To permit employees to request changes to their work schedules without fear of retaliation and to ensure that employers consider these requests, and to require employers to provide more predictable and stable schedules for employees in certain occupations with evidence of unpredictable and unstable scheduling practices that negatively affect employees, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 15, 2015

Ms. DeLauro (for herself, Mr. Scott of Virginia, Ms. Adams, Mr. Blumenauer, Ms. Bonamici, Mr. Brady of Pennsylvania, Mr. Cartwright, Ms. Judy Chu of California, Ms. Clarke of New York, Mr. Conyers, Mr. Courtney, Mr. Cummings, Mr. Delaney, Mr. DeSaulnier, Ms. Edwards, Mr. Ellison, Ms. Fudge, Mr. Grijalva, Mr. Gutiérrez, Ms. Hahn, Mr. Honda, Ms. Jackson Lee, Mr. Jeffries, Mr. Johnson of Georgia, Ms. Kaptur, Mr. Kennedy, Ms. Langevin, Ms. Lee, Mr. Lewis, Mrs. Carolyn B. Maloney of New York, Ms. Matsui, Ms. McCollum, Mr. McGovern, Ms. Moore, Mr. Nadler, Ms. Norton, Mr. Pascrell, Ms. Pingree, Mr. Pocan, Mr. Rangel, Mr. Rush, Mr. Ryan of Ohio, Ms. Loretta Sanchez of California, Ms. Schakowsky, Mr. Takano, Mr. Tonko, Mr. Van Hollen, Ms. Wilson of Florida, Mrs. Watson Coleman, Ms. Slaughter, Mr. Brendan F. Boyle of Pennsylvania, Ms. Clark of Massachusetts, Mr. Danny K. Davis of Illinois, Mr. Gene Green of Texas, Mr. McDermott, Mrs. Napolitano, Ms. Plaskett, Ms. Speier, Mr. Becerra, Mr. Beyer, Mrs. Davis of California, Mr. Al Green of Texas, Mr. Higgins, Mr. Larsen of Washington, Mr. Ted Lieu of California, and Ms. Roybal-Allard) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committees on House Administration, Oversight and Government Reform, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.
A BILL

To permit employees to request changes to their work schedules without fear of retaliation and to ensure that employers consider these requests, and to require employers to provide more predictable and stable schedules for employees in certain occupations with evidence of unpredictable and unstable scheduling practices that negatively affect employees, and for other purposes.

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

SECTION 1. SHORT TITLE; FINDINGS.

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

(b) Findings.—Congress finds the following:

(1) The vast majority of the United States workforce today is juggling responsibilities at home and at work. Women are primary breadwinners or co-breadwinners in 63 percent of families in the United States.

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

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

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

(i) roughly half of low-wage workers re-
ported very little or no control over the timing
of the hours they were scheduled to work;

(ii)(I) many workers in low-wage jobs re-
ceive their work schedules with very little ad-
advance notice; and

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

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

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

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

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

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

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

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

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

(C) pursue workforce training;

(D) get or keep a second job, which many
part-time workers need to make ends meet;
(E) plan for and access transportation to
reach worksites; and

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

(5) Twenty-six percent of workers on irregular
or on-call schedules and 19 percent of workers on
rotating or split shift schedules experience work-fam-
ily conflict, as compared to 11 percent of workers on
regular work schedules.

(6) Unpredictable and unstable schedules are
common in a wide range of occupations, including
food preparation and service, retail sales, and clean-
ing occupations. According to data from the Bureau
of Labor Statistics for early-career adults, 64 per-
cent of food service workers, 50 percent of retail
workers, and 40 percent of cleaning workers know
their schedules only a week or less in advance. The
average variation between the least and most hours
worked in a single month is 70 percent for food
service workers, 50 percent for retail workers, and
40 percent for cleaning workers.
(7) Food service workers, retail workers, and cleaning workers are among the lowest-paid workers. The median pay for workers in those 3 occupations is between $9.20 and $10.57 per hour, and women make up more than half of the workers in those occupations. Workers in those occupations account for nearly 18 percent of workers in the economy, which is more than 24,000,000 workers.

(8) Employers that have implemented fair work scheduling policies that allow workers to have more control over their work schedules, and provide more predictable and stable schedules, have experienced significant benefits, including reductions in absenteeism and workforce turnover, and increased worker morale and engagement.

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

SEC. 2. DEFINITIONS.

As used in this Act:

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

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

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

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

(D) a significant detrimental effect on business performance;

(E) insufficiency of work during the periods an employee proposes to work;

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

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

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

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

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

(B) ongoing care, including responsibility for securing the ongoing care, of—
(i) a person with a serious health condition who is in a family relationship with the individual; or

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

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

(A) under age 18; or

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

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

(6) **COVERED EMPLOYER.**—

(A) **IN GENERAL.**—The term “covered employer”—

(i) means any person engaged in commerce or in any industry or activity affecting commerce who employs 15 or more employees (described in paragraph (9)(A));
(ii) includes any person who acts, directly or indirectly, in the interest of such an employer to any of the employees (described in paragraph (9)(A)) of such employer;

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

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

(B) RULE.—For purposes of determining the number of employees who work for a person described in subparagraph (A)(i), all employees (described in paragraph (9)(A)) performing work for compensation on a full-time, part-time, or temporary basis shall be counted, except that if the number of such employees who perform work for such a person for compensation fluctuates, the number may be determined for a calendar year based upon the average number of such employees who performed work for the person for compensation during the preceding calendar year.
(C) PERSON.—In this paragraph, the term “person” has the meaning given the term in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

(7) DOMESTIC PARTNER.—The term “domestic partner” means the individual recognized as being in a relationship with an employee under any domestic partnership, civil union, or similar law of the State or political subdivision of a State in which the employee resides.

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

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

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

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

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

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

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

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

(G) an employee of the Government Accountability Office.

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

(A) who is—

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

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

(iii) an employing office, as defined in section 101 of the Congressional Accountability Act of 1995;
(iv) an employing office, as defined in section 411(c) of title 3, United States Code;

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

(vi) the Librarian of Congress; or

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

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

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

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

(B) any individual related to the employee involved by blood or affinity, whose close association with the employee is the equivalent of a family relationship described in subparagraph (A).
(12) **GRANDCHILD.**—The term “grandchild” means the child of a child.

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

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

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

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

(17) **PARENTAL RELATIONSHIP.**—The term “parental relationship” means a relationship in which a person assumed the obligations incident to parenthood for a child and discharged those obligations before the child reached adulthood.
(18) **PART-TIME EMPLOYEE.**—The term “part-time employee” means an individual who works fewer than 30 hours per week on average during any 1-month period.

(19) **RETAIL, FOOD SERVICE, OR CLEANING EMPLOYEE.**—The term “retail, food service, or cleaning employee” means an individual nonexempt employee who is employed in any of the following occupations, as described by the Bureau of Labor Statistics Standard Occupational Classification System (as in effect on the day before the date of enactment of this Act):

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

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

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

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

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

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

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

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

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

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

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

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

(B) **Same-Sex or Common Law Marriage.**—Such term includes an individual in a same-sex or common law marriage that meets the requirements of subparagraph (A).

(25) **State.**—The term “State” has the meaning given the term in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

(26) **Work Schedule.**—The term “work schedule” means those days and times within a work period when an employee is required by an employer to perform the duties of the employee’s employment for which the employee will receive compensation.
(27) Work schedule change.—The term “work schedule change” means any modification to an employee’s work schedule, such as an addition or reduction of hours, cancellation of a shift, or a change in the date or time of a work shift, by an employer.

(28) Work shift.—The term “work shift” means the specific hours of the workday during which an employee works.

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

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

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

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

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

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

(5) minimizing fluctuations in the number of hours the employee is scheduled to work on a daily, weekly, or monthly basis.
(b) Employer Obligation To Engage in an Interactive Process.—

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

(2) Result.—Such process shall result in—

(A) either granting or denying the request;

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

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

(3) Information.—If information provided by the employee making a request under this section requires clarification, the employer shall explain what further information is needed and give the employee reasonable time to produce the information.
(c) Requests Related to Caregiving, Enrollment in Education or Training, or a Second Job.—

If an employee makes a request for a change in the terms and conditions of employment as set forth in subsection (a) because of a serious health condition of the employee, due to the employee’s responsibilities as a caregiver, or due to the employee’s enrollment in a career-related educational or training program, or if a part-time employee makes a request for such a change for a reason related to a second job, the employer shall grant the request, unless the employer has a bona fide business reason for denying the request.

(d) Other Requests.—If an employee makes a request for a change in the terms and conditions of employment as set forth in subsection (a), for a reason other than those reasons set forth in subsection (c), the employer may deny the request for any reason that is not unlawful. If the employer denies such a request, the employer shall provide the employee with the reason for the denial, including whether any such reason is a bona fide business reason.
SEC. 4. REQUIREMENTS FOR REPORTING TIME PAY, SPLIT
SHIFT PAY, AND ADVANCE NOTICE OF WORK
SCHEDULES FOR RETAIL, FOOD SERVICE,
CLEANING, OR SECRETARY’S DESIGNATED
EMPLOYEES.

(a) Reporting Time Pay Requirement.—An em-
ployer shall pay a retail, food service, or cleaning employee
or a designated employee, in an additional occupation des-
ignated by the Secretary, under section 8(a)(2) as appro-
priate for coverage under this Act (referred to in this Act
as “a retail, food service, cleaning, or Secretary’s des-
ignated employee”)—

(1) for at least 4 hours at the regular rate of
pay of the employee involved for each day on which
the retail, food service, cleaning, or Secretary’s des-
ignated employee reports for work, as required by
the employer, but is given less than four hours of
work, except that if the employee’s scheduled hours
for a day are less than 4 hours, such employee shall
be paid for the scheduled hours of the employee in-
volved for that day if given less than the scheduled
hours of work; and

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

(b) Split Shift Pay Requirement.—An employer
shall pay a retail, food service, cleaning, or Secretary’s
designated employee for one additional hour at the em-
ployee’s regular rate of pay for each day during which the
employee works a split shift.

(c) Advance Notice Requirement.—

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

(2) Providing Notice of New Schedules.—
Except as provided in paragraph (3), if a retail, food
service, cleaning, or Secretary’s designated employ-
ee’s work schedule changes from the work schedule
of which the employee was informed pursuant to
paragraph (1), the employer shall provide the em-
ployee with the new work schedule of the employee
involved not less than 14 days before the first day of the new work schedule. If the expected minimum number of work hours that a retail, food service, cleaning, or Secretary’s designated employee will be assigned changes from the number of which the employee involved was informed pursuant to paragraph (1), the employer shall also provide notification of that change, not less than 14 days in advance of the first day this change will go into effect. Nothing in this subsection shall be construed to prohibit an employer from providing greater advance notice of a retail, food service, cleaning, or Secretary’s designated employee’s work schedule than is required under this section.

(3) Work schedule changes made with less than 24 hours’ notice.—An employer may make work schedule changes as needed, including by offering additional hours of work to retail, food service, cleaning, or Secretary’s designated employees beyond those previously scheduled, but an employer shall be required to provide one extra hour of pay at the employee’s regular rate for each shift that is changed with less than 24 hours’ notice, except in the case of the need to schedule the employee due to the unforeseen unavailability of a retail, food serv-
ice, cleaning, or Secretary’s designated employee previously scheduled to work that shift.

(4) NOTIFICATIONS IN WRITING.—The notifications required under paragraphs (1) and (2) shall be made to the employee involved in writing. Nothing in this subsection shall be construed as prohibiting an employer from using any additional means of notifying a retail, food service, cleaning, or Secretary’s designated employee of the work schedule of the employee involved.

(5) SCHEDULE POSTING REQUIREMENT.—Every employer employing any retail, food service, cleaning, or Secretary’s designated employee, subject to this Act shall post the schedule and keep it posted in a conspicuous place in every establishment where such employee is employed so as to permit the employee involved to observe readily a copy. Availability of that schedule by electronic means accessible by all retail, food service, cleaning, or Secretary’s designated employees, of that employer shall be considered compliance with this subsection.

(6) EMPLOYEE SHIFT TRADING.—Nothing in this subsection shall be construed to prevent an employer from allowing a retail, food service, cleaning, or Secretary’s designated employee to work in place
of another employee who has been scheduled to work
a particular shift as long as the change in schedule
is mutually agreed upon by the employees. An em-
ployer shall not be subject to the requirements of
paragraph (2) or (3) for such voluntary shift trades.
(d) Pay Stub Transparency.—Any pay provided
to an employee pursuant to subsection (a), (b), or (c)(3)
(referred to in this paragraph as “additional pay”) shall
be included in the employee’s regular paycheck. The em-
ployer shall identify, in the corresponding written wage
statement or pay stub, the total number of hours of addi-
tional pay provided for the pay period involved and wheth-
er the additional pay was due to the requirements of sub-
section (a)(1), the requirements of subsection (a)(2), the
requirements of subsection (b), or the requirements of
subsection (c)(3).
(e) Exception.—The requirements in subsections
(a) through (d) shall not apply during periods when reg-
ular operations of the employer are suspended due to
events beyond the employer’s control.
SEC. 5. PROHIBITED ACTS.
(a) Interference With Rights.—It shall be un-
lawful for any employer to interfere with, restrain, or deny
the exercise or the attempt to exercise, any right of an
employee as set forth in section 3 or of a retail, food serv-
ice, cleaning, or Secretary’s designated employee as set forth in section 4.

(b) Retaliation Prohibited.—It shall be unlawful for any employer to discharge, threaten to discharge, demote, suspend, reduce work hours of, or take any other adverse employment action against any employee in retaliation for exercising the rights of an employee under this Act or opposing any practice made unlawful by this Act.

For purposes of section 3, such retaliation shall include taking an adverse employment action against any employee on the basis of that employee’s eligibility or perceived eligibility to request or receive a change in the terms and conditions of employment, as described in such section, on the basis of a reason set forth in section 3(c).

(c) Interference With Proceedings or Inquiries.—It shall be unlawful for any person to discharge or in any other manner discriminate against any individual because such individual—

(1) has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to this Act;

(2) has given or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this Act; or
(3) has testified, or is about to testify, in any
inquiry or proceeding relating to any right provided
under this Act.

SEC. 6. REMEDIES AND ENFORCEMENT.

(a) INVESTIGATIVE AUTHORITY.—

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

(2) OBLIGATION TO KEEP AND PRESERVE
RECORDS.—Each employer shall make, keep, and
preserve records pertaining to compliance with this
Act in accordance with regulations issued by the
Secretary under section 8.

(3) REQUIRED SUBMISSIONS GENERALLY LIM-
ITED TO AN ANNUAL BASIS.—The Secretary shall
not under the authority of this subsection require
any employer to submit to the Secretary any books
or records more than once during any 12-month pe-
period, unless the Secretary has reasonable cause to
believe there may exist a violation of this Act or any
regulation or order issued pursuant to this Act, or
is investigating a charge pursuant to subsection (c).
(4) **Subpoena powers.**—For the purposes of any investigation provided for in this section, the Secretary shall have the subpoena authority provided for under section 9 of the Fair Labor Standards Act of 1938 (29 U.S.C. 209).

(b) **Civil action by employees.**—

(1) **Liability.**—Any employer who violates section 5(a) (with respect to a right set forth in subsection (a), (b), or (c)(3) of section 4) or subsection (b) or (c) of section 5 (referred to in this section as a “covered provision”) shall be liable to any employee affected for—

(A) damages equal to the amount of—

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

(ii) in a case in which wages, salary, employment benefits (as so defined), or other compensation have not been denied, lost, or owed to the employee, any actual monetary losses sustained by the employee as a direct result of the violation;
(B) interest on the amount described in subparagraph (A) calculated at the prevailing rate;

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

(D) such equitable relief as may be appropriate, including employment, reinstatement, and promotion.

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

   (A) the employees; or

   (B) the employees and other employees

   similarly situated.

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

(4) LIMITATIONS.—The right provided by para-
graph (2) to bring an action by or on behalf of any
employee shall terminate on the filing of a complaint
by the Secretary in an action under subsection (c)(3)
in which a recovery is sought of the damages de-
scribed in paragraph (1)(A) owing to an employee by
an employer liable under paragraph (1) unless the
action described is dismissed without prejudice on
motion of the Secretary.

(c) ACTIONS BY THE SECRETARY.—

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

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

(3) Civil penalty.—An employer who willfully and repeatedly violates—

(A) paragraph (1), (2), (4), or (5) of section 4(c), or section 4(d), shall be subject to a civil penalty in an amount to be determined by the Secretary, but not to exceed $100 per violation; and
(B) subsection (b) or (c) of section 5 shall be subject to a civil penalty in an amount to be determined by the Secretary, but not to exceed $1,100 per violation.

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

(A) restrain violations of this Act;

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

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

(d) LIMITATION.—

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

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

tion for which such action is brought.

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

(e) OTHER ADMINISTRATIVE OFFICERS.—

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

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

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

(4) LIBRARIAN OF CONGRESS.—In the case of
employees of the Library of Congress, the authority
of the Secretary under this Act shall be exercised by
the Librarian of Congress.
(5) COMPTROLLER GENERAL.—In the case of employees of the Government Accountability Office, the authority of the Secretary under this Act shall be exercised by the Comptroller General of the United States.

SEC. 7. NOTICE AND POSTING.

(a) IN GENERAL.—Each employer shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees and applicants for employment are customarily posted, a notice, to be prepared or approved by the Secretary (or the corresponding administrative officer specified in section 8) setting forth excerpts from, or summaries of, the pertinent provisions of this Act and information pertaining to the filing of a complaint under this Act.

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

SEC. 8. REGULATIONS.

(a) SECRETARY OF LABOR.—

(1) IN GENERAL.—Except as provided in subsections (b) through (f), not later than 180 days after the date of enactment of this Act, the Secretary shall issue such regulations as may be necessary to implement this Act.
(2) Regulations regarding additional occupations to be covered.—

(A) In general.—In carrying out paragraph (1), the Secretary shall issue regulations that specify a process the Secretary will follow to identify and designate additional occupations, for purposes of section 4(a), that are appropriate for coverage under this Act. Non-exempt employees in such occupations shall be considered to be designated employees for purposes of this Act.

(B) Criteria.—The regulations shall provide that the Secretary shall so designate an additional occupation—

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

(I) receive advance notice of their work schedules less than 14 days before the first day of the work schedules; or

(II) experience fluctuations in the number of hours the employees are scheduled to work on a daily, weekly, or monthly basis; or
(ii) for which the Secretary determines such designation is appropriate.

(C) DATA REVIEW.—In issuing the regulations, the Secretary shall specify the process by which the Department of Labor will review data from stakeholders, and data collected or generated by the Department, in making those designations.

(b) BOARD.—

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

(2) CONSIDERATION.—In prescribing the regulations, the Board shall take into consideration the enforcement and remedies provisions concerning the Board, and applicable to rights and protections

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

(c) PRESIDENT.—

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

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

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

(d) OFFICE OF PERSONNEL MANAGEMENT.—

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

(2) CONSIDERATION.—In prescribing the regu-
lations, the Office shall take into consideration the
enforcement and remedies provisions concerning the
Office under subchapter V of chapter 63 of title 5,
United States Code.
(3) **MODIFICATIONS.**—The regulations issued under paragraph (1) to implement this Act shall be the same as substantive regulations issued by the Secretary to implement this Act, except to the extent that the Office may determine, for good cause shown and stated together with the regulations issued by the Office, that a modification of such substantive regulations would be more effective for the implementation of the rights and protections under this Act.

(c) **LIBRARIAN OF CONGRESS.**—

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

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

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

(f) COMPTROLLER GENERAL.—

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

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

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

SEC. 9. RESEARCH, EDUCATION, AND TECHNICAL ASSISTANCE PROGRAM AND SURVEYS.

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

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

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

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

(A)(i) conducting pilot programs that implement fairer work schedules, including by promoting cross training, providing three weeks or more advance notice of schedules, providing em-
ployees with a minimum number of hours of work, and using computerized scheduling soft-
ware to provide more flexible, predictable, and stable schedules for employees; and

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

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

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

(D) providing technical assistance to employers, labor organizations, professional associations, and other interested persons on means of achieving and maintaining compliance with the provisions of this Act.

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

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

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

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

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

(2) conduct at regular intervals the Contingent Worker Supplement, the Work Schedules and Work at Home Supplement, and other relevant supplements (as determined by the Secretary), to the Current Population Survey.

SEC. 10. RIGHTS RETAINED BY EMPLOYEES.

This Act provides minimum requirements and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater rights for employees than are required in this Act.
SEC. 11. EXEMPTION.

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

SEC. 12. EFFECT ON OTHER LAW.


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