that they cannot refuse overtime or extra work hours without some form of backlash.
- Instability in work hours often has significant consequences for low-wage workers as fluctuations in work hours lead to fluctuations in income. More than one in four *part-time* low-wage hourly workers (on both standard and nonstandard schedules) experience reduction of work hours or layoffs when work is slow, and one in five *full-time* workers in jobs requiring nonstandard schedules experience this same problem. One in two part-time workers in a job requiring a standard schedule and almost one in four part-time workers in a job requiring a nonstandard schedule would prefer to be working full-time.

Our report is one of the first to highlight the extent to which these three different types of scheduling problems — rigidity, unpredictability, and instability — pervade the low-wage hourly workforce. We note, however, that the data on which we rely is incomplete. There is no national data available that will allow us to state conclusively the extent to which low-wage hourly workers experience unpredictable scheduling and instability in their work hours, or the consequences of these types of employer practices on employees and their families. Given the scope of the scheduling challenges we have uncovered in this report with the existing data, we can say with certainty that the problems of rigidity, unpredictability, and instability impact substantial numbers of low-wage workers on standard and nonstandard work schedules.

Only three months before this report was issued, the United States Department of Labor's (U.S. DOL) Women's Bureau hosted a national meeting on the flexibility needs of hourly workers that featured businesses' best practices, workers' perspectives, and existing research.²³ The success of some employers' scheduling innovations in these areas to date suggests that broader-scale implementation of these strategies would be incredibly useful both to low-wage workers and to their employers.

These public-sector and private-sector efforts could have far-reaching implications for low-wage workers and their families, not only for those in the workforce now, but also for those who are currently out of the workforce and might have an easier time reentering if flexibility were a more common feature of low-wage jobs. All of this activity presents an unparalleled opportunity for advocates for low-wage hourly workers and for the businesses that employ them to ensure that their flexibility needs are included in the current policy conversation on flexibility.

Roadmap

In this report, we accomplish the following:

1

Describe and categorize the different types of scheduling challenges faced by low-wage hourly workers in jobs requiring standard and nonstandard schedules and part-time and full-time work;



2

Provide a *flexible workplace solutions framework* for conceptualizing and developing new strategies for addressing scheduling challenges — including employer practices and policy solutions; and



3

Link the scheduling challenges facing low-wage hourly workers to the broader national dialogue on workplace flexibility policy and practice.²³

Spotlight on Low-Wage Working Families

Low wages and challenging work schedules are just two of the pressing challenges low-wage workers face. Many have limited options for quality, affordable child care, lack reliable transportation to and from work, and have limited access to the education and training opportunities that may provide avenues to higher-paying jobs. These workers and their families are far more likely than other workers to have health problems that limit their ability to sustain employment and increase caregiving obligations. For these and other reasons, low-wage workers are far more likely to be unemployed and to face job loss than other workers. When they do, they are less likely to receive unemployment insurance due to their more tenuous attachment to the labor market, or to have personal savings to bridge the gap. Work supports, including the Earned Income Tax Credit, Medicaid, food stamps, and child care subsidies, can help but are often underutilized.

Scheduling challenges often intersect with and sometimes compound these other problems. In some cases, improving scheduling could have positive impacts in other areas of a worker's life. In others, challenging scheduling practices unlikely to change in the near future may be reason to modify existing public policy designed to help low-wage workers. Below are some of the particular intersections that we have identified as ripe for study.

Child Care. The unavailability of quality, affordable child care is a significant barrier to stable employment for low-income working parents, and informal child care, on which many of these parents rely, may fall through at the last minute.²⁵ Unstable child care arrangements are particularly challenging for workers on rigid, unpredictable, or unstable schedules. These schedules also give rise to child care instability, as workers cannot hold on to spaces in child care centers when their work schedules and incomes vary from week to week or month to month.²⁶ In the 2008 NSCW, of the 40% of low-wage hourly workers who reported being absent from work during the past three months, 16% of workers in standard hours jobs and 10% of workers in nonstandard hours jobs reported that child care problems caused them to miss work. Of those who missed work, 40-60% reported losing pay, benefits, or being penalized in some way as a result.

Transportation. Most low-wage jobs are located outside of the central city areas where many low-wage workers live, requiring them to commute to work.²⁷ Although privately owned vehicles are the primary method of transportation for most low-wage workers, many cannot afford to purchase or maintain a reliable vehicle.²⁸ Without reliable private transportation, workers with rigid schedules that do not coincide with peak hours of public transportation (such as nonstandard night, evening, or weekend work) may find it difficult to get to work,²⁹ and those with unpredictable and unstable schedules may have difficulty determining public transportation schedules at the last minute.³⁰ Public transportation often requires long commute times, due to travel during off-peak hours, lengthy waits, and time-consuming transfers.³¹

Lack of personal savings. Workers who are laid off from work or experience instability in the number of hours they are scheduled to work from week to week or month to month often do not have the savings to fill gaps created by these fluctuations in income.³² Likewise fluctuating work schedules, including layoffs, reductions in work hours, and involuntary part-time work, can lead to insufficient income and savings for low-wage hourly workers. Roughly eight in ten low-income families are asset poor; while 57% have a bank account, the median savings in their accounts is only \$800.³³

Health. Low-wage workers in low-income families with children are nearly twice as likely as the average worker to be in only fair or poor health; these workers may need flexibility to provide caregiving or seek medical treatment.³⁴ Furthermore, challenging schedules can themselves contribute to poor health. Research from the National Institutes of Child Health and Development recently found that interventions focused on improving employees' sense of control over their work schedules and improving supervisor support for flexibility led to measurable improvements in employee health and well-being.³⁵

Job loss. Rigid, unpredictable, or unstable schedules may be a significant contributing factor to both voluntary and involuntary turnover among low-wage workers. Lambert and Henly's Scheduling Intervention Study found that the workers with the most fluctuating and unstable hours were new hires, a group whose turnover rates were, in some cases, 200% higher than other workers'.³⁶ Similarly, a study of low-wage workers in three different cities found that employees often reported the intention to leave jobs shortly after having been hired because of scheduling and family conflicts.³⁷ Shorter job tenure decreases the likelihood that workers will qualify for employer- and government-provided benefits with associated job tenure requirements (e.g., employer-provided vacation and sick days, leave under the Family and Medical Leave Act, and unemployment insurance). Low-wage workers are 2.5 times more likely to be out of work than other workers and half as likely to receive unemployment insurance.³⁸

Access to education and training. Scheduling challenges may be a significant barrier to low-wage workers' pursuit of education and training. Although education alone cannot counteract the abundance of low-skilled, low-paying jobs in our labor market, there is a strong correlation between education, labor force attachment, and higher earnings.³⁹ For example, one study found that only about 10% of the low-wage working population has a college degree, compared with 36% of those above 200% of the poverty line.⁴⁰ In a set of focus groups of students enrolled in community colleges, students identified employers' lack of flexibility with work schedules as a significant obstacle to pursuing education.⁴¹ The study's authors concluded that employers' inflexibility was a leading factor preventing students from enrolling in programs, continuing in programs in which they were enrolled, or completing their programs within projected time frames.⁴²

Work supports. Many low-wage workers earn at or around the poverty line.⁴³ Work supports like the Earned Income Tax Credit (EITC), Medicaid/SCHIP, food stamps, and child care subsidies can play a critical role in supplementing these workers' wages. Take-up rates among working families for many of these programs — with the exception of the EITC — remain extremely low.⁴⁴ In 2002, only 7% of working families living below the federal poverty level received all four of the supports described above.⁴⁵ Lack of flexibility at work, in combination with in-person application and recertification requirements at public benefits offices, may contribute to low-wage workers' low rate of receipt of work supports. For example, in a recent study of low-wage employees in Savannah, Georgia, inability to take time off from work emerged as a significant barrier to accessing work supports.⁴⁶



PART

1

Standard or Nonstandard Schedules – Critical Factors in the Flexibility Equation for Low-Wage Hourly Workers

To determine the prevalence of the three forms of scheduling challenges identified in this report, we analyzed the 2008 National Study of the Changing Workforce (2008 NSCW), one of the only national representative studies of the U.S. workforce that provides detailed information about the quality of workers' lives both on and off the job. The 2008 NSCW includes a total of sample of 3,502 workers, of which 2,769 were categorized as wage and salaried workers.

Our analysis found that roughly 50% of low-wage hourly workers are employed in jobs that primarily require standard schedules. The other 50% of low-wage hourly workers are employed in jobs requiring nonstandard schedules.⁴⁷ This last finding

may even be an underestimate of the number of workers employed in jobs requiring nonstandard hours, since some employees reporting standard daytime hours may occasionally work nonstandard hours, meaning a night, weekend rotating, or variable schedule.⁴⁸

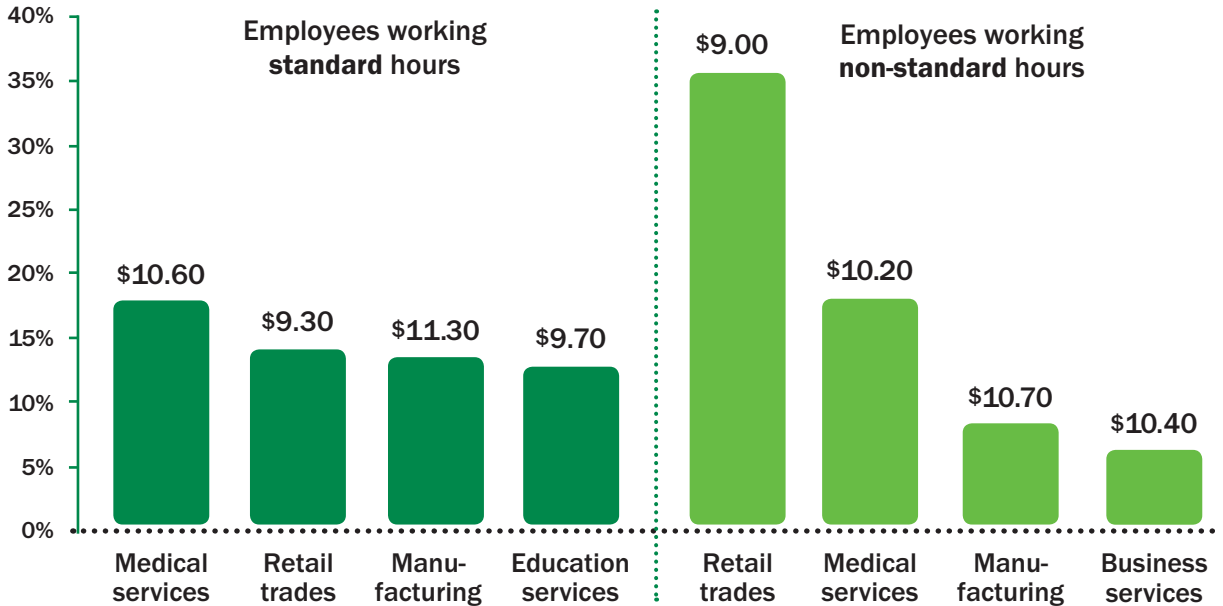
Low-wage hourly workers on standard and nonstandard schedules largely work in the same industries, but in different proportions. As noted in Table 1, the most common industry among low-wage hourly workers employed in jobs that require standard schedules is medical services, followed by retail trades, manufacturing, and education services. For low-wage hourly workers in jobs that require nonstandard hours, the most common industry is retail trades, with medical, manufacturing, and business services following behind.

Defining Low-Wage Hourly Workers and Standard and Nonstandard Schedules

To identify the sample of low-wage hourly workers in the 2008 NSCW, we defined low-wage using the social inclusion perspective,⁴⁹ according to which a low-wage job is one paying less than two-thirds the median wage for men. Using the 2008 NSCW data to calculate this figure, we restricted our sample to workers paid \$15.41 or less per hour and who indicated that they were paid hourly. This resulted in a sample of 648 low-wage hourly workers, on which we based much of the analyses described in this report. **We find that 24% of the overall workforce is in hourly jobs paying low wages.**

In this report we make comparisons between workers employed in jobs that generally require working standard and nonstandard schedules. Informed by the work of Dr. Harriet Presser, we define standard schedules as routine, Monday through Friday daytime schedules, and nonstandard schedules as all other schedules.⁵⁰ Our sample of low-wage hourly workers are almost equally split between those on standard schedules (n=318) and nonstandard schedules (n=330).⁵¹

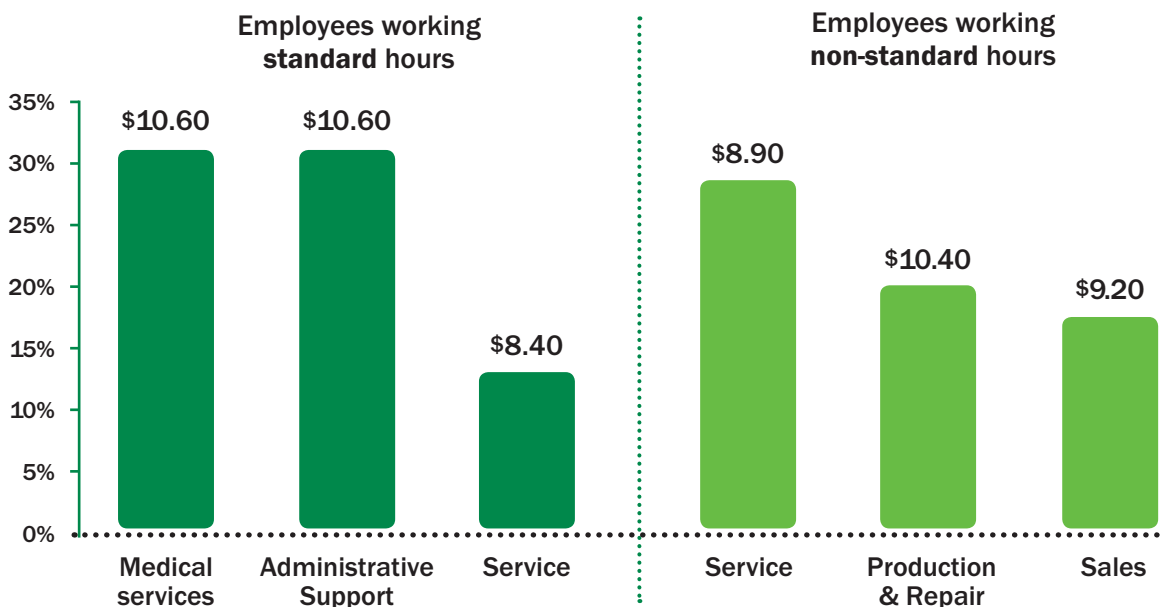
TABLE 1: Top Industries and Average Wages*



*The 2008 NSCW used the 3-digit NAICS Standard Industrial Classification (SIC) codes for major industry classifications. The top four industry classifications in which low-wage, hourly workers are employed are noted here. Medical services was comprised of codes 812–840; retail trade, codes 580–691; manufacturing, codes 100–392; education services, 842–860; and business services, codes 500–571.

Low-wage hourly workers on standard and nonstandard schedules are found in the same occupational categories, but again, in different proportions. As illustrated in Table 2, the most common occupations among low-wage earners working standard hours are medical services, administrative support, and service. In contrast, the top occupation among low-wage hourly workers working nonstandard hours is service, followed by production and repair, and sales.⁵²

TABLE 2: Top Occupations and Average Wages*



*Codes developed for the 2008 NSCW are as coded by the NAICS. Medical services was comprised of codes 812–840; administrative support, codes 303–389; service, codes 403–469; production and repair includes all production workers, machine operators, and repair workers, codes 473–904; and sales, codes 243–285.

The second important distinguishing feature of low-wage hourly workers' schedules is whether those schedules are full-time or part-time. Working full-time is more common among workers in low-wage hourly jobs on both standard and nonstandard schedules than working part-time. However, a significantly higher percentage of low-wage hourly workers on nonstandard schedules work part-time compared to those on standard schedules, 43% vs. 14%.

Many of these part-time workers would prefer to work more hours. We categorize the problem of involuntary part-time work as schedule instability, which we discuss in depth in Part 2.

About 45% of low-wage hourly workers working nonstandard schedules (part-time and full-time) indicated that a daytime shift was the most common shift they were scheduled to work, followed by an evening shift, rotating shift, variable or split shift, and night shift. (See Table 4).

Growth Trends in Low-Wage Jobs

The U.S. DOL's occupational projections for 2008 to 2018 show that seven out of the ten occupations in which job growth was predicted are typically low-wage occupations.⁵³ The industry sectors in which economic growth is occurring — retail, service, and health care — are industries with a high proportion of low-wage jobs.⁵⁴

In particular, the U.S. DOL projects that the retail sector will add 1.6 million new jobs, reaching 16.7 million by 2014, and will continue to be the dominant source of employment and the largest source of employment growth in America.⁵⁵ This tracks past growth trends: the retail and service sector accounted for more than 83% of all new jobs between 1989 and 1995.⁵⁶

Many jobs in the industries and occupations with projected growth often have limited access to flexible work arrangements, and have been characterized as having rigid, unstable, and unpredictable scheduling practices that strain working families.⁵⁷

TABLE 3: Schedule Types of Workers in Low-Wage, Hourly Jobs

	Standard hours	Nonstandard hours
Full-time	86.5%	56.5%
Part-time	13.5%	43.5%

TABLE 4: Schedule Types of Employees Who Work Nonstandard Hours

	Full-time	Part-time
Regular daytime	48.4%	44.8%
Regular evening	12.9%	18.9%
Regular night shift	11.8%	5.6%
Rotating shift	13.9%	15.4%
Split, flexible, variable, or other type of shift	12.9%	15.3%



Business and Economic Forces Fueling Nonstandard Work

Several trends are fueling our changing economy: a shift toward a service-based economy; the growth of female employment, particularly in the low-wage service sector; an increased demand for services during non-daytime hours and weekends due to the increase in the number of women employed in daytime jobs; the increase in the demand for entertainment and recreational-type activities due to the rise in single-earner and dual-earner households; an aging population in need of round-the-clock medical care; and a global economy that requires people to be on-call at all times.⁵⁸

According to Lambert, “the ability of employers to readily adjust the number of employees and their work hours [. . .] has increased over the past two decades as just-in-time business strategies have permeated the economy.”⁵⁹ Lambert explains that the use of a workforce that is paid by the hour allows employers to “contain, if not minimize outlays for wages,” creating instability in both hours and income.⁶⁰

The National Institute for Occupational Safety and Health further describes the factors contributing to unstable and unpredictable scheduling as follows: “the continued push toward lean manufacturing, with short lead times and low inventory, and the greater demand for night and evening customer service have resulted in larger fluctuations in production and service levels by hour of day, day of week, week of month, month of year.”⁶¹

Changes in scheduling technology have facilitated this shift toward just-in-time scheduling. Some employers are now using new computer software programs to add or subtract hours within the same day or to vary schedules within the same day to respond to fluctuating consumer and production demand schedules.⁶²

For example, the marketing for one of the leading scheduling software products provides insight into why just-in-time scheduling may hold appeal for businesses. One company that targets its software to the manufacturing, retail, and health care industries reports that the software can be used “to enable a just-in-time workforce perfectly aligned with demand for products or services.”⁶³ The software allows stores to track sales, transactions, and customer traffic in fifteen-minute increments so that companies can fine-tune staffing levels, even within the same day, to meet workload fluctuations.⁶⁴

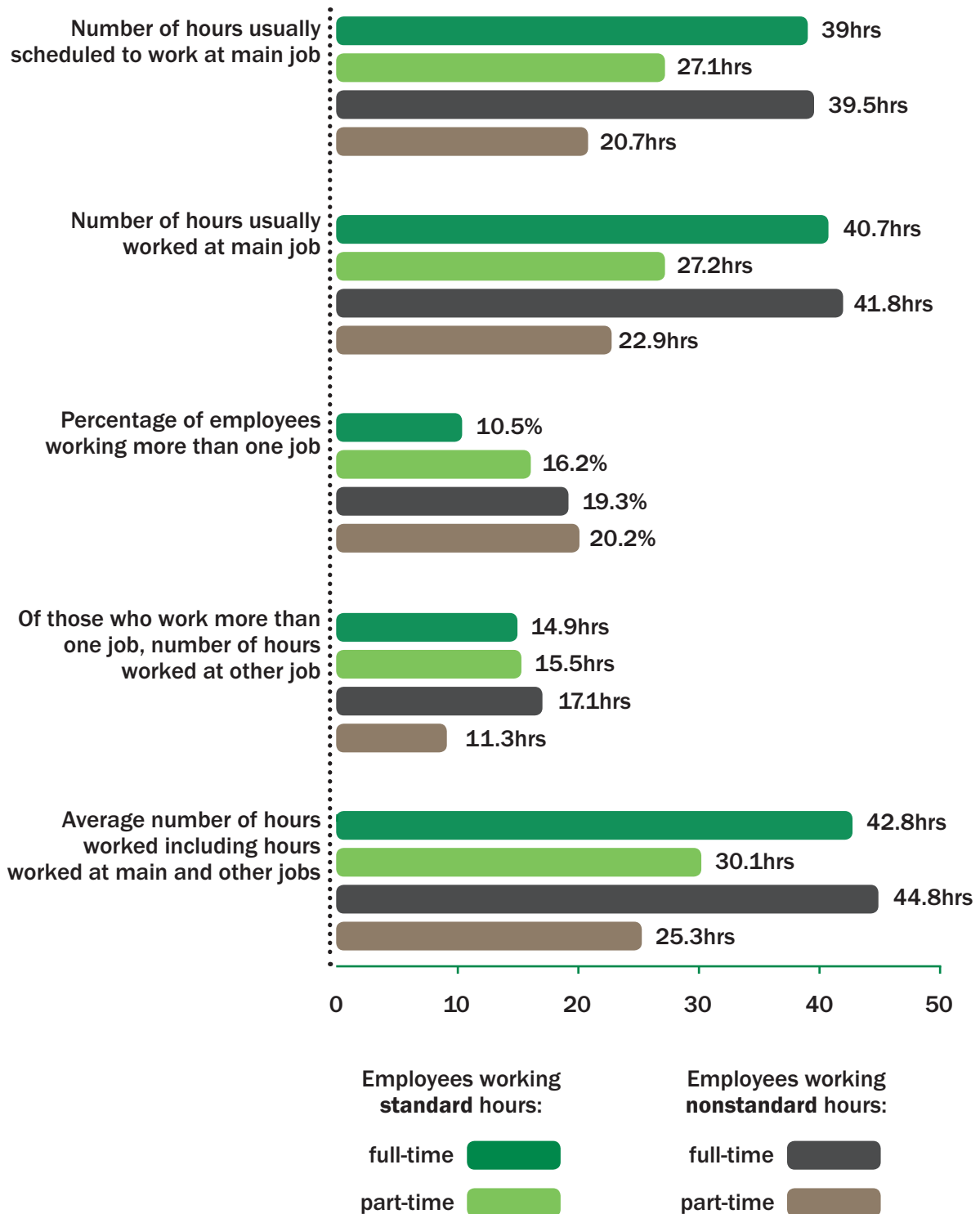
Demographics and Work Hours

TABLE 5: Low-Wage, Hourly Workers: Sample Demographics

		Employees working standard hours	Employees working nonstandard hours
Average age		44.3	42.5
Gender	Male	37.7%	36.9%
	Female	62.2%	63%
Race	White	72%	78.2%
	Black	15.7%	9.8%
	Hispanic	7.8%	6.1%
	Other	4.4%	5.8%
Is a U.S. Citizen		98.7%	98.7%
Is a member of a union or bargaining unit		10.3%	11.8%
Lives with partner		56.7%	53.9%
Has a child <18 in the home		40.8%	34.5%
Average number of children in the home		1.4	1.5
Residential Area Type	Urban	30.5%	26.6%
	Suburban	33.9%	41.5%
	Rural	35.5%	31.8%
Number of employees at work	Less than 25 people	30.7%	44.1%
	Between 25 and 249	41.7%	34.8%
	250 people or more	27.5%	20.9%
Average roundtrip commute time to work		46.3 min.	41.1 min.
Full-time workers in school/taking classes		13%	12.3%
Part-time workers in school/taking classes		20.9%	26.5%

of Low-Wage Hourly Workers

TABLE 6: Average Hours Worked per Week



PART 2

Diagnosing the Problem – Rigidity, Unpredictability, and Instability

We analyzed data from the 2008 NSCW and synthesized data from existing reports to examine how the problems of rigidity, unpredictability, and instability play out for low-wage hourly workers on standard and nonstandard schedules and to determine, to the extent possible, the prevalence of each of these problems for low-wage hourly workers in these two categories.

An Overview

Rigid Scheduling Practices. Rigidity is a problem for workers on both standard and nonstandard schedules. The very nature of “standard” work hours connotes rigidity, in that employees are generally required to report to and leave work at a set time. Workers in jobs requiring standard hours may not have control over the timing of their work hours or the ability to adjust their starting and quitting times within some range of hours, or control over when they take breaks. Their schedules can be very difficult to modify, either because of certain job requirements or because of supervisor expectations.⁶⁵ For these workers, adherence to a regular schedule is the norm, and deviation from this norm may require employers to rethink performance measures and the overall management approach. In general, these workers have very little opportunity for meaningful input into their work schedules.

Employer adherence to routine, set schedules is a problem for some workers employed in jobs requiring nonstandard hours as well.⁶⁶ Some of these workers may work the same schedule from week to week with very little opportunity for input into that schedule (e.g., they may work a routine night shift or weekend shift). Those nonstandard hours workers on unpredictable schedules who get notice of their schedules at the last minute may also experience rigidity in that they are unable to alter start and end times or decide when they take breaks.



Robert is a single father of two and the primary caregiver for his elderly mother, who is in poor health. Robert works full-time as a receptionist; he answers phones and greets clients from 8:00 a.m. until 5:00 p.m. Until his mother got sick, she came in the mornings and stayed with the children until the school bus picked them up, so Robert could be at work on time. Since his mother has been sick, a neighbor has been watching the children in the mornings.

(continue to next page)

But the neighbor is occasionally late, making Robert late for work. During the past three weeks, Robert was late twice and also took several personal days off to take his mother to the doctor, for which Robert’s supervisor gave him a “warning.” Employees who receive three warnings are usually terminated. This situation is quite stressful for Robert; he is worried that he could lose his job.

If Robert could adjust his start time to 8:30 he would likely be able to get his kids off to school and get to work on time. Unlike workers in many salaried positions, deviation from an employer-determined start time may result in threatened or actual job loss for many workers in low-wage hourly jobs.⁶⁷

(This example is from field research on flexibility and low-wage work conducted by Dr. Jennifer E. Swanberg.)

Unpredictable Scheduling Practices. Workers in jobs with nonstandard schedules in many industries such as health care, retail, and hospitality may have routinely unpredictable schedules, receiving very little notice of their weekly work schedules. The requirement to work overtime with little or no notice or to work extra hours is another type of unpredictability that impacts both standard and nonstandard hours workers.



Karen is a part-time package delivery person with a one-year-old. She is generally assigned four days of work a week, for one of two different daytime shifts. The particular days that she works change from week to week. She gets notice of the shifts and days she will work only a week ahead of time. Each week, after she receives notice of her work schedule, she calls friends and family to arrange her child care for the coming week. In the past year, she has been “written up” at work by her supervisor several times — at least once for missing work and a couple of times for being fifteen minutes late — all due to child care problems. Her supervisor is sympathetic to her situation, but he is required to report these infractions. Karen would love to work full-time, with a predictable set schedule. She has been in her “temporary” position for over one year; she believes she is being overlooked for full-time employment because of her child. Having more notice of her schedule would allow Karen to line up her child care much further in advance, decreasing the likelihood of being unable to find child care at the last minute. Having more stable child care would allow her to get to work on time and reduce the chance of disciplinary action against her for being absent from or late to work.

(This example is from a research study, the Work & Family Transitions Project, at the University of Massachusetts-Amherst. Principal Investigator: Dr. Maureen Perry-Jenkins.)

Unstable Scheduling Practices. Unstable scheduling practices refer to the fluctuation in work hours by week, time of day, and length of shift. Workers on nonstandard schedules may be required to work a different schedule on different days or the length of their schedules may vary day-to-day.⁶⁸ Instability also impacts workers in jobs requiring both standard and nonstandard schedules who are subject to reduced work hours or temporary layoffs during slow periods or involuntary part-time work.



Sarah, a mother of four young children, works the night shift as a Certified Nursing Assistant three to four nights a week. The particular nights of the week that she works change from week to week. Her partner, Andrew, works full-time during the day and takes care of their children at night. When Sarah comes home from work at 7 a.m., she gets her five-, six-, and seven-year-old off to school and then is home all day with her sixteen-month-old baby. Most days Sarah is home alone with the baby, and sleeps only when the baby is sleeping. Sarah arranged her work schedule this way, sacrificing both sleep and time with her partner, so she can be available for her children. Ideally, she would like to secure a stable full-time job, but she hasn't been able to find one.

Although she has asked for a more regular schedule, Sarah has little, if any, control over which nights or how many hours she works each week. She struggles with a variable schedule and an unstable, fluctuating income.

(This example comes from the Work & Family Transitions Project referenced earlier.)

Although some employees may face only one of these challenges, others may face two or more simultaneously. For example, a worker in a job with a nonstandard schedule who receives only one week's notice of her schedule may have trouble arranging child care at such late notice and so may need to pick up her child from school at a time when she is scheduled to work. But this same worker is likely to have very little ability to alter the time at which her shift ends so that she can pick up her child. She has both an unpredictable and rigid schedule. She would benefit from at least two flexible workplace solutions: more predictability and more opportunities for meaningful input into her schedule.

Likewise, a worker in a 9 to 5 job who generally works a full-time schedule may occasionally be required to work overtime or extra hours without notice. But this same worker has a schedule that is generally rigid, but occasionally unpredictable. The worker would benefit both from the ability to have more input into when he works overtime or extra hours, and more advance notice of when overtime hours will be scheduled.

Prevalence

1. Rigid Scheduling Practices

To determine the prevalence of rigid scheduling practices for low-wage hourly workers on nonstandard and standard schedules, we examined three factors: workers' self-reported control over work hours generally; workers' ability to choose start and end times; and workers' ability to take breaks at times of their own choosing.

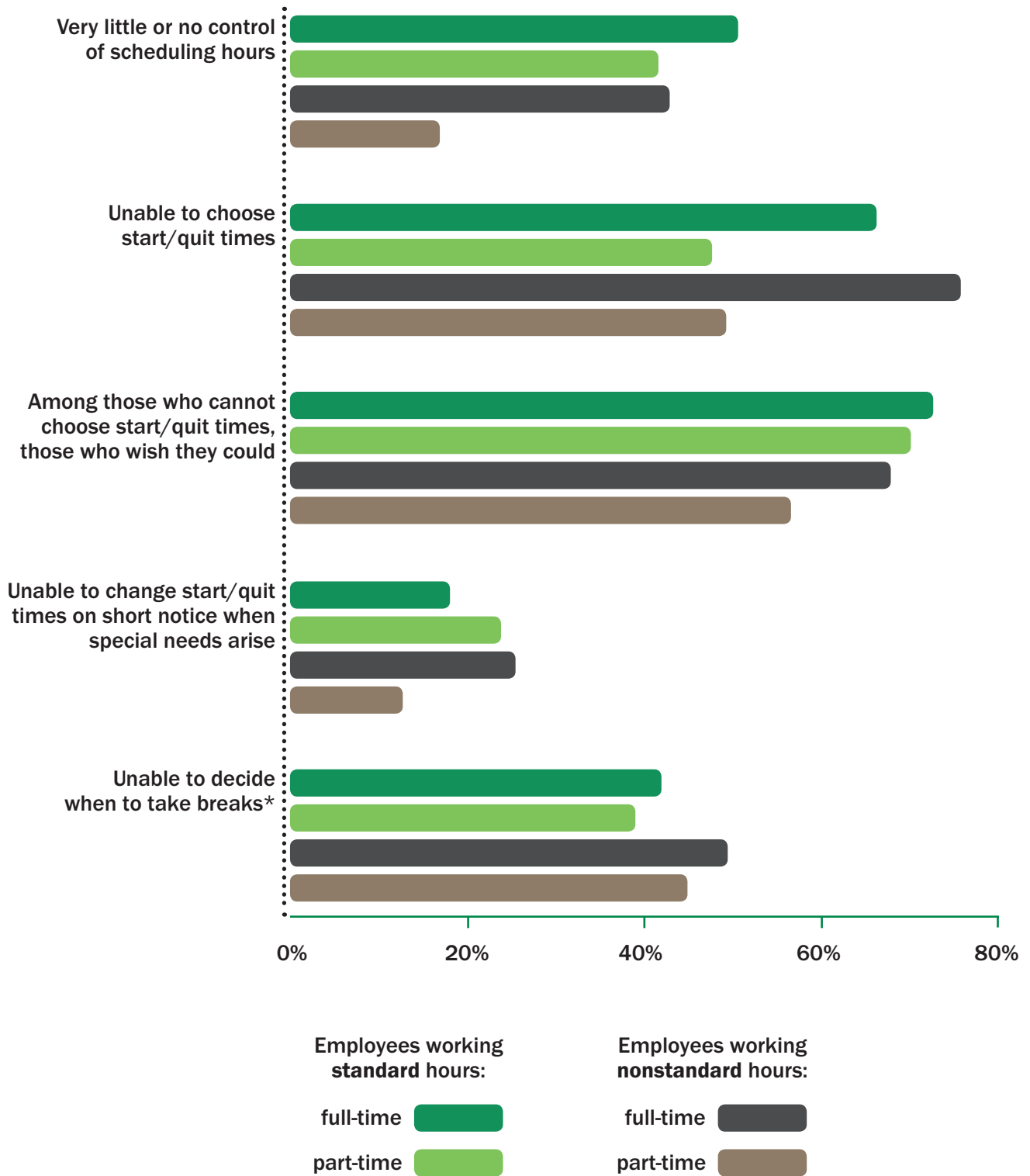
Roughly half of low-wage hourly workers report having limited control over their work hours. Among those low-wage hourly workers in jobs with standard schedules, 51% of full-time and 42% of part-time workers report having very little or no control over the hours that they work. Among those low-wage hourly workers in jobs with nonstandard schedules, 43% of full-time and 17% of part-time workers report having very little or no control over their scheduled hours.

Significant proportions of low-wage hourly workers also report that they cannot alter their start and end times. As indicated in Table 7, about two-thirds of full-time workers in jobs with standard schedules and three-quarters of full-time workers in jobs with nonstandard schedules do not have any choice regarding when they start and end their work day.

Overall, between 40% and 50% of low-wage hourly workers report experiencing the third indicator of rigid scheduling practices: being unable to determine when to take breaks while at work. Among workers in jobs with standard schedules, 42% of full-time and 39% of part-time workers cannot choose when to take a break from their work-related tasks. A slightly higher percentage of workers in jobs with nonstandard schedules do not have control over their break times — 50% of full-time workers and 45% of part-time workers.



TABLE 7: Rigid Scheduling Practices



*2002 NSCW data were used for this item as the question was not included in the 2008 NSCW.

2. Unpredictable Scheduling Practices

Predictability of work schedules has been defined as the length of advance notice given to workers regarding which shifts they will be required to work.⁶⁹ We extend the meaning of unpredictability to include being required to work overtime or extra hours with little or no notice. To the best of our knowledge, there is no known national data that directly examines the prevalence of workers receiving their schedules with little or no notice. Thus, to fully understand the scope of this scheduling challenge, we first turn to three leading research studies on scheduling and flexible workplace practices, and then supplement this information using the 2008 NSCW to determine the prevalence of overtime hours being required with little or no notice.

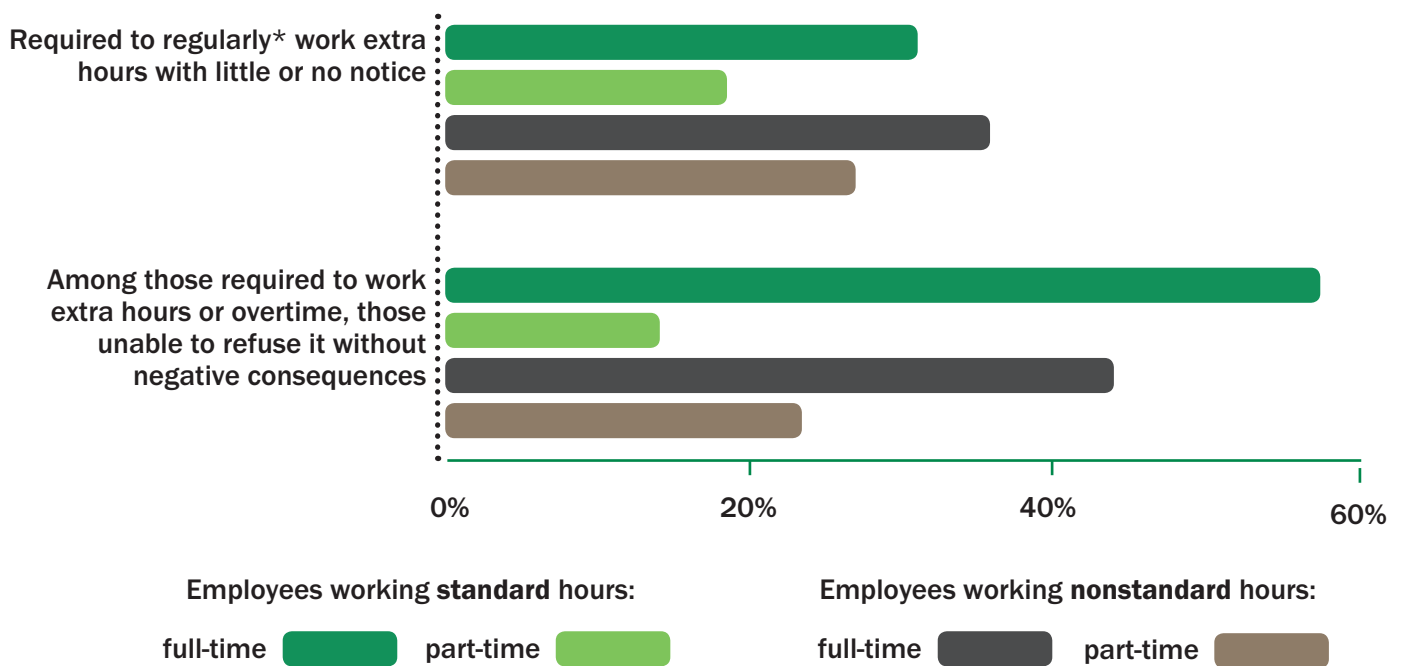
Last minute posting of schedules. In a study led by Lambert of low-skilled, non-production jobs in 17 major U.S. corporations in four industries (hospitality, airlines and packaging delivery, retail, and financial services) scheduling with little advance notice was common practice in every industry.⁷⁰ Only three of the 17 corporations gave more than a week's notice of schedules. The rest of the organizations posted schedules on Wednesday, Thursday, or Friday for a work week that began on Sunday, giving as little as two days' notice of schedules. Lambert also observed that some workers in that study experienced unpredictability when they were called in to work at the last minute to respond to last minute fluctuations in business demand.

Last minute posting of schedules was common practice in another study of low-wage hourly workers in a Fortune 100 retail company.⁷¹ Across multiple stores located in geographically disparate regions in the country, the average amount of notice of work schedules that these workers received was seven days.

Finally, in a study of 32 companies across a broad range of industries, unpredictable schedules were more common in service industries (e.g., retail, financial, and food service) and less common in manufacturing industries (e.g., electronics, food, manufacturing).⁷²

Last minute overtime or extra hours requirement. Unpredictable scheduling also includes being required to work overtime or extra hours with little or no notice. Overall, overtime requirements appear to be common among low-wage hourly workers in jobs with both standard and nonstandard schedules, though this practice is slightly more prevalent among workers in jobs with nonstandard schedules. As noted in Table 8, 31% of full-time and 19% of part-time low-wage hourly workers on standard schedules are regularly required to work extra hours with little or no notice, while the same is true of about 36% of full-time workers and 27% of part-time workers on nonstandard schedules. Among low-wage hourly workers who are regularly asked to work overtime or extra hours, about 58% of full-time and 14% of part-time workers on standard schedules and 43% of full-time and 24% of part-time workers on nonstandard schedules must work overtime or extra hours to avoid negative consequences.

TABLE 8: Unpredictable Work Schedules



*Regularly is characterized as being required to work overtime weekly or more, two to three times a month or about once a month.

3. Unstable Scheduling Practices

We use the term unstable work schedules to refer to work schedules that fluctuate in hours by week, time of day, and/or length of shift. Such practices make it difficult for workers to plan for their personal or family expenses, as well as personal logistics, like child care. We also include in our definition the reduction of work hours when work is slow, and the incidence of part-time work among those who express a preference for full-time hours.

To determine the prevalence of schedule fluctuations in the low-wage hourly workforce, we refer to three research studies, and we use the 2008 NSCW to examine related dimensions of this problem.

Fluctuating schedules. Results from the CitiSales Study, a study of workplace flexibility practices at one U.S. retailer, found that 50% of full-time hourly workers reported working the same days each week, and 41% reported working the same days and same shifts each week. This means that 50% of the employees had their shifts change from week to week, while the days that they worked stayed the same, and for 59% of employees, either one or both their shifts and the days that they worked changed each week.⁷³

Involuntary reduction of hours. The second dimension of schedule instability takes the form of involuntary reduction in work hours. The reduction of work hours when work is slow is a problem for both standard and nonstandard hours workers, as well as part-time and full-time workers. As noted in Table 9, between 20% and 30% of part-time workers on standard hours and full-time and part-time workers on nonstandard hours report this problem.

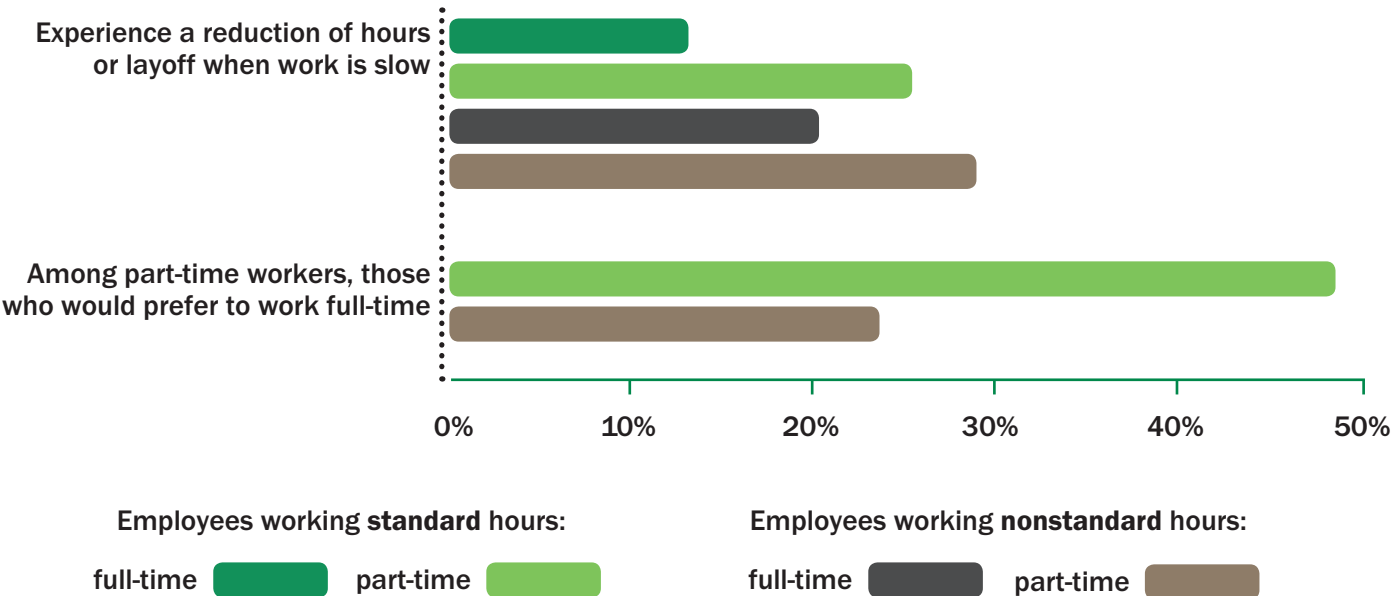
Sometimes workers have their hours cut while in the midst of a work shift. In Lambert’s previously described study, employers often sent workers home when work was slow. Lambert found that newly hired workers and part-time workers were more likely to be subjected to reductions in the amount of hours for which they were previously scheduled to work and to just-in-time scheduling practices than other workers.

Involuntary part-time work. Low wages, combined with involuntary part-time work, leave many workers with very little take-home pay at the end of the week or month. Assuming the number of part-time workers who would prefer to be working full-time is a fair proxy for involuntary part-time work, approximately 49% of low-wage hourly part-time workers in jobs with standard schedules and 24% of low-wage hourly part-time workers in jobs with nonstandard schedules are working part-time involuntarily.

These results are consistent with findings from the CitiSales Study that found that 33% of full-time and 43% of part-time workers would like to work more hours. The most common reasons given for not working more hours at CitiSales are, “more hours are not available” and “schedule offerings do not fit with my family responsibilities.”⁷⁴

Nonetheless, we anticipate that these percentages may be much higher in this current economic climate, given the national unemployment rate of 9%.⁷⁵ As evidence of this, the Economic Policy Institute reports that the number of involuntary part-time workers has almost doubled since the start of the recession from 4.6 million to 9.1 million.⁷⁶ More recent figures on involuntary part-time work from the United States Bureau of Labor Statistics show that, as of January 2011, 8.4 million people were employed in part-time jobs for economic reasons, defined as either slack work or business conditions or only being able to find a part-time job.⁷⁷

TABLE 9: Scheduling Instability



Spotlight on the Business Case

Although a number of reports have described a robust business case for workplace flexibility in general, until recently there was almost no research documenting the business case for providing workplace flexibility to low-wage hourly workers.⁷⁸ Here we synthesize and summarize results from the leading reports, and discuss some of the challenges to businesses' implementation of flexibility.

Flexibility for Low-Wage Hourly Workers Improves Recruitment and Retention, Employee Engagement, and Well-Being

- Workplace flexibility improved employee retention in industries with typically high turnover like sales and customer service, reducing recruitment and training costs of new employees.⁷⁹
- Employees with flexibility were 30% more likely than employees without flexibility to intend to stay with their employers for more than two years.⁸⁰
- Job commitment was 63% higher among low-wage employees who felt their managers provided sufficient flexibility to meet their personal and family responsibilities than among employees who felt their managers did not offer sufficient flexibility.⁸¹

Flexibility for Low-Wage Hourly Workers Benefits the Bottom Line

- The studies' overall consensus is that providing flexibility reduced absenteeism, enhanced customer service, and led to higher profits.
- Providing flexibility was found to be cost-neutral. Employee use of flexibility was found to result in significant savings due to reductions in overtime costs resulting from unscheduled absences.⁸²
- Flexibility for low-wage workers was found to lead to a return on investment equal to, if not greater than, the return on investment associated with providing flexibility to other workers.⁸³

Flexibility for Low-Wage Hourly Workers Poses Some Challenges for Business

The studies report several types of challenges, including:

- Management's mistrust of employees, concern about the need for control over hourly workers, and a fear of increased costs associated with providing flexibility;
- Concerns about whether offering flexibility to employees will jeopardize quality and continuity of customer service, and about the need to balance employee requests with the needs of the company;⁸⁴ and
- Questions regarding how to implement FWAs for non-exempt workers while complying with the requirements of the Fair Labor Standards Act (FLSA).

There is also a growing body of literature examining how flexibility works in union settings. Identifying strategies for the successful implementation of flexibility in the union context — either through formal collective bargaining or informal “shop floor” negotiations — is an important addition to the business case.⁸⁵ Identifying barriers to flexibility in the union setting is also important.

Further research in this area is warranted to better understand employer challenges, and develop strategies for overcoming management resistance. Likewise, much more could be done to document the return on investment of providing flexibility to low-wage hourly workers in a variety of jobs and industries.

PART 3

Solving the Problem – The Flexible Workplace Solutions Framework

The challenges of rigidity, unpredictability, and instability are common among low-wage hourly workers. For workers on standard schedules, the primary problem appears to be rigid scheduling practices, with some of these workers also experiencing unpredictable schedules, in the form of last minute mandatory overtime or extra hours. Workers on nonstandard schedules may face all three of these challenges. The Flexible Workplace Solutions Framework lays a foundation for developing and categorizing solutions to each of these problems that will be meaningful for workers in jobs requiring both standard and nonstandard schedules.

SCHEDULING CHALLENGES

Rigidity

- Lack of control in scheduling work hours, including overtime or extra work hours
- Lack of input into starting and quitting times
- Lack of control over break times

Unpredictability

- Regularly receiving work schedules with little or no advance notice
- Being requested to work overtime or extra hours with little or no notice

Instability

- Fluctuations in work hours by week, time of day, and length of shift
- Being subject to reductions in work hours when work is slow
- Involuntary part-time work (defined as working part-time but desiring more work hours)

FLEXIBLE WORKPLACE SOLUTIONS

Opportunities for meaningful input into work schedules

The ability to have schedule preferences taken into account, including:

- To work or not work particular shifts
- To alter start and end times
- To work or not work overtime or extra work hours
- To take breaks at certain times

Predictability

- Providing work schedules (including overtime schedules) in advance
- Minimizing changes to previously assigned schedules

Stability

- Providing a consistent number of hours from week to week or month to month
- Guaranteeing a certain proportion of hours or shifts
- Giving new employees notice of how many hours of work will be assigned

Below we provide a number of business examples of flexible workplace solutions in practice, categorized by type of solution: providing opportunities for meaningful input into scheduling, providing more predictable schedules, and providing more stable schedules. (In practice, however, flexible workplace solutions often come bundled together. For this reason, some of the real-world examples below incorporate more than one type of solution.)

Flexible Workplace Solution: Provide opportunities for meaningful input into work schedules

Employers can lessen rigidity in scheduling practices by providing employees with opportunities for meaningful input into their work schedules. There are a number of different ways to do this.⁸⁶

We note, however, that past efforts to provide greater employee input into scheduling have often resulted in workers being scheduled for fewer hours or less desirable shifts.⁸⁷ Thus, regardless of which avenue for including employee input an employer might choose, it will be necessary to build in appropriate safeguards for the employee making the request.

Establish a formal process for considering employee requests. Some employers have instituted a formal policy by which employees may ask for a flexible work arrangement.⁸⁸ Management retains the discretion to say “no” to these requests, but the policy is designed to provide a level of categorical availability to employees — i.e., ensuring that eligible employees can request FWAs — and to allow the employer to respond to requests in a manner that addresses its business needs and achieves a mutually beneficial result. In some companies, an employee may request an FWA regardless of the employee’s position in the company and for any reason. Management approves or denies the request — often based solely on work-related needs and not based on the merits of the employee’s reason for requesting flexibility. Denials of such requests are usually reviewed either by a company’s Human Resources Department or through a company’s standard employee appeal process.



A national retail firm that was the focus of the CitiSales Study has three established flexible practices designed to give employees more control over their schedules: 1) Managers allow employees to indicate specific days, shifts, and hours that they prefer to work, as well as preferences for a set routine schedule; 2) Managers offer employees “pre-planned scheduled modifications” that give employees the opportunity to request that they not be scheduled for a particular day or shift prior to the creation of the weekly schedule; and 3) Just-in-time scheduling changes permit employees to request changes to the existing schedule by having someone cover a particular shift or swapping a shift with a co-worker.⁸⁹ Managers report that offering these types of “flexible practices” reduces work-family conflict, employee stress, turnover, absenteeism, and presenteeism (i.e., reporting to work sick), while also enhancing employee engagement. In addition, managers report that flexibility is a good recruitment tool.⁹⁰

Promote team scheduling. Through team scheduling, results-oriented workplace teams set their own performance goals, which meet the employer's goals and objectives, and then set schedules that allow employees to both meet those goals and meet the individual needs of team members.



The **Business Opportunities for Leadership Diversity Initiative** is one example of a team-based, results-focused approach to scheduling in which employee teams work together to determine how and when to get the work done. This approach, pioneered by Bea Fitzpatrick and Harvey Thompson, assumes that employers and employees have a shared need for flexibility and that productivity will be enhanced by implementing a team-based approach to meeting this need. The BOLD Initiative, which is funded by the Alfred P. Sloan Foundation, has been implemented at the Chubb Corporation, Gannett, Nextel, PepsiCo, Johnson & Johnson, and Prudential, among others.⁹¹

Enlist employee input. Before making significant schedule changes that will impact its employees, employers can enlist the input of their employees either through key employee interviews or focus groups.



The IKEA Savannah Distribution Center convenes focus groups of co-workers (which is how IKEA refers to its workers) to discuss business and other concerns affecting IKEA co-workers and their families. In particular, changes to the method of scheduling workers are often first discussed in focus groups. (IKEA Distribution Centers receive goods from suppliers for shipment to IKEA home good stores.)

Offer shift-swapping. When employees are not able to work the shift to which they are assigned, shift-swapping policies can allow employees to find a peer replacement. Shift-swapping is mainly beneficial to employees after schedules are posted or when last minute needs prevent them from working an assigned schedule. Shift swaps are commonly provided in collective bargaining agreements. Generally, the agreements provide that the trades or swaps require the approval of the employee's supervisor. Many of the agreements set other limitations such as noting that swapping employees must be in the same job classification, limiting the number of swaps that an employee may engage in per month, and stating that swaps are only permissible if they do not result in the employer incurring additional overtime payment obligations.⁹²

Promote cross-training. Cross-training employees (so that one employee is able to perform several different types of jobs) creates a sizable pool of employees who are available to cover for an employee who cannot work an assigned shift. Cross-training employees benefits the employer, who is less likely to be short-staffed if employees are able to fill in for absent co-workers.



To promote greater flexibility for employees and improved staff coverage for the employer, a team of three administrative assistants in the economics department from the Harvard Union of Clerical and Technical Workers cross-trained so that each was able to cover the others' work. As a result, the assistants had much greater flexibility in the shifts that they worked, and the professors and graduate students with whom they worked had better staff coverage because if one of the assistants was not working at any given time, the others could still get the work done.⁹³

Likewise, cross-training may allow employees to work more hours and have more income. For example, if a restaurant employee who typically works as a server is not needed due to slow customer traffic, that employee might be able to fill in where there is another need in the restaurant (e.g., hosting and taking phone reservations, or assisting in the kitchen).

Provide workers with more choice in whether and when they work overtime or extra hours. Rather than requiring employees to work scheduled overtime or extra hours, employers can try to increase the likelihood that these hours are distributed to those employees who want them, rather than to those for whom they are a burden, by first seeking volunteers before requiring any particular employee to work overtime or extra hours. Establishing policies that permit employees to refuse overtime or extra hours without being penalized, or to refuse overtime for particular reasons — e.g., family emergency or other caregiving responsibilities — is another way to give employees input into whether and when they work overtime or extra hours.



Some collective bargaining agreements provide opportunities for employees to indicate their preferences for overtime shifts. An AFSCME agreement with the State of Delaware allows employees to indicate their overtime availability and shift preferences in an overtime book that is distributed on a rotating seniority basis.⁹⁴ A collective bargaining agreement from the La Salle County Highway Department allows employees to be excused from mandatory overtime for illness, family emergency, or an approved leave of absence.⁹⁵ A collective bargaining agreement between the California Nurses Association and Mills Peninsula Hospital states that nurses will not be penalized for refusing to work overtime assigned on short notice, and that mandatory overtime will not be assigned unless a disaster or emergency is declared by government officials.⁹⁶

Computerized self-scheduling systems. Numerous corporations are already leveraging technology to facilitate flexible work for low-wage hourly workers. Computerized self-scheduling systems allow employees to remotely adjust their schedules, responding to obligations as they arise. JetBlue, J.C. Penney, and Kraft Foods all use variations of online self-scheduling through which an employee can input scheduling preferences, remotely access scheduling information,

and electronically contact co-workers with shift change requests. Such programs efficiently allow employees to manage their schedules, even away from the office or work site, can cut down on time managers spend adjusting posted shifts, and foster cooperation in team-based positions.⁹⁷

Train managers on how to respond to scheduling requests. Training for managers in reducing work-family conflict and responding to scheduling preferences has been shown to yield significant positive outcomes for employees. Since implementation of innovative scheduling practices is often at the discretion of the supervisor or manager, we recommend that supervisors receive training on the business case for flexible work arrangements and how to think creatively about giving employees input into their assigned schedules.⁹⁸



Training line managers paid big dividends in one grocery store setting. In a study of grocery store managers' supervision practices, Dr. Ellen Kossek provided grocery store managers with training in Family Supportive Supervisor Behaviors, including computer-based tutorial quizzes, face-to-face discussion, and supervisor daily self-monitoring.⁹⁹ Employees reported significant benefits from this training, including: "higher levels of physical health; higher levels of participation in safety programs; higher levels of perceptions of family supportive supervisor behaviors; higher levels of job satisfaction; lower levels of work-family conflict; and lower levels of turnover intentions."¹⁰⁰

Train employees on how to negotiate schedules. Providing meaningful input into scheduling requires that employees understand the scheduling process, are realistic about their requests, and feel empowered to make requests for schedule changes. This can be done through tip sheets, at employee orientation, or during other regularly scheduled employee training.



Corporate Voices for Working Families and WFD Consulting have developed a toolkit with advice for employees about how to negotiate flexible schedules. Tips for employees include: being specific about the FWA desired but also being willing to be flexible if there are days or times when the particular FWA that has been negotiated does not work; thinking through the employee's job requirements and what types of flexibility would work well; focusing on business results and continuing to meet performance expectations; and communicating regularly with managers and coworkers about schedule changes and soliciting feedback.¹⁰¹

In unionized workplaces, unions can play an important role in training union representatives and other employees in how to negotiate for flexible schedules.¹⁰² A recent issue brief by Kossek and Dr. Peter Berg found that union's support for flexibility was positively associated with access to flexibility. Kossek and Berg concluded, "Supporting worker negotiations with their supervisors or helping them with their schedules makes a significant impact on the ability of workers to get access to flexible schedules."¹⁰³

Flexible Workplace Solution: Provide advance notice of scheduling

Employers can provide more predictable work schedules by giving employees as much advance notice of work schedules as is feasible, and making efforts to minimize last minute overtime or extra work hours.¹⁰⁴

Advance notice of regular work schedules. Instead of providing minimal advance notice of work schedules, employers could give employees as much notice as possible, such as posting work schedules (or some portion of each employee's work schedule) one month at a time. Employers can also take steps to minimize changes to schedules once assigned.



Posting schedules one month in advance has led to promising results, as demonstrated in an ongoing study by Lambert and Henly. In this study being conducted at a leading retail chain, Lambert and Henly are analyzing the effects of making work schedules more predictable by providing one month's notice of schedules.¹⁰⁵ Most managers at the retail chain had been posting schedules on a Tuesday for a workweek beginning on Sunday, despite receiving their staffing hours one month ahead of time. Through the intervention, managers changed their practices to post schedules one month in advance.¹⁰⁶ Although results from the experimental component of the study are not yet available, employee survey results indicate that employees with less predictable work schedules had higher levels of stress, greater work-family conflict, and more interferences with non-work activities such as scheduling doctor's appointments, socializing with friends, and eating meals together as a family.

Advance notice of changes to previously assigned schedules. Providing employees with advance notification of changes to previously assigned schedules, such as last minute overtime or extra work hourly requirements, can ease work-family conflict for employees. Some collective bargaining agreements require advance notice of schedule changes.



A collective bargaining agreement between the Coalition of University Employees and the University of California requires five days' advance notice for a period of less than four workweeks in duration and 20 days' advance notice for a period of four workweeks or more in duration.¹⁰⁷ This agreement makes an exception for 24-hour operations. Another agreement requires posting changes in work schedules at least ten days in advance, except in emergencies.¹⁰⁸

Flexible Workplace Solution: Provide schedule stability

Provide a minimum number of hours that workers will be assigned to work each week, month, or year. Consistency in the number of hours they are scheduled to work during set pay periods offers workers some stability in income and a greater personal economic security. One strategy to ensure this consistency is for employers to provide workers with a minimum number of hours per pay period or some other designated period of time.



About half of Costco employees work full-time schedules, and virtually all part-time employees are provided with a minimum of 24 hours per week.¹⁰⁹ The average part-time worker actually works 30 to 31 hours per week. Schedules are posted a minimum of one week in advance, and managers try to maintain as consistent work schedules as possible, giving the same shifts and days off during the week, to the extent possible consistent with business needs. Ninety percent of hourly employees are provided with health insurance benefits. Using these strategies, Costco has achieved very low turnover rates of between 10 and 15% per year, in an industry known for extremely high turnover.

Allow employees to supplement their hours by working at multiple employer locations.

As a strategy to minimize a reduction in employee work hours and provide consistency in the number of hours worked per pay period, firms with multiple locations could allow employees to work in more than one location in the event that an employee's usual amount of work hours cannot be met at only one employer location.



In the CitiSales Study, a retail employer allowed its workers to work at multiple store locations so that workers could increase their work hours when store traffic at a single location was too slow to provide employees with sufficient hours.¹¹⁰

Provide employees with certain guaranteed shifts or guaranteed days, even if the entire week is not guaranteed.¹¹¹ Greater stability in low-wage workers' schedules allows employees to more effectively manage their lives outside of work, and their income. One way to accomplish this is to guarantee workers a partially set schedule in which a proportion of work hours is guaranteed to be the same every week or to guarantee work on certain days or shifts."¹¹²



At the IKEA Savannah Distribution Center, when hourly co-workers are hired, they are told that they will work between 32 and 50 hours per week, depending on business needs including sales and other factors. These co-workers are scheduled for one of three types of schedules each week: a 3x10 (30 hours), 4x10 (40 hours), or 5x10 (50 hours). (5x10s usually only occur during particularly busy seasons, such as summertime.) When IKEA moved to this schedule, it asked co-workers to indicate their preferences for particular days and shifts, within each of these three types of schedules, allowing co-workers to have greater stability in the days and shifts that they work. These schedules are assigned three weeks in advance, including, to the extent possible, overtime hours. (IKEA seeks volunteers for any overtime assigned with less than the usual notice period, and then gives as much notice as possible.)

PART 4

An Overview of the Public Policy Landscape

This is a timely moment to consider how best to incorporate low-wage hourly workers' needs into the larger public policy conversation on workplace flexibility. There is a significant initiative at the federal level to elevate the national conversation on workplace flexibility.¹¹³ This initiative began with the White House Forum on Workplace Flexibility, held on March 31, 2010.¹¹⁴ Since then, the Administration has continued to raise the profile of this issue in a number of ways. Most visibly, the U.S. DOL's Women's Bureau has been charged with hosting local events to discuss the issue of workplace flexibility, several of which will focus on industries that employ significant numbers of low-wage and hourly workers, and the Administration has released a "Starter Kit" that local communities can use to host their own events.¹¹⁵ The Office of Personnel Management (OPM) is implementing a flexibility pilot project for salaried and hourly workers. As described in a recent Memorandum of Understanding between the Office of Disability Employment Policy and the Women's Bureau, the government also has plans underway for a website devoted to providing technical assistance, training, and information about workplace flexibility.¹¹⁶

This section of the report lays the groundwork for policymakers who are interested in exploring how to build on the research and promote better business practice in this arena. In the first section, we draw on the key recommendations from WF2010's Flexible Work Arrangements Public Policy Platform, issued in 2009, and elaborate on many of those recommendations to identify public policy responses that could serve as a first step toward improving scheduling for low-wage hourly workers and their employers. We also discuss existing models from government, the private sector, and abroad that may be useful as policymakers study this issue. In the second section, we outline the current labor standards discussion in this area.

Workplace Flexibility 2010's Flexible Work Arrangements Public Policy Platform

Workplace Flexibility 2010's Flexible Work Arrangements Public Policy Platform provides a blueprint for public policy to increase access to FWAs for employees across the income spectrum. The Platform recommends the following approach:

Create a National Campaign for FWAs: launch a strategic public education campaign, provide awards, conduct research, and disseminate data;

Lay the Groundwork: provide the information, technical assistance, and implementation tools, clarify and remove (or consider removing) actual or perceived legal obstacles;

Invest in Innovation: pilot select FWAs and requirements in the federal workforce and private sector; and

Lead by Example: make the federal government a model employer for FWA implementation and utilization.

We believe it is critically important that low-wage hourly workers' needs be part of the larger policy conversation on increasing access to flexibility for workers across the income spectrum. For that reason, we embedded many ideas specific to these workers' needs throughout the FWA Platform.

In the sections that follow, we describe some of the strategies from the FWA Platform and how they can be implemented in ways that are specific to the needs of low-wage hourly workers. As we made clear in the FWA Platform, we believe these are important first steps in a comprehensive policy approach to making workplace flexibility a normal way of doing business. We hope and expect that the data and experiences collected as a result of the activities below will inform further public policy development in this area.

Include low-wage workers in a national campaign on flexibility

Include low-wage hourly workers in a public issue campaign on the benefits of FWAs to businesses, families, and the public. Many employers do not anticipate a return on investment associated with providing flexibility to workers at the lower end of the wage spectrum.¹¹⁷ They wrongly assume that flexibility for these workers would come at high cost, with little benefit. Since the research on the positive business impact of flexibility for low-wage hourly workers is the least publicly known, government has an important role to play in disseminating these findings. One example of a government-sponsored issue campaign to improve workplace practices is the Campaign for Disability Employment, a collaborative effort among business leaders and disability organizations funded through the United States Office of Disability and Employment Policy within the U.S. DOL.¹¹⁸ The U.S. DOL could start a similar issue campaign promoting flexibility, with an emphasis on the positive impact on business, workers, families, and communities of providing flexibility to low-wage workers.

Provide awards targeted to businesses that provide flexibility to low-wage hourly workers. The United States could have a special award or special category of an award for companies that provide flexibility to low-wage workers, and tailor that award to different industry sectors.¹¹⁹ Although there are a handful of outstanding awards programs offered by the private sector to employers with good workplace practices for hourly workers, including FWA options, the government is in a position to make a much bigger impact. The U.S. could look for inspiration to other countries that have established such an initiative. For example, the government of Singapore has a Work-Life Excellence Award and seal that employers may display for recruitment and publicity purposes.¹²⁰ Likewise, the Australian government's National Work-Life Balance Awards recognize businesses, government, and community organizations that have flexible workplaces.¹²¹ The government site includes a pledge to reinvigorate the awards through the funding and development of a seal of approval that will be provided to award winners and through the development of awards for different industry sectors.

Fund research and disseminate findings on FWAs for low-wage hourly workers. There is a real need for further research to support the business case for providing FWAs to low-wage hourly workers. In addition, the government should consider funding scientifically rigorous research to document the impact that rigid, unpredictable, and unstable schedules have on family economic

security for low-wage workers. The lack of innovative flexible solutions to address scheduling challenges experienced by low-wage hourly workers may lead to missed work, lost pay, job loss, and other forms of economic insecurity, but little work to date has been done to explore these connections.

Provide technical assistance and training specific to flexibility for low-wage hourly workers

The government has an important role to play in leveraging existing best practice guidance from the private sector to ensure that it reaches the widest possible audience and in creating new guidance where it is needed. Many employers are in favor of adopting flexible workplace practices but may not have the time or resources available to make these changes. “How-to” information could make a great deal of difference to these employers. In the United States, the private sector abounds with best practice examples of FWAs that have worked well in different types of businesses, but these examples have yet to reach most businesses.¹²² Corporate Voices for Working Families and WFD Consulting have been leaders in publicizing best flexibility practices for hourly workers.¹²³ Future best practice guidance should explicitly provide examples of ways that employers can improve scheduling along each of the three flexible workplace solutions that we have identified – meaningful input, predictability, and stability.

Target specific industries. To encourage the adoption of flexible workplace solutions for low-wage workers across industries, best practice research and technical assistance should be tailored to particular industries. Studies have shown that training managers in how to implement flexibility is an incredibly cost-effective and time-efficient way to change manager behavior.¹²⁴ The government is in a good position to do this well, either by providing training directly or through third parties. For example, the Australian government worked together with an employer organization, Restaurant and Catering Australia, to compile a set of best practices to provide employees in the restaurant industry with flexible work arrangements.¹²⁵ The U.S. DOL can work with industry groups to identify best practices and make similar best practice guidance available for hourly employees in the top industries that employ hourly, low-wage workers – retail, manufacturing, and health care.¹²⁶

Draw on existing technical assistance models. The U.S. government has an excellent existing technical assistance model in the Job Accommodation Network (JAN), a source of free, expert, and confidential guidance on workplace accommodations and disability employment.¹²⁷ The centerpiece of JAN is a comprehensive website through which JAN offers information about workplace accommodations, the Americans with Disabilities Act, and related information about employment of people with disabilities. JAN is a resource for both employers and employees. Similarly, the government of Singapore’s Tripartite Committee on Work-Life Strategy has a website through which it offers best practices guidance and case studies for employers on work-life practices.¹²⁸ The U.S. DOL could provide similar resources on flexible work arrangements, with technical assistance components specific to low-wage hourly workers, such as shift-swapping software, on-line scheduling platforms that allow for self-scheduling, and sample HR policies on providing opportunities for meaningful input into work schedules, advance notice of work schedules, and stable work schedules. To encourage both small and large employers to adopt FWAs, some of the technical assistance could be geared toward the particular needs of small employers and delivered through the Small Business Administration.

Bring in the experts. The government can also tap third-party providers to provide important resources and information. The government of Singapore, for example, sponsors several trainings every month, many of which are conducted by private consultants.¹²⁹ Singapore also offers a list of

government-approved consultants who can be paid to implement FWA policies using government grant money awarded to companies. The U.S. DOL could sponsor similar trainings, staffing them with both U.S. DOL employees and expert third-party consultants.

Establish public-private partnerships. The government can partner with leading employers to implement innovative new programs and encourage peer-to-peer information-sharing between leading employers and their industry peers. The Alliance Initiative, also through the Office of Disability Employment Policy, is a cooperative program between that office and leading employers to both improve disability workplace practices through the implementation of new programs and practices and to serve as leaders on this issue by participating in forums and events on improving the employment of people with disabilities.¹³⁰ A similar effort on flexible workplace strategies for low-wage workers could be undertaken by the U.S. DOL, and formed around several leading employers who offer to implement best practices and act as leaders on this issue in the business community.

Make strategic investments in piloting new FWA approaches for low-wage hourly workers and new policy strategies

Fund new pilot programs. The federal government should invest in piloting innovative workplace practices, learning from those efforts and disseminating lessons learned. Specifically, it should provide funding to researchers to pilot test a range of scheduling interventions for low-wage hourly workers in challenging business environments, and objectively measure and quantify the results.

There are a number of promising practices for low-wage hourly workers that have yet to be piloted on a wider scale and for which results have yet to be measured. Pilot studies and later quasi-experimental and experimental research designs could assess the impact of interventions for workers on standard and nonstandard schedules, and interventions designed to implement each of the three flexible workplace solutions. This would provide successful models of innovation for new employers and industries.

Provide incentives to encourage flexible workplace solutions. Grant programs to incentivize employers to implement FWAs for low-wage hourly workers may help employers make the capital expenditures they need to experiment with new FWA programs for their low-wage workers and offset the cost of implementation. For example, the government of Singapore allows companies to claim up to \$10,000 to offset the cost of modifying human resources policies to include FWAs, hiring FWA consultants, and communicating new policies to staff. Appropriate uses of this funding include: “job redesign, consultancy, recruitment, training, absentee payroll and equipment, or to put in place part-time or flexible working arrangements.”¹³¹ Following a similar model, the United States government could fund the implementation of flexibility programs in the private sector that pioneer cutting-edge strategies, such as computer-assisted self-scheduling by employees and computer programs that provide as much advance notice of scheduling as possible while still accounting for consumer demand fluctuations that affect staffing needs.

Lead by Example: The federal government as model employer

WF2010’s FWA Platform recommends that the federal government pilot FWAs within its own workforce for exempt and non-exempt, hourly and contract workers. In particular, since the federal government contracts with various businesses to provide services such as janitorial, customer service, commissary staffing, and public safety, we recommended that the federal government require federal contractors to provide two of seven suggested FWAs that might be useful for hourly workers. Researchers from the federal government could then analyze these pilots to determine which FWAs have the potential for success in a broader context.

Requirements: A description of recent policy proposals

Several labor standards approaches have been proposed to improve low-wage hourly workers' scheduling and access to flexibility. Such approaches include the right to request flexibility, limits on mandatory overtime, and reporting time pay requirements. This section describes these various approaches, drawing from ideas suggested by academic researchers, advocacy organizations, bills that have been introduced at the state or federal level, and some enacted legislation.

“Right to request law”

Efforts to develop labor standards that directly address the need for flexible work arrangements have been quite limited, in part because it is difficult to formulate a labor standard that takes into account the range of circumstances that employers being asked to implement flexible work arrangements may face, and the range of types of flexible work arrangements that employees may need.

Perhaps for these reasons, the flexibility labor standard that has gained the most traction is the “right to request” bill. This bill was first introduced by Senator Edward Kennedy (D-MA) and Representative Carolyn Maloney (D-NY) as the Working Families Flexibility Act and it has been re-introduced in several subsequent Congresses.¹³² In essence, the bill proposes that employees have the right to request a change in the: (1) number of hours worked; (2) times when the employee is required to work; and (3) location where the employee is required to work. The only specific outcome required by the “right to request” legislation is that employers abide by a mandated process for considering employee requests.

The “right to request” bill is modeled on similar legislation enacted in 2002 in the United Kingdom, and like that law it creates a process employers must follow when considering employee requests for FWAs.¹³³ To distinguish the “right to request” from labor standards requiring substantive outcomes such as limits on mandatory overtime, required break times, and minimum hours rules, we refer to the “right to request” as a “process requirement.”¹³⁴

Any “right to request” law would need to explicitly allow for requests relating to meaningful input into scheduling, stability, and predictability. We question whether the bill is broad enough to encompass low-wage and hourly workers' needs for flexibility. For example, under this bill, it is unclear whether an employee could request cross-training with her co-worker in order to facilitate shift-swapping or shift changes when needed; whether an employee could request to have notice of her schedule more than one week in advance; or whether an employee could request to be permitted to work at more than one store location in order to be scheduled for more work hours. In order to clearly encompass the broad range of flexibility needs that low-wage workers have, a “right to request” bill may need to have broad language that encompasses the different types of changes that employees may request. Another approach would be to provide a non-exhaustive list of the FWAs that could be requested by hourly workers under the “right to request” law.

One open question about such a law is whether low-wage hourly workers in particular would feel comfortable making this type of request. On this question it might be useful to learn about whether low-wage workers have made use of the right to request in the countries that have enacted such a law. It would be critical to ensure that a right to request law adequately protects workers from retaliation for making a request.

The United States' current right to request bill includes language prohibiting discrimination against employees for any action relating to exercising the right to request.¹³⁵ Employees who believe they have been discriminated against may make a formal complaint through DOL's Wage and Hour Division (WHD). A WHD case administrator will investigate the complaint and would have the authority to implement proper relief through awarding back pay, reinstatement, reemployment, or by changing the employee's terms of employment.¹³⁶

FLSA Requirements and FWAs

The FLSA is the primary law that governs working time in the United States.¹³⁷ The FLSA provides employees with time and one-half pay for overtime worked, acting as a disincentive to the assignment of overtime hours.¹³⁸

Though many employers are concerned that providing flexible work arrangements to non-exempt employees would violate the FLSA, WF2010's research found that the vast majority of FWAs are permissible under the FLSA. For this reason, WF2010's FWA platform suggests that the U.S. DOL should provide written guidance, technical assistance, and training on the types of FWAs that can be provided within the requirements of the FLSA. Such guidance should provide examples of FWAs that comply with the FLSA, examples of FWAs that do not, and an explanation for the underlying analysis.¹³⁹

We note that at the federal level there have been numerous proposals to amend the FLSA to permit comp time (one and one-half hours of time off per hour worked) in lieu of overtime pay. In our analysis of this issue we did not find that this action was necessary to advance flexible work arrangements for hourly workers or effective in doing so.¹⁴⁰ We also recommended, however, that U.S. DOL further study the discrete issue of biweekly compressed workweeks for non-exempt employees to determine whether the FLSA could be modified to permit this type of FWA for employees who seek it, without inadvertently providing an avenue for some employers to avoid their overtime obligations.

Minimum hours and reporting time pay requirements

Lambert and Henly have suggested that employers could be required or encouraged to provide employees with a certain minimum number of work hours per week.¹⁴¹ The goal of the minimum hours proposal is to provide employees with more stable work hours and income. Lambert and Henly argue, "Requiring employers to schedule and pay employees for a minimum number of hours each week would increase the fixed costs of hiring a worker, thereby countering pressures to keep headcount high. Like minimum wage legislation, minimum hour legislation would help level the playing field for employers and provide a stable base of income for workers."¹⁴² As a model for minimum hour requirements, Lambert, Haley-Lock, and Henly have cited the minimum hour requirements often contained in collective bargaining agreements.¹⁴³

Women Employed, an advocacy organization based in Chicago, has considered the utility of reporting time pay requirements that require employers to pay employees some minimum amount of hours, even if they are called into work and then sent home without working a scheduled shift because work is slow.¹⁴⁴ Currently, seven states — California, Connecticut, Massachusetts, New Hampshire, New Jersey, New York, and Rhode Island — impose reporting time pay requirements.¹⁴⁵ In California, Connecticut, and New York, these requirements only apply to employers in select industries.¹⁴⁶ For example, in Connecticut, employers in the mercantile trade and restaurant industry are required to pay a non-exempt employee who reports for duty a minimum of four hours of pay at the employee's

regular rate.¹⁴⁷ Massachusetts and New Hampshire apply these requirements to all employees except those in charitable or nonprofit organizations and New Jersey and Rhode Island cover all non-exempt employees.¹⁴⁸

Break time requirements

The FLSA, which does not require that employers permit employees to take breaks (with the exception of nursing mothers), could be amended to require employers to permit employees to take those breaks at times of the employees' choosing for selected purposes. The recent health care bill included a new FLSA requirement that allows employees to take unpaid break time to express breast milk.¹⁴⁹ Prior to the enactment of this law, nearly half of the states already had laws in place relating to breastfeeding in the workplace.¹⁵⁰ Likewise, although the FLSA does not require employers to provide breaks at any particular time, a number of states have laws prescribing the times at which employers must permit employees to take meals or rest periods.¹⁵¹ For example, Colorado requires certain types of employees to be permitted one half-hour meal period for every five hours worked, under most circumstances.¹⁵² Outside of meal and rest periods and break time to express breast milk, the idea of mandating break time as a means of gaining flexibility for workers does not appear to have any current supporters.

Limits on Mandatory Overtime

Although the FLSA requires employers to pay employees one and one-half times their regular rate of pay for hours worked beyond 40 per week, it does not allow employees to refuse to work overtime.¹⁵³ In 2002, Dr. Lonnie Golden and Dr. Helene Jorgensen proposed a right to refuse overtime at the federal level.¹⁵⁴ Their proposal calls for: "upper limits on overtime hours per week, unless there is an agreement, such as in a union contract, between the employer and employee on overtime beyond the established limits; the right of employees to refuse mandatory overtime, with the exception of certain essential personnel, such as firefighters, police officers, and doctors, and except in cases of natural disasters or other emergencies; and sanctions [. . .] against employers who take any actions against or otherwise discriminate against employees who refuse to work more than the maximum number of hours per day or week."¹⁵⁵ Golden and Jorgensen also recommend that, "Refusal by any employee to accept such overtimes (*sic*) work should not be a grounds for employment discrimination, dismissal, or discharge or any other penalty."¹⁵⁶

Restrictions on overtime have been enacted at the state level and bills have been introduced to limit overtime for certain categories of workers at the federal level. For example, the Safe Nursing and Patient Care Act, introduced in Congress in 2007, would have limited overtime for nurses and other licensed health care providers.¹⁵⁷

States with laws limiting mandatory overtime for certain categories of employees include California,¹⁵⁸ Maine,¹⁵⁹ Minnesota,¹⁶⁰ Oregon,¹⁶¹ and West Virginia,¹⁶² which permit nurses to refuse any shift that is longer than 12 hours in a 24-hour period. Connecticut,¹⁶³ Illinois,¹⁶⁴ Maryland,¹⁶⁵ New Jersey,¹⁶⁶ and Washington¹⁶⁷ prohibit mandatory overtime for nurses except in emergencies. Only one state, Maine, has a statutory cap on the number of overtime hours that all non-exempt employees may be required to work, prohibiting employers from requiring employees to work more than 80 overtime hours in any two-week period.¹⁶⁸ However, in recent years, nearly 20 other states have introduced legislation to curb mandatory overtime.¹⁶⁹



As noted above, one challenge of developing a labor standard in this area is that, with the exception of the right to request process requirement, each of these standards only addresses some of the flexibility needs that hourly workers face. For example, limits on mandatory overtime address this significant problem for low-wage hourly workers who are regularly subject to this practice (which is estimated at approximately 33% for full-time workers and 23% for part-time workers),¹⁷⁰ but they do nothing to address the problem of involuntary part-time work for those low-wage hourly workers who want but cannot get full-time work (a population estimated at 48% of part-time low-wage workers in standard jobs and 24% of low-wage part-time workers in nonstandard jobs).¹⁷¹

CONCLUSION

There is good reason to take this issue seriously. Scheduling challenges directly impact the economic security, health, and well-being of low-wage hourly workers and their families. For employers, having a stable and effective hourly workforce requires providing workers with the flexibility that they need to get the job done. Flexibility should be used as a key business strategy to improve performance. Its positive outcomes include reduced turnover and absenteeism, and improved employee engagement and productivity.

But the traditional understanding of flexibility needs to be expanded to fit the distinct scheduling challenges of low-wage hourly jobs requiring both standard and nonstandard schedules. Our data analysis and synthesis of the existing research shed new light on the diverse scheduling challenges facing workers in these jobs.

Offering flexibility to workers in low-wage hourly jobs requires businesses to implement strategies that address the full range of scheduling challenges facing these workers by reducing the use of rigid scheduling practices and increasing the use of predictable and stable scheduling practices. Through our Flexible Workplace Solutions Framework we identified employer strategies for making improvements in each of these areas.

Workplace flexibility is necessary to ensure the economic health of American businesses, and the health and well-being of today's workers and their families. The Flexible Workplace Solutions Framework lays the foundation for employers, employees, and the government to make flexibility a regular feature of low-wage hourly jobs.

ENDNOTES

- ¹ URBAN INST. & WORKPLACE FLEXIBILITY 2010, LOWER-WAGE WORKERS AND FLEXIBLE WORK ARRANGEMENTS 5, available at http://workplaceflexibility2010.org/index.php/stakeholders/low_wage_workers/ (prepared for WF2010 by Shelley Waters Boots and Anna Danziger).
- ² See Kathleen Christensen & Barbara Schneider, *Evidence of the Worker and Workplace Mismatch*, in *WORKPLACE FLEXIBILITY: REALIGNING 20TH-CENTURY JOBS FOR A 21ST-CENTURY WORKFORCE 2* (Kathleen Christensen & Barbara Schneider, eds., Cornell University Press 2010); Family Values @ Work, *It's About TIME: Why We Need Minimum Standards To Ensure A Family-Friendly Workplace 2* (2007), available at <http://familyvaluesatwork.org/assets/files/FV@workReport.pdf>; Soc. for Human Res. Mgmt., *Workplace Flexibility*, available at <http://www.shrm.org/Advocacy/Issues/WorkplaceFlexibility/Pages/default.aspx>; *Flexible Work Arrangements: Working for America's Employers and Employees*, Congressional Briefing by the FWA Collaborative (Dec. 14, 2009), available at http://workplaceflexibility2010.org/index.php/events/flexible_work_arrangements_working_for_americas_employers_and_employees; *Our Stories: Your Constituents*, Congressional Briefing by the FWA Collaborative (Oct. 23, 2009), available at http://workplaceflexibility2010.org/index.php/events/congressional_briefing.
- ³ See "Meeting the Needs of Today's Families," Congressional Briefing by Workplace Flexibility 2010 (May 1, 2006), available at http://www.workplaceflexibility2010.org/index.php/events/congressional_briefing5.
- ⁴ Heather Boushey, *The New Breadwinners*, in *THE SHRIVER REPORT: A WOMAN'S NATION CHANGES EVERYTHING 32* (Heather Boushey & Ann O'Leary eds., 2009), available at http://www.americanprogress.org/issues/2009/10/womans_nation.html.
- ⁵ See ALICE KESSLER-HARRIS, *OUT TO WORK: A HISTORY OF WAGE EARNING WOMEN IN THE UNITED STATES 46-47* (2003) (explaining how the decreasing profitability of household work lead women, especially those in low-wage households, into the formal workforce during the industrial revolution); ALICE KESSLER-HARRIS, *WOMEN HAVE ALWAYS WORKED: AN HISTORICAL OVERVIEW 70* (1981).
- ⁶ FAMILIES AND WORK INST., *2008 NATIONAL STUDY OF THE CHANGING WORKFORCE (2008 NSCW)* (unpublished raw data). This analysis was conducted by Dr. Jennifer Swanberg for this report. See description of the 2008 NSCW infra on page 10 of the report.
- ⁷ See *Meeting the Needs of Today's Families*, supra note 3.
- ⁸ AARP, *AARP BULLETIN SURVEY ON EMPLOYMENT STATUS OF THE 45+ POPULATION (2009)*, available at http://assets.aarp.org/rgcenter/econ/bulletin_jobs_09.pdf; MICHELLE WONG, GLORIA TOWER, TAY McNAMARA & MARCIE PITT CATSOUPHES, *THE SLOAN CENTER ON AGING & WORK, COMPARISON OF STATE WORKFORCE DEMOGRAPHICS TRENDS FOR ADULTS OVER 55 (2008)*, available at <http://www.bc.edu/research/agingandwork/state/statePublications.html>; see also JACQUELYN B. JAMES, JENNIFER E. SWANBERG & SHARON P. McKECHNIE, *THE CTR. ON AGING & WORK, RESPONSIVE WORKPLACES FOR OLDER WORKERS: JOB QUALITY, FLEXIBILITY AND EMPLOYEE ENGAGEMENT (2007)*, available at http://www.citisalessstudy.com/_pdfs/IB1-OlderWorkers.pdf (discussing older workers' job engagement and evolving idea of retirement).
- ⁹ KERSTEN AUMANN ET AL., *FAMILIES & WORK INST., THE ELDER CARE STUDY: EVERYDAY REALITIES AND WISHES FOR CHANGE (2008)*, available at http://www.familiesandwork.org/site/research/reports/elder_care.pdf.
- ¹⁰ More than 1/3 of American adults have at least one chronic condition, and this number is estimated to rise to 50% of American adults by 2020. CTR. ON AN AGING SOC'Y, *WORKERS AFFECTED BY CHRONIC CONDITIONS: HOW CAN WORKPLACE POLICIES AND PROGRAMS HELP? (2004)*, available at <http://ihcrp.georgetown.edu/agingsociety/pubhtml/workplace/workplace.html> (based on analysis of the 2003 National Health Interview Survey).
- ¹¹ CENSUS BUREAU, U.S. DEP'T OF COMMERCE, PUB. NO. 70-107, *AMERICANS WITH DISABILITIES: 2002 (2002)*, available at <http://www.census.gov/prod/2006pubs/p70-107.pdf>.
- ¹² This lack of flexibility may partly explain the significant percentage of low-income mothers who are out of the workforce. Although the demographic trends of the rest of the population have changed over the last thirty years with women entering the workforce in droves, as Dr. Heather Boushey and Joan Williams note in a recent report, married low-income mothers are actually slightly more likely today than in 1979 to be out of the labor force (60% today as compared to 55% in 1979). JOAN C. WILLIAMS & HEATHER BOUSHEY, *THE THREE FACES OF WORK-FAMILY CONFLICT: THE POOR, THE PROFESSIONALS, AND THE MISSING MIDDLE 7 (2010)*, available at <http://www.americanprogress.org/issues/2010/01/pdf/threefaces.pdf>.
- ¹³ See Christensen & Schneider, supra note 2, at 2. A significant amount of research in the field of work and family research is funded by the Alfred P. Sloan Foundation. Much of this research is available on the Sloan Work and Family Research Network at <http://wfnetwork.bc.edu>. Workplace Flexibility 2010, a project of the Alfred P. Sloan Foundation, has defined workplace flexibility as including three key components: flexible work arrangements (e.g., workplace changes such as part-time and part-year work, phased retirement, compressed workweeks, telecommuting, and flexible scheduling); Time Off comprised of different lengths of time (e.g., sick days, time off to attend a parent-teacher conference, family leave, short-term disability, and military service), paid and unpaid; and career flexibility (e.g., training for workers reentering the workforce and mechanisms that keep individuals connected to the workplace during long periods of absence). Workplace Flexibility 2010's report, *Family Security Insurance: A New Foundation for Economic Security*, provides a blueprint for establishing and financing a new national insurance program to provide wage replacement for time off for health and caregiving needs. See <http://www.familysecurityinsurance.org/>. Workplace Flexibility 2010's Public Policy Platform on Flexible Work Arrangements provides a blueprint for making flexible work arrangements "the new normal" in the American workplace. See www.workplaceflexibility2010.org.
- ¹⁴ See *WORKPLACE FLEXIBILITY 2010 & URBAN INST., THE BUSINESS CASE FOR FLEXIBLE WORK ARRANGEMENTS (2008)*, available at <http://workplaceflexibility2010.org/images/uploads/BusinessCaseforFWAs.pdf> (compiling key findings from the research on the business case for FWAs); see also CORP. VOICES FOR WORKING FAMILIES, *BUSINESS IMPACTS OF FLEXIBILITY: AN IMPERATIVE FOR EXPANSION (2005)*,

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¹⁵ See 2008 *National Study of Employers* *supra* note 14; *A Status Report on Flexibility*, *supra* note 14.

¹⁶ See Lonnie Golden, *The Flexibility Gap: Employee Access to Flexibility in Work Schedules*, in FLEXIBILITY IN WORKPLACES: EFFECTS ON WORKERS, WORK ENVIRONMENT AND UNIONS 38–56 (IIRA/ILO 2005); Jennifer Swanberg, Marcie Pitt-Catsoupes & Krista Drescher-Burke, *A Question of Justice: Disparities in Employees' Access to Flexible Schedule Arrangements*, 26 J. FAM. ISSUES 866 (2005); Jennifer Swanberg, *Flexible Work Arrangements for Low-Wage Workers: A Critical Dimension of Job Quality* 15–16, presented at “Flexible Work Arrangements and Low-Wage Work: Creating Opportunity for Low-Wage Workers,” Washington, D.C., July 8, 2009.

¹⁷ See, e.g., A BETTER BALANCE: THE WORK & FAMILY LEGAL CTR., THE BUSINESS CASE FOR WORKPLACE FLEXIBILITY (Mar. 2008), available at <http://www.abetterbalance.org/web/images/stories/Documents/fairness/factsheets/businesscasewflex.pdf>; James T. Bond & Ellen Galinsky, *How Can Employers Increase the Productivity and Retention of Entry-Level, Hourly Employees?*, FAMILIES & WORK INST. (Nov. 2006), available at <http://familiesandwork.org/site/research/reports/brief2.pdf>; James T. Bond and Ellen Galinsky, *Workplace Flexibility and Low-wage Employees*, 2008 NSCW, (2011); LISA DODSON, THE MORAL UNDERGROUND: HOW ORDINARY AMERICANS SUBVERT AN UNFAIR ECONOMY (The New Press 2009); Charles Grantham, Jim Ware & Jennifer E. Swanberg, *Flexible Work Arrangements for Nonexempt Employees*, WORLDATWORK (2009), <http://www.worldatwork.org/waw/adimLink?id=33622>; Julia R. Henly & Susan J. Lambert, *Schedule Flexibility and Unpredictability in Retail: Implications for Employee Work-Life Outcomes* (July 2010) (working paper, University of Chicago Work Scheduling Study), available at <http://www.ssa.uchicago.edu/faculty/Henly.Lambert.Unpredictability.and.work-life.outcomes.pdf>; Susan J. Lambert, *Making a Difference for Hourly Employees*, in WORK-LIFE POLICIES THAT MAKE A REAL DIFFERENCE FOR INDIVIDUALS, FAMILIES, AND COMMUNITIES (Alan Booth & Ann C. Crouter eds., Urban Institute Press 2009), available at <http://harrisschool.uchicago.edu/centers/chppp/pdf/spring08-henly2.pdf>. [hereinafter *Making a Difference for Hourly Employees*]; Susan J. Lambert, *Passing the Buck: Labor Flexibility Practices that Transfer Risk onto Hourly Workers*, 61 HUM. REL. 1203 (Sept. 2008) [hereinafter *Passing the Buck*]; Susan J. Lambert, Anna Haley-Lock & Julia R. Henly, *Work Schedule Flexibility in Hourly Jobs: Unanticipated Consequences and Promising Directions* (June 2010) (working paper, University of Chicago Work Scheduling Study), available at <http://www.ssa.uchicago.edu/faculty/Lambert.Haley-Lock.Henly.Unanticipated%20Consequences%20of%20Flexibility%20in%20Hourly%20Jobs.7.2010.pdf> [hereinafter *Hourly Jobs*]; Susan J. Lambert & Julia R. Henly, *Managers' Strategies for Balancing Business Requirements with Employee Needs: Manager Survey Results*, UNIV. OF CHICAGO, SCH. OF SOC. SERVICE ADMIN. (May 2010), http://news.uchicago.edu/images/assets/pdf/100831SSA_work_scheduling.pdf; Jodie Levin-Epstein, *Getting Punched: The Job and the Family Clock*, CTR. FOR LAW AND SOC. POL'Y (2006), www.clasp.org/admin/site/publications/files/O303.pdf; NAT'L P'SHIP FOR WOMEN & FAMILIES, THE EMPLOYEE CASE FOR FLEXIBILITY IN HOURLY, LOW-WAGE JOBS, available at http://www.nationalpartnership.org/site/PageServer?pagename=issues_work_library_workflex; AMY RICHMAN, DIANE BURRUS, LISA BUXBAUM, LAURIE SHANNON, & YOUNG YAI, CORP. VOICES FOR WORKING FAMILIES, INNOVATIVE WORKPLACE FLEXIBILITY OPTIONS FOR HOURLY WORKERS (May 2009), available at <http://www.cvworkingfamilies.org/system/files/CVWF%20report-FINAL.pdf>; Jennifer E. Swanberg, Jacquelyn B. James, & Sharon P. McKechnie, *CitiSales Jobs that Work Study: Can Business Benefit By Providing Workplace Flexibility to Hourly Workers?*, CITISALES, (n.d.), http://www.citisalessstudy.com/_pdfs/IB3-HourlyWorkers.pdf [hereinafter *CitiSales: Business Benefits*]; Jennifer E. Swanberg, Jacquelyn B. James, Mamta U. Ojha, Mac Werner, & Sharon P. McKechnie, *CitiSales Jobs that Work Study*, CITISALES STUDY, (n.d.), http://www.citisalessstudy.com/_pdfs/IB1-HourlyWorkers.pdf; Justina Victor, Evren Esen, Steve Williams, & Nancy R. Lockwood, *Workplace Flexibility in the 21st Century: Meeting the Needs of the Changing Workforce* (Executive Summary), SOC'Y FOR HUMAN RESOURCE MGMT. (July 2009), <http://www.shrm.org/Research/SurveyFindings/Articles/Documents/09-0425%20Workplace%20Flexibility%20Survey%20Report-Executive%20Summary.pdf>; Joan C. Williams & Penelope Huang, *Improving Work-Life Fit in Hourly Jobs: An Underutilized Cost-cutting Strategy in a Globalized World*, THE CTR. ON WORKLIFE LAW (2011), <http://www.worklifelaw.org/pubs/ImprovingWork-LifeFit.pdf>; CORP. VOICES FOR WORKING FAMILIES, *supra* note 14; WFD CONSULTING, CORP. VOICES FOR WORKING FAMILIES, WORKPLACE FLEXIBILITY FOR LOWER WAGE WORKERS, (Oct. 2006), available at <http://www.cvworkingfamilies.org/system/files/lowerwageflexreviewreport.pdf>; Williams & Boushey, *supra* note 12 at 7–8.

¹⁸ Families and Work Institute's *Workplace Flexibility and Low-wage Employees*, which is based on the National Study of the Changing Workforce (2008), reports that “Low-wage employees are significantly less likely (66%) to work regular daytime schedules than higher-wage employees (79%), though the majority do, and they are much more likely to be paid by the hour (86% versus 60%). They are also much more likely (32% versus 9%) to have part-time jobs.” *Workplace Flexibility and Low-wage Employees*, 2008 NSCW, *supra* note 17.

¹⁹ One common form of unpredictability for part-time and full-time workers is working extra hours with little or no notice. For full-time workers, this often means working overtime (which is defined in the Fair Labor Standards Act as working more than 40 hours per week and requires time and one-half pay). 29 U.S.C. §§ 206(a)(1)(c), 207(a)(1). Part-time workers may also be asked to work extra hours. The 2008 NSCW asks both part-time and full-time workers (which it defines as working more than 35 hours per week) whether they are asked to work extra hours, capturing both those workers being required to work more than 40 hours (overtime) and those workers being required to work more hours than they are regularly scheduled to work, but less than 40.

We use both terms—extra hours and overtime—throughout the report given our focus on scheduling challenges for both part-time and full-time workers.

²⁰ See SUSAN J. LAMBERT & JULIA R. HENLY, *THE MOBILITY AGENDA, SCHEDULING IN HOURLY JOBS: PROMISING PRACTICES FOR THE TWENTY-FIRST CENTURY ECONOMY* 6, tbl. 1 6–8 (May 2009), available at <http://www.mobilityagenda.org/home/file.axd?file=2009%2F5%2Fscheduling.pdf>.

²¹ See *Making a Difference for Hourly Employees*, *supra* note 17.

²² The one exception to this finding is that nearly 17% of low-wage hourly workers on part-time nonstandard schedules have very little control over the scheduling of their work hours.

²³ Press Release, White House, Office of the Press Secretary, President and First Lady Host White House Forum on Workplace Flexibility (Mar. 31, 2010), available at <http://www.whitehouse.gov/the-press-office/president-and-first-lady-host-white-house-forum-workplace-flexibility>; *A Conversation on Workplace Flexibility*, WHITE HOUSE (April 1, 2010, 12:53 EST), <http://www.whitehouse.gov/blog/2010/04/01/a-conversation-workplace-flexibility>.

²⁴ As WF2010 articulated in our FWA Public Policy Platform (released in March 2009), some of the FWA needs of low-wage workers are very similar to the flexibility needs of other workers, but others are quite different. *Flexible Work Arrangements Public Policy Platform*, WORKPLACE FLEXIBILITY 2010 (2009), http://workplaceflexibility2010.org/images/uploads/reports/report_1.pdf. As Chai Feldblum, the former Co-Director and Founder of WF2010 noted early on in the initiative, articulating the needs of low-wage workers and policies and employer strategies that are responsive to those needs was one of WF2010's core objectives. Chai Feldblum, *Workplace Flexibility 2010 Power Point Presentation* (2003) (unpublished presentation) (on file with authors).

²⁵ See, e.g., *Barriers to Employment: National Survey of America's Families (NSAF) Findings on Preschool Children, Mother's Employment Status and Child Care Choices*, UNIV. OF WISCONSIN-MILWAUKEE (2002), <http://www4.uwm.edu/eti/barriers/nsafus.htm>; HANNAH MATTHEWS & DANIELLE EWEN, CTR. FOR LAW & SOCIAL POL'Y, *CHILD CARE ASSISTANCE IN 2006: INSUFFICIENT INVESTMENTS 1* (2008), available at <http://www.clasp.org/admin/site/publications/files/0439.pdf>.

²⁶ GINA ADAMS & MONICA ROHACEK, URBAN INST., *CHILD CARE INSTABILITY: DEFINITIONS, CONTEXT, AND POLICY IMPLICATIONS 10* (2010).

²⁷ Evelyn Blumenberg, *Transportation and Low-wage Work*, Presentation at Employment and Housing Roundtable by the Mobility Agenda, Baltimore, Maryland (July 9, 2007), available at <http://www.mobilityagenda.org/Blumenberg.pdf>; Evelyn Blumenberg & Margy Waller, *The Long Journey to Work: A Federal Transportation Policy for Working Families*, CTR. ON URBAN & METROPOLITAN POL'Y (July 2003), at 5, http://www.mobilityagenda.org/20030801_Waller.pdf.

²⁸ Blumenberg & Waller, *supra* note 27, at 9.

²⁹ *Id.* at 6.

³⁰ *Id.* at 10.

³¹ *Id.* at 6.

³² SIGNE-MARY McKERNAN & CAROLINE RATCLIFFE, URBAN INST., *A NEW SAFETY NET FOR LOW-INCOME WORKING FAMILIES* (July 2008), available at http://www.urban.org/UploadedPDF/411737_enabling_families_summary.pdf.

³³ *Id.*

³⁴ GREGORY ACS & AUSTIN NICHOLS, URBAN INST., *LOW-INCOME WORKERS AND THEIR EMPLOYERS: CHARACTERISTICS AND CHALLENGES 4* (May 2007), available at http://www.urban.org/UploadedPDF/411532_low_income_workers.pdf.

³⁵ See Work, Family and Health Network, funded by the National Institutes of Child Health and Development, <http://www.kpchr.org/workfamilyhealthnetwork/public/researcherscontent.aspx?pageid=46>.

³⁶ *Making a Difference for Hourly Employees*, *supra* note 17.

³⁷ LISA DODSON, TIFFANY MANUEL & ELLEN BRAVO, RADCLIFFE INST. FOR ADVANCED STUDY, *KEEPING JOBS AND RAISING FAMILIES IN AMERICA: IT JUST DOESN'T WORK, AN ACROSS THE BOUNDARIES REPORT 16* (2002), available at http://www.familyvaluesatwork.org/assets/files/Keeping_Jobs.pdf.

³⁸ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-07-1147, *UNEMPLOYMENT INSURANCE: LOW-WAGE AND PART-TIME WORKERS CONTINUE TO EXPERIENCE LOW RATES OF RECEIPT 3* (Sept. 2007), available at <http://www.gao.gov/new.items/d071147.pdf>.

³⁹ See Gregory Acs, Katherin Ross Phillips & Daniel McKenzie, *Playing by the Rules but Losing the Game: America's Working Poor*, in *LOW-WAGE WORKERS IN THE NEW ECONOMY* (Richard Kazis & Marc S. Miller eds., Urban Institute Press 2000), available at <http://www.urban.org/publications/410404.html>.

⁴⁰ *Id.*

⁴¹ LISA MATUS-GROSSMAN & SUSAN GOODEN, MDRC, *OPENING DOORS: STUDENTS' PERSPECTIVES ON JUGGLING WORK, FAMILY AND COLLEGE 65* (July 2002), available at <http://www.mdrc.org/publications/260/overview.html>.

⁴² *Id.*

⁴³ See PAMELA LOPREST, GREGORY ACS, CAROLINE RATCLIFFE & KATIE VINOPAL, *WHO ARE LOW-WAGE WORKERS? 1* (Feb. 2009) (prepared for U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation), available at <http://aspe.hhs.gov/hsp/09/LowWageWorkers/rb.shtml>. These researchers found that the wages that a full-time worker would have to earn to be at the poverty line in 2001 was \$8.63 per hour, equivalent to \$10.50 in 2008 dollars. In 2001, 30.8% of all workers between the ages of 16 and 64 earned less than \$8.63 an hour. Of these low-wage workers, 44% lived in a low-income family and 26% were in a low-income family with children. *Id.* at 2.

⁴⁴ See URBAN INST., *GOVERNMENT WORK SUPPORTS AND LOW-INCOME FAMILIES: FACTS AND FIGURES 1* (July 2006), available at <http://www.urban.org>.

org/publications/900981.html.

⁴⁵ See *id.* at 2.

⁴⁶ MICHAEL J. TOMA, SHIRLEY NYEPAH & THOMAS SASSEVILLE, CTR. FOR REGIONAL ANALYSIS, EVALUATION OF THE FORD FOUNDATION FAMILIES AND WORK INSTITUTE GRANT TO THE CITY OF SAVANNAH'S STEP-UP POVERTY REDUCTION INITIATIVE 9 (Feb. 2009), available at http://stepupsavannah.org/sites/stepup.christianyates.com/files/Ford%20Barriers%20Report_020509_v2_0.doc.

⁴⁷ For more information, see the box on page 10 entitled "Defining Low-wage Hourly Workers and Standard and Nonstandard Schedules."

⁴⁸ Because of the way that the 2008 NSCW asked respondents to describe their work schedule, it is possible that workers who responded to this question by stating that they regularly work a daytime schedule, may occasionally, or even on a weekly basis, work some nonstandard hours.

⁴⁹ HEATHER BOUSHEY, SHAWN FREMSTAD, RACHEL GRAGG, & MARGY WALLER, THE MOBILITY AGENDA, UNDERSTANDING LOW-WAGE WORK IN THE UNITED STATES 2 (March 2007), available at <http://www.inclusionist.org/files/lowwagework.pdf>.

⁵⁰ Dr. Harriet Presser, a sociologist from the University of Maryland has documented the incidence and implications of standard and nonstandard work in the general population. Presser defines nonstandard hours as working other than a fixed day schedule with at least half the hours worked most days in the prior week fell between 8:00 a.m. and 4:00 p.m. See HARRIET B. PRESSER, WORKING IN A 24/7 ECONOMY: CHALLENGES FOR AMERICAN FAMILIES, (2003) [hereinafter PRESSER 24/7]; Harriet B. Presser, *Race-ethnic and Gender Differences in Nonstandard Work Shifts*, 30 WORK & OCCUPATIONS 412, 416 (Nov. 2003). We tried to adhere closely to this definition despite the limitations of the available data. Since we are unable to determine whether employees self-reported schedule was the norm for at least half the hours worked during the prior week, we may have some over-representation of employees categorized as working standard hours. Nonetheless, the available data provides a rich description of flexible work arrangements and scheduling problems among workers. Two questions from the 2008 NSCW were used to classify workers into standard and nonstandard categories: 1) Which of the following best describes your work schedule at your main job? and 2) What days of the week do you usually work? Workers who reported working a regular daytime schedule and Monday through Friday were categorized as working standard schedules, and all other workers were classified as working nonstandard schedules.

⁵¹ Families and Work Institute recently published a report, *Workplace Flexibility and Low-wage Employees*, which is also based on the 2008 *National Study of the Changing Workforce*. See Bond & Galinsky, *supra* note 17. The two reports differ in several ways. First, while both reports rely on a social inclusion perspective to define low-wage work, the working assumptions that informed the definition of low-wage are different. The authors of the Families and Work Institute report calculated 2/3 the median wage for male workers who are paid hourly, whereas in this report we calculated the low-wage figure using 2/3 the median wage for all male workers in the sample. Second, the focus of our report is on low-wage, hourly workers, whereas, the primary objective of the Families and Institute's report is to compare low-wage and higher-wage workers. Therefore, our sample of low-wage workers includes only those workers that are paid hourly and are low-wage. In contrast, Families and Work Institute's study sample is comprised of low-wage workers, who may be paid hourly or salaried. Third, our report is interested in studying similarities and differences between workers in jobs that primarily require standard and nonstandard schedules. As noted in the text box that describes the analysis conducted for this report, we define standard hour schedules as Monday through Friday, days, and nonstandard schedules as everything else. In contrast, Families and Work Institute appears to define standard schedules as "day schedules" and nonstandard as everything else. Due to these three primary differences between the two reports, the percentages of workers that have access to different types of flexible work arrangements or who work on standard or nonstandard schedules may vary.

⁵² The "Production, operation and repair" category includes all production workers, machine operators, and repair workers and their immediate supervisors.

⁵³ Table 6. *The 30 occupations with the largest employment growth, 2008–2018*, BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, available at <http://www.bls.gov/news.release/ecopro.t06.htm> (last modified Dec. 11, 2009).

⁵⁴ *Id.*

⁵⁵ *High Growth Industry Profile—Retail*, EMPLOYMENT & TRAINING ADMIN., U.S. DEP'T OF LABOR, available at http://www.doleta.gov/brg/IndProf/Retail_profile.cfm (last modified Mar. 8, 2010).

⁵⁶ LAWRENCE MISHEL, JARED BERNSTEIN & JOHN SCHMITT, *THE STATE OF WORKING AMERICA: 1996–1997*, (Sharpe Publishers 1997).

⁵⁷ See Swanberg, Pitt-Catsoupes & Drescher-Burke, *supra* note 16; Lambert & Henly, *supra* note 20.

⁵⁸ See PRESSER 24/7, *supra* note 50.

⁵⁹ See *Passing the buck*, *supra* note 17, at 1203.

⁶⁰ *Id.* at 1204.

⁶¹ Todd Dawson, Anneke Heitman & Alex Kerin, *Industry Trends, Costs and Management of Long Working Hours*, Presentation at Work Schedules: Shift Work and Long Hours, Baltimore, Maryland (April 29–30, 2004), available at <http://www.cdc.gov/niosh/topics/workschedules/abstracts/dawson.html>.

⁶² *Passing the buck*, *supra* note 17, at 1218.

⁶³ *Kronos Targets Demand-Driven Workforce*, SOFTWAREMAG.COM (Sept. 26, 2006), <http://www.softwaremag.com/L.cfm?Doc=982-9/2006>.

⁶⁴ Kris Maher, *Wal-Mart Seeks New Flexibility in Worker Shifts*, WALL ST. J., Jan. 3, 2007, at A1.

⁶⁵ See Lambert & Henly, *supra* note 20; Julia R Henly, H. Luke Shaefer & Elaine Waxman, *Nonstandard Work Schedules: Employer and Employee Driven Flexibility in Retail Jobs*, 80 Soc. SERV. REV. 609 (Dec. 2006); Jennifer E. Swanberg, Jacquelyn B. James, Mac Werner, & Sharon P. McKechnie, *Workplace Flexibility for Hourly Lower-Wage Employees: A Strategic Business Practice Within One National Retail Firm*, 11 PSYCHOL.-MANAGER J. 5 (Mar. 2008).

⁶⁶ Lambert & Henly, *supra* note 20, at 6–8.

⁶⁷ The case illustrations provided in the Case In Point boxes for Karen and Sarah are descriptions of study participants in the Work and Family Transitions Project, a multi-year study funded by the National Institute of Mental Health, led by Dr. Maureen Perry-Jenkins, at the University of Massachusetts-Amherst. See M. Perry-Jenkins & J.A. Smith, *Blue-collar Blues: Work Conditions and the Mental Health of Dual-earner Parents*, Presentation at Annual Meeting of the National Council on Family Relations, Pittsburgh, PA (Nov. 2007). Dr. Jennifer Swanberg provided information about Robert from her field research on flexible work arrangements. To protect the anonymity of the people interviewed, all three workers' names have been changed.

⁶⁸ Lambert & Henly, *supra* note 20, at 7.

⁶⁹ *Id.*

⁷⁰ *Passing the buck*, *supra* note 17, at 1203.

⁷¹ JENNIFER SWANBERG ET AL., INTRODUCTION TO THE CITISALES STUDY 3 (2009), available at http://www.uky.edu/Centers/iwin/citisaless/_pdfs/IB1-HourlyWorkers.pdf.

⁷² Phillip Moss, Hal Salzman & Chris Tilly, *When Firms Restructure—Understanding Work-Life Outcomes*, in WORK AND LIFE INTEGRATION IN ORGANIZATIONS: NEW DIRECTIONS FOR THEORY AND PRACTICE (Susan Lambert & Ellen Kossek eds., 2005).

⁷³ See SWANBERG ET AL., *supra* note 71.

⁷⁴ Jennifer E. Swanberg (2011) (unpublished data from the CitiSales Study).

⁷⁵ *Employment Situation Summary*, BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR (Feb. 4, 2011), <http://www.bls.gov/news.release/empsit.nr0.htm>

⁷⁶ Heidi Shierholz & Lawrence Mishel, *Highest Unemployment Rate Since 1983*, ECON. POL'Y INST. (June 16, 2009), http://www.epi.org/publications/entry/jobspict_2009_july_preview.

⁷⁷ *Table A-8. Employed persons by class of worker and part-time status*, BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, <http://www.bls.gov/news.release/empsit.t08.htm> (last updated Mar. 4, 2011).

⁷⁸ For reports discussing the business case for workplace flexibility, see A BETTER BALANCE: THE WORK & FAMILY LEGAL CENTER, FACT SHEET: THE BUSINESS CASE FOR WORKPLACE FLEXIBILITY (Nov. 2010), available at http://www.abetterbalance.org/web/images/stories/Documents/fairness/factsheets/BC-2010-A_Better_Balance.pdf (noting that offering flexible work programs prevents turnover and high attrition rates, increases both productivity and investor returns, and reduces absenteeism); Victor et al., *supra* note 17 (documenting increased quality of personal life for employees, increased job satisfaction, and engagement, and increased employee retention); CORP. VOICES FOR WORKING FAMILIES, *supra* note 14 (documenting the positive correlation between flexible work programs and job satisfaction and commitment, employee engagement, lower stress levels, innovation, customer retention, shareholder value, productivity, and client service); JOAN WILLIAMS & PENELOPE HUANG, THE CTR. FOR WORKLIFE LAW, IMPROVING WORK-LIFE FIT IN HOURLY JOBS 4 (2011), available at <http://www.worklifelaw.org/pubs/ImprovingWork-LifeFit.pdf> (noting businesses can decrease absenteeism, lower turnover rates, increase productivity, and improve employee engagement by improving their “schedule effectiveness”).

⁷⁹ RICHMAN ET AL., *supra* note 17.

⁸⁰ WFD CONSULTING, *supra* note 17, at 17.

⁸¹ *Id.*

⁸² RICHMAN ET AL., *supra* note 17, at 31.

⁸³ See, e.g., WFD CONSULTING, *supra* note 17, at 11, 15–16.

⁸⁴ CitiSales: Business Benefits, *supra* note 17. See also Swanberg et al., *supra* note 65, at 10–14.

⁸⁵ There are a number of resources on flexibility in unionized workplaces. The Learn WorkFamily Website, available at <http://www.learnworkfamily.org>, developed by the Labor Project for Working Families, provides an online database of contract language on work-family issues, bargaining techniques, case studies, principles of good contract language, and resources. *The Sustainable Workforce Initiative*, available at <http://www.thesustainableworkforce.org/index.php/research-initiatives/featured>, features research by Dr. Ellen Ernst Kossek and Dr. Peter Berg on flexibility implementation in eight unionized work environments. Results from this research show two key roles for unions in improving employee access to workplace flexibility: “One, negotiating basic leave policies and flexible schedules and two, facilitating worker access to flexible schedules and leaves through supportive behaviors.”

⁸⁶ Dr. Lambert and Henly suggest the following interventions to provide workers with greater flexibility (which they define as the “amount of control workers have over the number and timing of their work hours”): “Allow workers input into their work schedule without reducing the number of hours they work; Clarify and codify flexibility options so that all workers have equal access to a schedule that fits their needs.” Lambert & Henly, *supra* note 20, at 6. See also CitiSales: Business Benefits, *supra* note 17; Swanberg et al., *supra* note 65, at 10–14.

⁸⁷ In study of 139 retail store managers, for example, Susan Lambert found that 79% of the store managers surveyed either agreed or strongly agreed with the statement “give more hours to sales associates who have greater availability.” Lambert & Henly, *supra* note 17.

- ⁸⁸ The description of these policies comes from interviews that Workplace Flexibility 2010 staff undertook with various companies in summer 2005. See, e.g., CORP. VOICES FOR WORKING FAMILIES, *supra* note 14; E. Sheley, *Flexible Work Options Beyond 9 to 5*, HR MAG. 52–59 (Feb. 1996).
- ⁸⁹ Swanberg et al., *supra* note 65, at 10–14.
- ⁹⁰ *Id.* at 18–22.
- ⁹¹ HARVEY A. THOMPSON & BEATRICE A. FITZPATRICK, THE BOLD INITIATIVE, FLEXIBLE WORK ARRANGEMENTS: A PRODUCTIVITY TRIPLE PLAY (2006), available at <http://www.sigmasoft.com.ph/download/public/whitepapers/06FlexibleWorkArrangements.pdf>.
- ⁹² See *Shift Swap*, LEARN WORKFAMILY, <http://www1.websearchstudio.net/scripts/ws.dll?websearch&site=LPWF> (providing shift swap contract language from eight collective bargaining agreements).
- ⁹³ Personal Conversation between Kris Rondeau, Founder, Harvard Union of Clerical and Technical Workers and Liz Watson (author), Dec. 11, 2009.
- ⁹⁴ See *AFSCME & State of Delaware CBA*, LEARN WORK-FAMILY, <http://www1.websearchstudio.net/scripts/ws.dll?websearch&site=LPWF>.
- ⁹⁵ LASALLE COUNTY HIGHWAY DEPARTMENT, LEARN WORK-FAMILY, <http://www1.websearchstudio.net/scripts/ws.dll?websearch&site=LPWF>.
- ⁹⁶ See *CBAs of the California Nurses Association*, LEARN WORK-FAMILY, <http://www1.websearchstudio.net/scripts/ws.dll?websearch&site=LPWF>.
- ⁹⁷ WFD Consulting, *supra* note 17, at 24–25.
- ⁹⁸ Swanberg et al., *supra* note 65.
- ⁹⁹ See ELLEN KOSSEK & LESLIE HAMMER, FAMILY SUPPORTIVE SUPERVISORY BEHAVIORS (FSSB) INTERVENTION STUDY: EFFECTS ON EMPLOYEE’S WORK, FAMILY, SAFETY, & HEALTH OUTCOMES (Apr. 2008), available at http://ellenkossek.lir.msu.edu/documents/Feedback_Report_Final_000.pdf.
- ¹⁰⁰ *Id.* at 7.
- ¹⁰¹ See WFD CONSULTING, CORP. VOICES FOR WORKING FAMILIES, GUIDE FOR IMPLEMENTING FLEXIBILITY WITH AN HOURLY AND NON-EXEMPT WORKFORCE, available at http://www.cvworkingfamilies.org/system/files/Sloan_Tips_and_Tools-managers+2-15-10.pdf. For helpful tips for hourly employees proposing flexibility to their employers, see WFD CONSULTING, CORP. VOICES FOR WORKING FAMILIES, TIPS FOR REQUESTING FLEXIBLE WORK ARRANGEMENTS, available at http://www.cvworkingfamilies.org/system/files/e_proposing_arrangement.pdf.
- ¹⁰² *Research Initiatives*, SUSTAINABLE WORKFORCE, MICH. ST. U., <http://www.thesustainableworkforce.org/index.php/research-initiatives/featured-research>. See also NICOLA DONES & NETSY FIRESTEIN, LABOR PROJECT FOR WORKING FAMILIES, LABOR’S PARTICIPATION IN WORK/FAMILY ISSUES: SUCCESSES AND OBSTACLES, available at http://www.working-families.org/learnmore/pdf/labor_participation.pdf. In this document labor leaders identify the need for a clearly expressed “bottom up” mandate from members around work and family provisions.
- ¹⁰³ SUSTAINABLE WORKFORCE, *supra* note 102. Examples of union-negotiated flexibility can be found on the Learn WorkFamily website, available at <http://www.learnworkfamily.org>.
- ¹⁰⁴ Lambert and Henly suggest the following interventions to provide greater advance notice to employees: “Provide work schedules to employees with greater advance notice; Curb adjustments to posted schedules.” LAMBERT & HENLY, *supra* note 20 at 9.
- ¹⁰⁵ See *Making a Difference for Hourly Employees*, *supra* note 17.
- ¹⁰⁶ Details of the Work Scheduling Study’s methodology and key findings can be found at <http://www.ssa.uchicago.edu/faculty/work-scheduling-study.shtml>.
- ¹⁰⁷ *Coalition of University Employees and University of California CBA*, LEARN WORKFAMILY (2003), <http://www1.websearchstudio.net/scripts/ws.dll?websearch&site=LPWF>
- ¹⁰⁸ *SEIU and City of Oakland, 2002 to 2008*, LEARN WORKFAMILY, <http://www1.websearchstudio.net/scripts/ws.dll?websearch&site=LPWF>
- ¹⁰⁹ Transcript of Audio Conference by the Center for Law and Social Policy with Mike Brosius, Assistant Vice President of Human Resources, Costco, *Scheduling Hourly Workers in A Just in Time World: Can Employees and Employers Sync the Clock?* (Dec. 11, 2009), available at http://www.clasp.org/admin/site/publications/files/CLASP_121109-2-DS.pdf.
- ¹¹⁰ Swanberg et al., *supra* note 65.
- ¹¹¹ See LAMBERT & HENLY, *supra* note 20, at 6. In this report we profile IKEA’s Savannah Distribution Center’s scheduling practices for providing workers with greater stability and input into their schedules. Of course, at large, multi-site employer’s practices may vary significantly by location. As one example of this, IKEA’s Danville, Virginia production site was recently profiled for having scheduling practices that were very difficult for workers, including unpredictable work schedules, mandatory overtime and disciplinary action for those who could not work schedules assigned at the last minute. See Nathaniel Popper, *IKEA’s U.S. Factory Churns Out Unhappy Workers*, LA Times, April 10, 2011.
- ¹¹² *Id.*
- ¹¹³ See President and First Lady Host White House Forum on Workplace Flexibility, Press Release, dated March 21, 2010, available at <http://www.whitehouse.gov/the-press-office/president-and-first-lady-host-white-house-forum-workplace-flexibility>.
- ¹¹⁴ *Id.*
- ¹¹⁵ See *Continue the Conversation on Workplace Flexibility*, WHITE HOUSE, available at <http://www.whitehouse.gov/work-flex-kit>. See also *Dallas Workers Speak: The Employee Case for Workplace Flexibility*, FAMILY VALUES AT WORK (Oct. 19, 2010), <http://www.familyvaluesatwork.org>

familyvaluesatwork.org/blog/2010/10/19/dallas-workers-speak-the-employee-case-for-workplace-flexibility/.

¹¹⁶ Memorandum of Agreement between the Office of Disability Employment Policy (ODEP) and the Department of Labor, Women's Bureau, http://www.dol.gov/_sec/newsletter/2010/20100812-3.htm. The Memorandum of Agreement (MOA) sets forth the agencies' plan to expand and promote the use of flexible work arrangements. The Women's Bureau and ODEP agree to create a technical assistance website, modeled after ODEP's Job Accommodation Network, and co-host a roundtable discussion on best practices for workplace flexibility, with representatives from the private sector, federal and state agencies, and non-profit organizations.

¹¹⁷ See Levin-Epstein, *supra* note 17, at 16 (advocating that state and local governments should "Build awareness of the benefits of responsive scheduling").

¹¹⁸ The campaign's website is <http://www.whatcanyoudocampaign.org>.

¹¹⁹ An interesting model for an awards program is the award launched in 2009 for New York City restaurants that provide paid sick days, and other benefits to workers. The award provides a window sticker seal of approval to restaurants that go beyond current state and federal requirements, and is accompanied by a "New York City Diner's Guide to High Road Restaurants." While this particular award is a partnership between the Restaurant Opportunities Center—NY and the New York City Restaurant Roundtable—one could imagine an award in which the government would also have a partnership role in the award creation and administration. See NEW YORK CITY RESTAURANT INDUSTRY ROUNDTABLE HONORS RESTAURANTS WITH EXCEPTIONAL WORKPLACE AWARD AND DINING GUIDE (July 7), <http://www.pitchengine.com/representagency/new-york-city-restaurant-industry-roundtable-honors-restaurants-with-exceptional-workplace-award-and-dining-guide-july-7/16886/>.

¹²⁰ *Work-Life Harmony*, MINISTRY OF MANPOWER, <http://www.mom.gov.sg/employment-practices/work-life-harmony/Pages/work-life-strategies.aspx> (from Singapore).

¹²¹ *National Work-Life Balance Award*, AUSTRALIAN GOV'T, <http://www.deewr.gov.au/WorkplaceRelations/Programs/worklife/Pages/default.aspx>.

¹²² The Sloan Award's Bold Ideas for Making Work Work Guides provide examples of award-winning companies' flexibility practices for both hourly and salaried workers, available at <http://familiesandwork.org/3w/awards/index.html>; see also *Flexible Work Arrangements for Non-Exempt Employees*, WORLDATEWORK, <http://www.worldatwork.org/waw/adimLink?id=33622>.

¹²³ *Workplace Flexibility Toolkits for Hourly Workers and Managers*, CORP. VOICES FOR WORKING FAMILIES, <http://www.cvworkingfamilies.org/publication-toolkits/tips-managers-employees>.

¹²⁴ KOSSEK & HAMMER, *supra* note 99.

¹²⁵ See SERVING UP FLEXIBILITY: CREATING FLEXIBLE WORKPLACES IN THE RESTAURANT AND CATERING INDUSTRY, AUSTRALIAN GOV'T (2006), <http://www.workplace.gov.au/NR/rdonlyres/F59B169D-083A-40DF-A948-6542A0DADFCD/0/A4inner.pdf>.

¹²⁶ See Levin-Epstein, *supra* note 17, at 17 (advocating employer-to-employer technical assistance to implement flexibility).

¹²⁷ The Job Accommodation Network's (JAN) website is <http://www.askjan.org>. JAN describes itself as: "the leading source of free, expert, and confidential guidance on workplace accommodations and disability employment issues. Working toward practical solutions that benefit both employer and employee, JAN helps people with disabilities enhance their employability, and shows employers how to capitalize on the value and talent that people with disabilities add to the workplace."

¹²⁸ See Best Work-Life Practices, available at http://www.mom.gov.sg/Documents/employment-practices/Guidelines/2672_GuidelinesonBestWLPractices.pdf.

¹²⁹ See *Calendar of Trainings and Events on Work-Life Strategies*, MINISTRY OF MANPOWER, <http://www.mom.gov.sg/employment-practices/work-life-harmony/awards-activities/calendar-of-events/Pages/calendar-of-events.aspx>.

¹³⁰ THE ALLIANCE INITIATIVE, <http://www.dol.gov/odep/alliances/index.htm>.

¹³¹ *Work-Life Harmony*, MINISTRY OF MANPOWER, <http://www.mom.gov.sg/employment-practices/work-life-harmony/Pages/work-life-strategies.aspx>.

¹³² S. 2419, introduced by Senator Edward Kennedy on December 6, 2007 and H.R. 4301, introduced by Congresswoman Carolyn Maloney on December 6, 2007, available at <http://www.law.georgetown.edu/workplaceflexibility2010/FWABBackground.cfm>. The Working Families Flexibility Act, introduced in the 111th Congress by Congresswoman Carolyn Maloney on March 3, 2009, and by Senator Bob Casey in the United States Senate on September 24, 2010, grants employees the right to request a change in the: (1) number of hours worked; (2) times when the employee is required to work; and (3) location where the employee is required to work. The Act requires the employer to meet with the employee within 14 days of the request and to issue a decision no later than 14 days after the meeting. The Act prohibits employers from interfering with this right and provides an enforcement mechanism through the Administrator of the Wage and Hour Division of the Employment Standards Administration of the U.S. DOL. The Act also requires the Secretary of Labor to conduct a continuing program of research, education, and technical assistance.

¹³³ EMPLOYMENT ACT (2002), c. 22, § 47(1–2) (U.K.), available at <http://www.opsi.gov.uk/acts/acts2002/20022-f.htm#47>. In 2009, Australia enacted a similar law. Fair Work Act, 2009, c. 65 (Austl.) New South Wales also has a right to request law, but this law provides certain caregivers with the right to request and receive flexibility, unless providing that flexibility would impose an unjustifiable hardship on the employer. Carers' Responsibilities Act (N.S.W.), 2001 (Austl.).

¹³⁴ In the FWA policy platform, we recommended that the federal government pilot within the federal workforce several different versions of a "right to request" – the main labor standard being discussed in terms of FWAs for workers across the income

spectrum. We felt that conducting such pilots could help provide the information needed to better evaluate the utility of this approach. Workplace Flexibility 2010, *supra* note 23.

¹³⁵ S. 3840, 111th Cong. §§ 5(b)(1) – (6) (2010).

¹³⁶ S. 3840, 111th Cong. § 6(b)(1) (2010).

¹³⁷ 21 U.S.C. § 207 (2006).

¹³⁸ § 207(a).

¹³⁹ See Workplace Flexibility 2010, *supra* note 23. The Platform explains that “[S]ome employers have described adhering to rigid scheduling approaches because they fear running afoul of the Fair Labor Standards Act (FLSA). The FLSA requires employers to pay non-exempt workers time-and-a-half for any hour worked over 40 in one workweek. A number of employers have told us that they wanted to offer more flexibility to their employees, but believed their hands were tied by the FLSA. The majority of flexible scheduling arrangements, however, [. . .] are all generally permissible under the FLSA.” The Platform recommends: “The U.S. DOL should provide written guidance, technical assistance and training on how the majority of flexible scheduling arrangements comply with the requirements of the FLSA. Such guidance should provide examples of FWAs that comply with the FLSA, examples of FWAs that do not, and an explanation of the underlying analysis.”

¹⁴⁰ Comp time in lieu of overtime pay is permissible in the public, but not the private sector. 29 U.S.C. § 207(o)(1). During the past decade, whether to extend comp time to the private sector has often been debated and a number of comp time bills have been introduced by Republicans at the federal level. To date, none of the bills have garnered bipartisan support, and none have passed. The most recent comp time bill, which was introduced in the 111th Congress, the Family Friendly Workplace Act, would have amended the FLSA to allow employers to provide comp time in lieu of overtime at a rate of one and one-half hours of paid time off per hour worked for non-exempt private sector employees that meet certain criteria. Family Friendly Workplace Act, H.R. 933, 111th Cong. (Introduced by Representative McMorris Rodgers [R-WA] on Feb. 10, 2009 and co-sponsored by 13 other Republican lawmakers); Family Friendly Workplace Act, H.R. 6025, 110th Cong. (Introduced by Representative McMorris Rodgers [R-WA] on May 13, 2008 and co-sponsored by 11 other Republican lawmakers). *Id.* §§ 2(r)(1)(A), 2(r)(2)(B). Similar legislation was introduced in previous Congresses. See, e.g., H.R. 1119, Family Time Flexibility Act, 108th Cong. (2003); S.317, Family Time and Workplace Flexibility Act, 108th Cong. (2003); America’s Workforce: Ready for the 21st Century, available at <http://www.whitehouse.gov/news/releases/2004/08/20040805-6.html>; 149 CONG. REC. S1999 (daily ed. Feb. 5, 2003) (statement of Sen. Gregg). <http://www.whitehouse.gov/news/releases/2001/06/20010620-1.html>.

¹⁴¹ Lambert & Henly, *supra* note 104.

¹⁴² *Id.* at 14.

¹⁴³ *Hourly Jobs*, *supra* note 17.

¹⁴⁴ Personal conversation between the author and Chris Warden and Anne Ladky of Women Employed (Fall 2010).

¹⁴⁵ CAL. INDUSTRIAL WELFARE COMMISSION WAGE ORDERS #1-16 (2007) (applying broadly to most industries, including manufacturing, personal services, and agricultural occupations, and requiring employers to pay employees up to half of their scheduled hours if they are called in to work and work less than 2 hours); CONN. REG. OF STATE AGENCIES § 31-60-11(a) (2008) (requiring an employer to pay employees for all time spent at the workplace, including time spent waiting for the employer to provide work to the employee); 455 C.M.R. § 2.03(1) (2008) (applying to all for-profit employers and requiring such employers to pay employees scheduled for three or more hours of work at minimum wage for at least three hours work); N.H. CODE LAB. §§ 803.03(h) – (j) (1992) (requiring employers to pay employees either two hours at minimum wage); N.J. STAT. ANN. § 12:56-5.5 (West 2010) (applying to most employees and requiring employers to pay employees at least one hour of wages); N.Y. COMP. CODES §137-16 (2009) (requiring employers to pay restaurant employees for either the number of hours normally worked in a shift or for four hours, whichever is smaller); R.I. GEN. LAWS § 28-12-3.2 (2011) (requiring employers to pay employees “not less than three (3) times the regularly hourly rate.”).

¹⁴⁶ See CAL. INDUSTRIAL WELFARE COMMISSION WAGE ORDERS #1-16 (2007) (applying to the manufacturing, personal services, public housekeeping, transportation, amusement, and recreation, broadcasting, and motion picture industries among others); CONN. REG. OF STATE AGENCIES § 31-62-D1(d) (2008) (applying to mercantile workers); CONN. REG. OF STATE AGENCIES § 31-62-E1(b) (2008) (applying to restaurant workers); N.Y. COMP. CODES § 137-16 (2009) (applying to employees in the restaurant industry).

¹⁴⁷ We are grateful to Women Employed and Attorney Ellen Neely for providing us with information about reporting time pay requirements and their intersection with the scheduling challenges we have described in this report.

¹⁴⁸ 455 C.M.R. § 2.03(1) (2008) (applying to all for-profit employers); N.H. CODE LAB. § 803.05 (1992) (exempting bona fide volunteers, inmates, people performing community service, and students participating in non-paid work among others); N.J. STAT. ANN. § 12:56-5.5 (West 2010) (applying to most employees).

¹⁴⁹ In 2010, the Patient Protection and Affordable Care Act (PPACA) amended the FLSA to guarantee nursing mothers unpaid reasonable break times to express breast milk each time they have a need to do so. H.R. 3590, Pub. L. No. 111-148, § 4207, 124 Stat. 119 (to be codified in sections of 42 U.S.C.).

¹⁵⁰ See *Breastfeeding Laws*, NATIONAL CONFERENCE OF STATE LEGISLATURES, available at <http://www.ncsl.org/default.aspx?tabid=14389> (last modified Sept. 2010).

¹⁵¹ See *Wage and Hour Division’s Minimum Length of Meal Period Required Under State Law for Adult Employees in the Private Sector*, U.S. DEP’T OF LABOR, available at <http://www.dol.gov/whd/state/meal.htm>.

¹⁵² *Id.*

¹⁵³ 29 U.S.C. § 207(a)(1) (2006).

¹⁵⁴ LONNIE GOLDEN & HELENE JORGENSEN, ECON. POL. INST., TIME AFTER TIME: MANDATORY OVERTIME IN THE U.S. ECONOMY (2002), available at http://www.epi.org/publications/entry/briefingpapers_bp120/.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ S. 1842; H.R. 2122. This bill was introduced in the Senate by Edward Kennedy, and is co-sponsored by eighteen additional Democratic senators. In the House, the bill was introduced by Pete Stark, and is co-sponsored by 85 other representatives, eighty Democrats and five Republicans.

¹⁵⁸ Regulations adopted in California prior to 2001 prevent an employee scheduled to work a 12-hour shift from working more than 12 hours in a 24 hour period except in a health care emergency. See *Mandatory Overtime*, AMERICAN NURSES ASS'N, <http://www.nursingworld.org/MainMenuCategories/ANAPoliticalPower/State/StateLegislativeAgenda/MandatoryOvertime.aspx>.

¹⁵⁹ 26 ME. REV. STAT. § 603(5) (2000).

¹⁶⁰ MINN. STAT. § 181.275, Subd. 2 (2005).

¹⁶¹ OR. REV. STAT. § 441.166(2) (2006).

¹⁶² W. VA. CODE § 21-5F-3(a) (2006).

¹⁶³ CONN. GEN. STAT. § 19a-4901(b) (2006).

¹⁶⁴ 210 ILL. COMP. STAT. ANN. § 85/10.9(b) (2005).

¹⁶⁵ MD. CODE ANN, LAB. & EMPL. § 3-421(a), (b) (2006).

¹⁶⁶ N.J. STAT. ANN. § 34:11-56a34(a) (2006).

¹⁶⁷ WASH. REV. CODE. § 49.28.140(1) (2006).

¹⁶⁸ ME. REV. STAT. Title 26, § 603 (2007).

¹⁶⁹ GOLDEN & JORGENSEN, *supra* note 154.

¹⁷⁰ Statistics are drawn from analysis of the 2008 NSCW conducted for this report. Percentages reported are for standard and nonstandard workers combined. (Regularly is characterized as being required to work overtime weekly or more, two to three times a month or about once a month.)

¹⁷¹ *Id.*



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Workplace Flexibility 2010 at Georgetown Law

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