

113TH CONGRESS  
2D SESSION

# S. 2642

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 growing low-wage occupations, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 22, 2014

Mr. HARKIN (for himself, Ms. WARREN, and Mr. BROWN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## 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 growing low-wage occupations, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; FINDINGS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Schedules That Work Act”.

1 (b) FINDINGS.—Congress finds the following:

2 (1) The vast majority of the United States  
3 workforce today is juggling responsibilities at home  
4 and at work. Women are primary breadwinners or  
5 co-breadwinners in 63 percent of families in the  
6 United States and 26 percent of families with chil-  
7 dren are headed by single mothers.

8 (2) Despite the dual responsibilities of today's  
9 workforce, workers across the income spectrum have  
10 very little ability to make changes to their work  
11 schedules when those changes are needed to accom-  
12 modate family responsibilities. Only 27 percent of  
13 employers allow all or most of their employees to pe-  
14 riodically change their starting and quitting times.

15 (3) Although low-wage workers are most likely  
16 to be raising children on their own, as more than  
17 half of mothers of young children in low-wage jobs  
18 are doing, low-wage workers have the least control  
19 over their work schedules and the most unpredict-  
20 able schedules. For example—

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

24 (B) many workers in low-wage jobs receive  
25 their schedules with very little advance notice

1 and have work hours that vary significantly  
2 from week to week or month to month;

3 (C) some workers in low-wage jobs are sent  
4 home from work when work is slow without  
5 being paid for their scheduled shift;

6 (D) in some industries, the use of “call-in  
7 shift” requirements—requirements that workers  
8 call in to work to find out whether they will be  
9 scheduled to work later that day—has become  
10 common practice; and

11 (E) at the same time, 20 to 30 percent of  
12 workers in low-wage jobs struggle with being re-  
13 quired to work extra hours with little or no no-  
14 tice.

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

17 (A) provide necessary care for children and  
18 other family members, including arranging child  
19 care;

20 (B) qualify for and maintain eligibility for  
21 child care subsidies, due to fluctuations in in-  
22 come and work hours, or keep an appointment  
23 with a child care provider, due to not knowing  
24 how many hours or when the workers will be  
25 scheduled to work;

1 (C) pursue workforce training;

2 (D) get or keep a second job that some  
3 part-time workers need to make ends meet; and

4 (E) arrange transportation to and from  
5 work.

6 (5) Unpredictable and unstable schedules are  
7 prevalent in retail sales, food preparation and serv-  
8 ice, and building cleaning occupations, which are  
9 among the lowest-paid and fastest-growing occupa-  
10 tions in the workforce today. For workers in those  
11 occupations, often difficult and sometimes abusive  
12 work scheduling practices combine with very low  
13 wages to make it extremely challenging to make  
14 ends meet.

15 (6) Retail sales, food preparation and service,  
16 and building cleaning occupations are among those  
17 most likely to have unpredictable and unstable  
18 schedules. According to data from the Bureau of  
19 Labor Statistics, 66 percent of food service workers,  
20 52 percent of retail workers, and 40 percent of jani-  
21 tors and housekeepers know their schedules only a  
22 week or less in advance. The average variation in  
23 work hours in a single month is 70 percent for food  
24 service workers, 50 percent for retail workers, and  
25 40 percent for janitors and housekeepers.

1           (7) Those are among the lowest-paid and fast-  
2           est-growing occupations, accounting for 18 percent  
3           of workers in the economy, some 23,500,000 work-  
4           ers. The median pay for workers in those 3 occupa-  
5           tions is between \$9.15 and \$10.44 per hour, and  
6           women make up more than half of the workers in  
7           those occupations.

8           (8) Employers that have implemented fair work  
9           scheduling policies that allow workers to have more  
10          control over their work schedules, and provide more  
11          predictable and stable schedules, have experienced  
12          significant benefits, including reductions in absentee-  
13          ism and workforce turnover, and increased employee  
14          morale and engagement.

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

18 **SEC. 2. DEFINITIONS.**

19          As used in this Act:

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

22                       (A) the identifiable burden of additional  
23                       costs to an employer, including the cost of pro-  
24                       ductivity loss, retraining or hiring employees, or

1 transferring employees from one facility to an-  
2 other facility;

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

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

10 (D) a significant detrimental effect on  
11 business performance;

12 (E) insufficiency of work during the peri-  
13 ods an employee proposes to work;

14 (F) the need to balance competing sched-  
15 uling requests when it is not possible to grant  
16 all such requests without a significant detri-  
17 mental effect on the employer's ability to meet  
18 organizational needs; or

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

22 (2) CAREER-RELATED EDUCATIONAL OR TRAIN-  
23 ING PROGRAM.—The term “career-related edu-  
24 cational or training program” means an educational  
25 or training program or program of study offered by

1 a public, private, or nonprofit career and technical  
2 education school, institution of higher education, or  
3 other entity that provides academic education, career  
4 and technical education, or training (including reme-  
5 dial education or English as a second language, as  
6 appropriate), that is a program that leads to a rec-  
7 ognized postsecondary credential (as identified under  
8 section 122(d) of the Workforce Innovation and Op-  
9 portunity Act), and provides career awareness infor-  
10 mation. The term includes a program allowable  
11 under the Workforce Investment Act of 1998 (29  
12 U.S.C. 2801 et seq.), the Workforce Innovation and  
13 Opportunity Act, the Carl D. Perkins Career and  
14 Technical Education Act of 2006 (20 U.S.C. 2301  
15 et seq.), or the Higher Education Act of 1965 (20  
16 U.S.C. 1001 et seq.), without regard to whether or  
17 not the program is funded under the corresponding  
18 Act.

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

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

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

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

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

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

12 (A) under age 18; or

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

15 (5) COVERED EMPLOYER.—

16 (A) IN GENERAL.—The term “covered em-  
 17 ployer”—

18 (i) means any person engaged in com-  
 19 merce or in any industry or activity affect-  
 20 ing commerce who employs 15 or more em-  
 21 ployees (described in paragraph (7)(A));

22 (ii) includes any person who acts, di-  
 23 rectly or indirectly, in the interest of such  
 24 an employer to any of the employees (de-



1           scribed in paragraph (7)(A)) of such em-  
2           ployer;

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

5           (iv) includes an agency described in  
6           subparagraph (A)(iii) of section 101(4) of  
7           the Family and Medical Leave Act of 1993  
8           (29 U.S.C. 2611(4)), to which subpara-  
9           graph (B) of such section shall apply.

10          (B) RULE.—For purposes of determining  
11          the number of employees who work for a person  
12          described in subparagraph (A)(i), all employees  
13          (described in paragraph (7)(A)) performing  
14          work for compensation on a full-time, part-time,  
15          or temporary basis shall be counted, except that  
16          if the number of such employees who perform  
17          work for such a person for compensation fluc-  
18          tuates, the number may be determined for a  
19          calendar year based upon the average number  
20          of such employees who performed work for the  
21          person for compensation during the preceding  
22          calendar year.

23          (C) PERSON.—In this paragraph, and  
24          paragraph (7), the term “person” has the

1 meaning given the term in section 3 of the Fair  
2 Labor Standards Act of 1938 (29 U.S.C. 203).

3 (6) DOMESTIC PARTNER.—The term “domestic  
4 partner” means the person recognized as being in a  
5 relationship with an employee under any domestic  
6 partnership, civil union, or similar law of the State  
7 or political subdivision of a State in which the em-  
8 ployee resides.

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

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

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

18 (C) a covered employee, as defined in sec-  
19 tion 101 of the Congressional Accountability  
20 Act of 1995 (2 U.S.C. 1301), other than an ap-  
21 plicant for employment;

22 (D) a covered employee, as defined in sec-  
23 tion 411(c) of title 3, United States Code;

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

4 (F) an employee of the Library of Con-  
5 gress; or

6 (G) an employee of the Government Ac-  
7 countability Office.

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

10 (A) who is—

11 (i) a covered employer, as defined in  
12 paragraph (4), who is not described in any  
13 of clauses (ii) through (vii);

14 (ii) an entity employing a State em-  
15 ployee described in section 304(a) of the  
16 Government Employee Rights Act of 1991;

17 (iii) an employing office, as defined in  
18 section 101 of the Congressional Account-  
19 ability Act of 1995;

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

23 (v) an employing agency covered  
24 under subchapter V of chapter 63 of title  
25 5, United States Code;

1 (vi) the Librarian of Congress; or  
 2 (vii) the Comptroller General of the  
 3 United States; and

4 (B) who is engaged in commerce (including  
 5 government), in the production of goods for  
 6 commerce, or in an enterprise engaged in com-  
 7 merce (including government) or in the produc-  
 8 tion of goods for commerce.

9 (9) FAMILY RELATIONSHIP.—The term “family  
 10 relationship” means a relationship with a child,  
 11 spouse, domestic partner, parent, grandchild, grand-  
 12 parent, sibling, or parent of a spouse or domestic  
 13 partner.

14 (10) GRANDCHILD.—The term “grandchild”  
 15 means the child of a child.

16 (11) GRANDPARENT.—The term “grandparent”  
 17 means the parent of a parent.

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

23 (13) PARENT.—The term “parent” means a bi-  
 24 ological or adoptive parent, a stepparent, or a person

1       who stood in a parental relationship to an employee  
2       when the employee was a child.

3           (14) PARENTAL RELATIONSHIP.—The term  
4       “parental relationship” means a relationship in  
5       which a person assumed the obligations incident to  
6       parenthood for a child and discharged those obliga-  
7       tions before the child reached adulthood.

8           (15) PART-TIME EMPLOYEE.—The term “part-  
9       time employee” means an individual who works  
10      fewer than 30 hours per week on average during any  
11      1-month period.

12          (16) RETAIL, FOOD SERVICE, OR CLEANING EM-  
13      PLOYEE.—

14           (A) IN GENERAL.—The term “retail, food  
15      service, or cleaning employee” means an indi-  
16      vidual employee who is employed in any of the  
17      following occupations, as described by the Bu-  
18      reau of Labor Statistics Standard Occupational  
19      Classification System (as in effect on the day  
20      before the date of enactment of this Act):

21           (i) Retail sales occupations consisting  
22      of occupations described in 41–1010 and  
23      41–2000, and all subdivisions thereof, of  
24      such System, which includes first-line su-  
25      pervisors of sales workers, cashiers, gam-

1           ing change persons and booth cashiers,  
2           counter and rental clerks, parts sales-  
3           persons, and retail salespersons.

4           (ii) Food preparation and serving re-  
5           lated occupations as described in 35–0000,  
6           and all subdivisions thereof, of such Sys-  
7           tem, which includes supervisors of food  
8           preparation and serving workers, cooks  
9           and food preparation workers, food and  
10          beverage serving workers, and other food  
11          preparation and serving related workers.

12          (iii) Building cleaning occupations as  
13          described in 37–2011, 37–2012 and 37–  
14          2019 of such System, which includes jani-  
15          tors and cleaners, maids and housekeeping  
16          cleaners, and building cleaning workers.

17          (B) EXCLUSIONS.—Notwithstanding sub-  
18          paragraph (A), the term “retail, food service, or  
19          cleaning employee” does not include any person  
20          employed in a bona fide executive, administra-  
21          tive, or professional capacity, as defined for  
22          purposes of section 13(a)(1) of the Fair Labor  
23          Standards Act of 1938 (29 U.S.C. 213(a)(1)).

24          (17) SECRETARY.—The term “Secretary”  
25          means the Secretary of Labor.

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

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

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

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

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

17          (21) SPOUSE.—

18                (A) IN GENERAL.—The term “spouse”  
19                means a person with whom an individual en-  
20                tered into—

21                       (i) a marriage as defined or recog-  
22                       nized under State law in the State in  
23                       which the marriage was entered into; or

24                       (ii) in the case of a marriage entered  
25                       into outside of any State, a marriage that

1 is recognized in the place where entered  
2 into and could have been entered into in at  
3 least 1 State.

4 (B) SAME-SEX OR COMMON LAW MAR-  
5 RIAGE.—Such term includes an individual in a  
6 same-sex or common law marriage that meets  
7 the requirements of subparagraph (A).

8 (22) STATE.—The term “State” has the mean-  
9 ing given the term in section 3 of the Fair Labor  
10 Standards Act of 1938 (29 U.S.C. 203).

11 (23) WORK SCHEDULE.—The term “work  
12 schedule” means those days and times within a work  
13 period when an employee is required by an employer  
14 to perform the duties of the employee’s employment  
15 for which the employee will receive compensation.

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

22 (25) WORK SHIFT.—The term “work shift”  
23 means the specific hours of the workday during  
24 which an employee works.

25 (26) VARIOUS ADDITIONAL TERMS.—



1 (A) COMMERCE TERMS.—The terms “com-  
 2 merce” and “industry or activity affecting com-  
 3 merce” have the meanings given the terms in  
 4 section 101 of the Family and Medical Leave  
 5 Act of 1993 (29 U.S.C. 2611).

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

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

11 (a) RIGHT TO REQUEST.—An employee may apply  
 12 to the employee’s employer to request a change in the  
 13 terms and conditions of employment as they relate to—

14 (1) the number of hours the employee is re-  
 15 quired to work or be on call for work;

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

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

20 (4) the amount of notification the employee re-  
 21 ceives of work schedule assignments; and

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

1 (b) EMPLOYER OBLIGATION TO ENGAGE IN AN  
2 INTERACTIVE PROCESS.—

3 (1) IN GENERAL.—If an employee applies to the  
4 employee's employer to request a change in the  
5 terms and conditions of employment as set forth in  
6 subsection (a), the employer shall engage in a time-  
7 ly, good faith interactive process with the employee  
8 that includes a discussion of potential schedule  
9 changes that would meet the employee's needs.

10 (2) RESULT.—Such process shall result in—

11 (A) either granting or denying the request;

12 (B) in the event of a denial, considering al-  
13 ternatives to the proposed change that might  
14 meet the employee's needs and granting or de-  
15 nying a request for an alternative change in the  
16 terms and conditions of employment as set  
17 forth in subsection (a); and

18 (C) in the event of a denial, stating the  
19 reason for denial.

20 (3) INFORMATION.—If information provided by  
21 the employee making a request under this section re-  
22 quires clarification, the employer shall explain what  
23 further information is needed and give the employee  
24 reasonable time to produce the information.

1       (c) REQUESTS RELATED TO CAREGIVING, ENROLL-  
2     MENT IN EDUCATION OR TRAINING, OR A SECOND JOB.—

3     If an employee makes a request for a change in the terms  
4     and conditions of employment as set forth in subsection  
5     (a) because of a serious health condition of the employee,  
6     due to the employee's responsibilities as a caregiver, or  
7     due to the employee's enrollment in a career-related edu-  
8     cational or training program, or if a part-time employee  
9     makes a request for such a change for a reason related  
10    to a second job, the employer shall grant the request, un-  
11    less the employer has a bona fide business reason for deny-  
12    ing the request.

13       (d) OTHER REQUESTS.—If an employee makes a re-  
14    quest for a change in the terms and conditions of employ-  
15    ment as set forth in subsection (a), for a reason other than  
16    those reasons set forth in subsection (c), the employer may  
17    deny the request for any reason that is not unlawful. If  
18    the employer denies such a request, the employer shall  
19    provide the employee with the reason for the denial, in-  
20    cluding whether any such reason was a bona fide business  
21    reason.

1 **SEC. 4. REQUIREMENTS FOR REPORTING TIME PAY, SPLIT**  
2 **SHIFT PAY, AND ADVANCE NOTICE OF WORK**  
3 **SCHEDULES.**

4 (a) REPORTING TIME PAY REQUIREMENT.—An em-  
5 ployer shall pay a retail, food service, or cleaning em-  
6 ployee—

7 (1) for at least 4 hours at the employee's reg-  
8 ular rate of pay for each day on which the retail,  
9 food service, or cleaning employee reports for work,  
10 as required by the employer, but is given less than  
11 four hours of work, except that if the retail, food  
12 service, or cleaning employee's scheduled hours for a  
13 day are less than 4 hours, such retail, food service,  
14 or cleaning employee shall be paid for the employee's  
15 scheduled hours for that day if given less than the  
16 scheduled hours of work; and

17 (2) for at least 1 hour at the employee's regular  
18 rate of pay for each day the retail, food service, or  
19 cleaning employee is given specific instructions to  
20 contact the employee's employer, or wait to be con-  
21 tacted by the employer, less than 24 hours in ad-  
22 vance of the start of a potential work shift to deter-  
23 mine whether the employee must report to work for  
24 such shift.

25 (b) SPLIT SHIFT PAY REQUIREMENT.—An employer  
26 shall pay a retail, food service, or cleaning employee for

1 one additional hour at the retail, food service, or cleaning  
2 employee's regular rate of pay for each day during which  
3 the retail, food service, or cleaning employee works a split  
4 shift.

5 (c) ADVANCE NOTICE REQUIREMENT.—

6 (1) INITIAL SCHEDULE.—On or before a new  
7 retail, food service, or cleaning employee's first day  
8 of work, the employer shall inform the retail, food  
9 service, or cleaning employee in writing of the em-  
10 ployee's work schedule and the minimum number of  
11 expected work hours the retail, food service, or  
12 cleaning employee will be assigned to work per  
13 month.

14 (2) PROVIDING NOTICE OF NEW SCHEDULES.—

15 Except as provided in paragraph (3), if a retail, food  
16 service, or cleaning employee's work schedule  
17 changes from the work schedule of which the retail,  
18 food service, or cleaning employee was informed pur-  
19 suant to paragraph (1), the employer shall provide  
20 the retail, food service, or cleaning employee with  
21 the employee's new work schedule not less than 14  
22 days before the first day of the new work schedule.  
23 If the expected minimum number of work hours that  
24 a retail, food service, or cleaning employee will be  
25 assigned changes from the number of which the em-

1        ployee was informed pursuant to paragraph (1), the  
2        employer shall also provide notification of that  
3        change, not less than 14 days in advance of the first  
4        day this change will go into effect. Nothing in this  
5        subsection shall be construed to prohibit an em-  
6        ployer from providing greater advance notice of a re-  
7        tail, food service, or cleaning employee's work sched-  
8        ule than is required under this section.

9            (3) WORK SCHEDULE CHANGES MADE WITH  
10        LESS THAN 24 HOURS' NOTICE.—An employer may  
11        make work schedule changes as needed, including by  
12        offering additional hours of work to retail, food serv-  
13        ice, or cleaning employees beyond those previously  
14        scheduled, but an employer shall be required to pro-  
15        vide one extra hour of pay at the retail, food service,  
16        or cleaning employee's regular rate for each shift  
17        that is changed with less than 24 hours' notice, ex-  
18        cept in the case of the need to schedule the retail,  
19        food service, or cleaning employee due to the unfore-  
20        seen unavailability of a retail, food service, or clean-  
21        ing employee previously scheduled to work that shift.

22            (4) NOTIFICATIONS IN WRITING.—The notifica-  
23        tions required under paragraphs (1) and (2) shall be  
24        made to the employee in writing. Nothing in this  
25        subsection shall be construed as prohibiting an em-

1        ployer from using any additional means of notifying  
2        a retail, food service, or cleaning employee of the  
3        employee's work schedule.

4            (5) SCHEDULE POSTING REQUIREMENT.—Every  
5        employer employing any retail, food service, or clean-  
6        ing employee subject to this Act shall post the  
7        schedule and keep it posted in a conspicuous place  
8        in every establishment where such retail, food serv-  
9        ice, or cleaning employee is employed so as to permit  
10       the employee to observe readily a copy. Availability  
11       of that schedule by electronic means accessible by all  
12       retail, food service, or cleaning employees of that  
13       employer shall be considered compliance with this  
14       subsection.

15           (6) EMPLOYEE SHIFT TRADING.—Nothing in  
16       this subsection shall be construed to prevent an em-  
17       ployer from allowing a retail, food service, or clean-  
18       ing employee to work in place of another employee  
19       who has been scheduled to work a particular shift as  
20       long as the change in schedule is mutually agreed  
21       upon by the employees. An employer shall not be  
22       subject to the requirements of paragraph (2) or (3)  
23       for such voluntary shift trades.

24       (d) EXCEPTION.—The requirements in subsections  
25 (a), (b), and (c) shall not apply during periods when reg-

1 ular operations of the employer are suspended due to  
2 events beyond the employer's control.

3 **SEC. 5. PROHIBITED ACTS.**

4 (a) INTERFERENCE WITH RIGHTS.—It shall be un-  
5 lawful for any employer to interfere with, restrain, or deny  
6 the exercise or the attempt to exercise, any right of an  
7 employee as set forth in section 3 or of a retail, food serv-  
8 ice, or cleaning employee as set forth in section 4.

9 (b) RETALIATION PROHIBITED.—It shall be unlawful  
10 for any employer to discharge, threaten to discharge, de-  
11 mote, suspend, reduce work hours of, or take any other  
12 adverse employment action against any employee in retal-  
13 iation for exercising the rights of an employee under this  
14 Act or opposing any practice made unlawful by this Act.  
15 For purposes of section 3, such retaliation shall include  
16 taking an adverse employment action against any em-  
17 ployee on the basis of that employee's eligibility or per-  
18 ceived eligibility to request or receive a change in the  
19 terms and conditions of employment, as described in such  
20 section, on the basis of a reason set forth in section 3(c).

21 (c) INTERFERENCE WITH PROCEEDINGS OR INQUIR-  
22 IES.—It shall be unlawful for any person to discharge or  
23 in any other manner discriminate against any individual  
24 because such individual—



1           (1) has filed any charge, or has instituted or  
2           caused to be instituted any proceeding, under or re-  
3           lated to this Act;

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

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

10 **SEC. 6. REMEDIES AND ENFORCEMENT.**

11       (a) INVESTIGATIVE AUTHORITY.—

12           (1) IN GENERAL.—To ensure compliance with  
13           this Act, or any regulation or order issued under  
14           this Act, the Secretary shall have, subject to para-  
15           graph (3), the investigative authority provided under  
16           section 11(a) of the Fair Labor Standards Act of  
17           1938 (29 U.S.C. 211(a)).

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

23           (3) REQUIRED SUBMISSIONS GENERALLY LIM-  
24           ITED TO AN ANNUAL BASIS.—The Secretary shall  
25           not under the authority of this subsection require

1 any employer to submit to the Secretary any books  
 2 or records more than once during any 12-month pe-  
 3 riod, unless the Secretary has reasonable cause to  
 4 believe there may exist a violation of this Act or any  
 5 regulation or order issued pursuant to this Act, or  
 6 is investigating a charge pursuant to subsection (c).

7 (4) SUBPOENA POWERS.—For the purposes of  
 8 any investigation provided for in this section, the  
 9 Secretary shall have the subpoena authority provided  
 10 for under section 9 of the Fair Labor Standards Act  
 11 of 1938 (29 U.S.C. 209).

12 (b) CIVIL ACTION BY EMPLOYEES.—

13 (1) LIABILITY.—Any employer who violates sec-  
 14 tion 5(a) (with respect to a right set forth in section  
 15 4) or subsection (b) or (c) of section 5 (referred to  
 16 in this section as a “covered provision”) shall be lia-  
 17 ble to any employee affected for—

18 (A) damages equal to the amount of—

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

1                   (ii) in a case in which wages, salary,  
2                   employment benefits (as so defined), or  
3                   other compensation have not been denied,  
4                   lost, or owed to the employee, any actual  
5                   monetary losses sustained by the employee  
6                   as a direct result of the violation;

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

10                  (C) an additional amount as liquidated  
11                  damages equal to the sum of the amount de-  
12                  scribed in subparagraph (A) and the interest  
13                  described in subparagraph (B), except that if  
14                  an employer who has violated a covered provi-  
15                  sion proves to the satisfaction of the court that  
16                  the act or omission which violated the covered  
17                  provision was in good faith and that the em-  
18                  ployer had reasonable grounds for believing that  
19                  the act or omission was not a violation of a cov-  
20                  ered provision, such court may, in the discretion  
21                  of the court, reduce the amount of liability to  
22                  the amount and interest determined under sub-  
23                  paragraphs (A) and (B), respectively; and

1 (D) such equitable relief as may be appro-  
2 priate, including employment, reinstatement,  
3 and promotion.

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

10 (A) the employees; or

11 (B) the employees and other employees  
12 similarly situated.

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

18 (4) LIMITATIONS.—The right provided by para-  
19 graph (2) to bring an action by or on behalf of any  
20 employee shall terminate on the filing of a complaint  
21 by the Secretary in an action under subsection (c)(3)  
22 in which a recovery is sought of the damages de-  
23 scribed in paragraph (1)(A) owing to an employee by  
24 an employer liable under paragraph (1) unless the

1       action described is dismissed without prejudice on  
2       motion of the Secretary.

3       (c) ACTIONS BY THE SECRETARY.—

4           (1) ADMINISTRATIVE ACTION.—The Secretary  
5       shall receive, investigate, and attempt to resolve  
6       complaints of violations of this Act in the same man-  
7       ner that the Secretary receives, investigates, and at-  
8       tempts to resolve complaints of violations of sections  
9       6 and 7 of the Fair Labor Standards Act of 1938  
10      (29 U.S.C. 206 and 207), and may issue an order  
11      making determinations, and assessing a civil penalty  
12      described in paragraph (3) (in accordance with para-  
13      graph (3)), with respect to such an alleged violation.

14          (2) ADMINISTRATIVE REVIEW.—An affected  
15      person who takes exception to an order issued under  
16      paragraph (1) may request review of and a decision  
17      regarding such an order by an administrative law  
18      judge. In reviewing the order, the administrative law  
19      judge may hold an administrative hearing con-  
20      cerning the order, in accordance with the require-  
21      ments of sections 554, 556, and 557 of title 5,  
22      United States Code. Such hearing shall be conducted  
23      expeditiously. If no affected person requests such re-  
24      view within 60 days after the order is issued under

1 paragraph (1), the order shall be considered to be a  
2 final order that is not subject to judicial review.

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

5 (A) paragraph (1), (4), or (5) of section  
6 4(c) shall be subject to a civil penalty in an  
7 amount to be determined by the Secretary, but  
8 not to exceed \$100 per violation; and

9 (B) subsection (b) or (c) of section 5 shall  
10 be subject to a civil penalty in an amount to be  
11 determined by the Secretary, but not to exceed  
12 \$1,100 per violation.

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

16 (A) restrain violations of this Act;

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

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

24 (d) LIMITATION.—

1           (1) IN GENERAL.—Except as provided in para-  
2           graph (2), an action may be brought under this sec-  
3           tion not later than 2 years after the date of the last  
4           event constituting the alleged violation for which the  
5           action is brought.

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

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

16          (e) OTHER ADMINISTRATIVE OFFICERS.—

17               (1) BOARD.—In the case of employees described  
18               in section 2(7)(C), the authority of the Secretary  
19               under this Act shall be exercised by the Board of Di-  
20               rectors of the Office of Compliance.

21               (2) PRESIDENT; MERIT SYSTEMS PROTECTION  
22               BOARD.—In the case of employees described in sec-  
23               tion 2(7)(D), the authority of the Secretary under  
24               this Act shall be exercised by the President and the  
25               Merit Systems Protection Board.

1           (3) OFFICE OF PERSONNEL MANAGEMENT.—In  
2           the case of employees described in section 2(7)(E),  
3           the authority of the Secretary under this Act shall  
4           be exercised by the Office of Personnel Management.

5           (4) LIBRARIAN OF CONGRESS.—In the case of  
6           employees of the Library of Congress, the authority  
7           of the Secretary under this Act shall be exercised by  
8           the Librarian of Congress.

9           (5) COMPTROLLER GENERAL.—In the case of  
10          employees of the Government Accountability Office,  
11          the authority of the Secretary under this Act shall  
12          be exercised by the Comptroller General of the  
13          United States.

14   **SEC. 7. NOTICE AND POSTING.**

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



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

4 **SEC. 8. REGULATIONS.**

5 (a) IN GENERAL.—Except as provided in subsections  
 6 (b) through (f), not later than 180 days after the date  
 7 of enactment of this Act, the Secretary shall issue such  
 8 regulations as may be necessary to implement this Act.

9 (b) BOARD.—

10 (1) IN GENERAL.—Not later than 180 days  
 11 after the date of enactment of this Act, the Board  
 12 of Directors of the Office of Compliance shall issue  
 13 such regulations as may be necessary to implement  
 14 this Act with respect to employees described in sec-  
 15 tion 2(7)(C).

16 (2) CONSIDERATION.—In prescribing the regu-  
 17 lations, the Board shall take into consideration the  
 18 enforcement and remedies provisions concerning the  
 19 Board, and applicable to rights and protections  
 20 under the Family and Medical Leave Act of 1993  
 21 (29 U.S.C. 2611 et seq.), under the Congressional  
 22 Accountability Act of 1995 (2 U.S.C. 1301 et seq.).

23 (3) MODIFICATIONS.—The regulations issued  
 24 under paragraph (1) to implement this Act shall be  
 25 the same as substantive regulations issued by the

1 Secretary to implement this Act, except to the extent  
2 that the Board may determine, for good cause  
3 shown and stated together with the regulations  
4 issued by the Board, that a modification of such  
5 substantive regulations would be more effective for  
6 the implementation of the rights and protections  
7 under this Act.

8 (c) PRESIDENT.—

9 (1) IN GENERAL.—Not later than 180 days  
10 after the date of enactment of this Act, the Presi-  
11 dent shall issue such regulations as may be nec-  
12 essary to implement this Act with respect to employ-  
13 ees described in section 2(7)(D).

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

21 (3) MODIFICATIONS.—The regulations issued  
22 under paragraph (1) to implement this Act shall be  
23 the same as substantive regulations issued by the  
24 Secretary to implement this Act, except to the extent  
25 that the President may determine, for good cause

1 shown and stated together with the regulations  
2 issued by the President, that a modification of such  
3 substantive regulations would be more effective for  
4 the implementation of the rights and protections  
5 under this Act.

6 (d) OFFICE OF PERSONNEL MANAGEMENT.—

7 (1) IN GENERAL.—Not later than 180 days  
8 after the date of enactment of this Act, the Office  
9 of Personnel Management shall issue such regula-  
10 tions as may be necessary to implement this Act  
11 with respect to employees described in section  
12 2(7)(E).

13 (2) CONSIDERATION.—In prescribing the regu-  
14 lations, the Office shall take into consideration the  
15 enforcement and remedies provisions concerning the  
16 Office under subchapter V of chapter 63 of title 5,  
17 United States Code.

18 (3) MODIFICATIONS.—The regulations issued  
19 under paragraph (1) to implement this Act shall be  
20 the same as substantive regulations issued by the  
21 Secretary to implement this Act, except to the extent  
22 that the Office may determine, for good cause shown  
23 and stated together with the regulations issued by  
24 the Office, that a modification of such substantive  
25 regulations would be more effective for the imple-

1       mentation of the rights and protections under this  
2       Act.

3       (e) LIBRARIAN OF CONGRESS.—

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

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

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

25      (f) COMPTROLLER GENERAL.—

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

6           (2) CONSIDERATION.—In prescribing the regu-  
 7           lations, the Comptroller General shall take into con-  
 8           sideration the enforcement and remedies provisions  
 9           concerning the Comptroller General under title I of  
 10          the Family and Medical Leave Act of 1993.

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

21 **SEC. 9. RESEARCH, EDUCATION, AND TECHNICAL ASSIST-**  
 22 **ANCE PROGRAM.**

23          (a) IN GENERAL.—The Secretary shall provide infor-  
 24          mation and technical assistance to employers, labor orga-

1 nizations, and the general public concerning compliance  
2 with this Act.

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

5 (1) the Secretary, acting through the Adminis-  
6 trator of the Wage and Hour Division of the Depart-  
7 ment of Labor, shall issue guidance on compliance  
8 with this Act regarding providing a flexible, predict-  
9 able, or stable work environment through changes in  
10 the terms and conditions of employment as provided  
11 in section 3(a); and

12 (2) the Secretary shall carry on a continuing  
13 program of research, education, and technical assist-  
14 ance, including—

15 (A)(i) conducting pilot programs that im-  
16 plement fairer work schedules, including by pro-  
17 moting cross training, providing three weeks or  
18 more advance notice of schedules, providing em-  
19 ployees with a minimum number of hours of  
20 work, and using computerized scheduling soft-  
21 ware to provide more flexible, predictable, and  
22 stable schedules for employees; and

23 (ii) evaluating the results of such pilot pro-  
24 grams for employees, employee’s families, and  
25 employers;

1 (B) publishing and otherwise making avail-  
2 able to employers, labor organizations, profes-  
3 sional associations, educational institutions, the  
4 various communication media, and the general  
5 public the findings of studies regarding fair  
6 work scheduling policies and other materials for  
7 promoting compliance with this Act;

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

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

16 (c) GAO STUDY.—

17 (1) STUDY.—The Comptroller General of the  
18 United States shall conduct a study on—

19 (A) the impact of difficult scheduling prac-  
20 tices on employees and employers, including un-  
21 predictable and unstable schedules and sched-  
22 ules over which employees have little control,  
23 and particularly how these scheduling practices  
24 impact absenteeism, workforce turnover, and

1 employees' ability to meet their caregiving re-  
2 sponsibilities;

3 (B) the prevalence in occupations not de-  
4 scribed in section 2(16)(A) of employees rou-  
5 tinely receiving inadequate advance notice of  
6 the shifts or hours of the employees, being as-  
7 signed split shifts, being sent home from work  
8 prior to the completion of their scheduled shift  
9 without being paid for the hours in their sched-  
10 uled shift, being assigned call-in shifts (where  
11 the employee is required to contact the em-  
12 ployer, or wait to be contacted by the employer,  
13 less than 24 hours in advance of the potential  
14 work shift to determine whether the employee  
15 must report to work), or being called into work  
16 outside of scheduled hours;

17 (C) the effects on employees in occupations  
18 not described in section 2(16)(A) of providing  
19 advance notice of work schedules, reporting  
20 time pay when employees are sent home without  
21 working their full scheduled shift or are as-  
22 signed to call-in shifts but given no work for  
23 those shifts, and split shift pay when employees  
24 are assigned split shifts; and



1 (D) the effects on employers in occupations  
2 not described in section 2(16)(A) of providing  
3 advance notice of work schedules, reporting  
4 time pay when employees are sent home without  
5 working their full scheduled shift or assigned to  
6 call-in shifts but given no work for those shifts,  
7 and split shift pay when employees are assigned  
8 split shifts.

9 (2) REPORTS.—Not later than 18 months after  
10 the date of enactment of this Act, the Comptroller  
11 General of the United States shall prepare and sub-  
12 mit a report to the appropriate committees of Con-  
13 gress concerning the initial results of the study con-  
14 ducted pursuant to paragraph (1). Not later than 5  
15 years after the date of enactment of this Act, the  
16 Comptroller General shall prepare and submit a fol-  
17 low-up report to such committees concerning the re-  
18 sults of such study.

19 **SEC. 10. RIGHTS RETAINED BY EMPLOYEES.**

20 This Act provides minimum requirements and shall  
21 not be construed to preempt, limit, or otherwise affect the  
22 applicability of any other law, regulation, requirement,  
23 policy, or standard that provides for greater rights for em-  
24 ployees than are required in this Act.

1 **SEC. 11. EXEMPTION.**

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

6 **SEC. 12. EFFECT ON OTHER LAW.**

7       Nothing in this Act shall be construed as creating or  
8 imposing any requirement in conflict with any Federal or  
9 State law or regulation (including the Americans with Dis-  
10 abilities Act of 1990 (42 U.S.C. 12101 et seq.), the Fam-  
11 ily and Medical Leave Act of 1993 (29 U.S.C. 2611 et  
12 seq.), the National Labor Relations Act (29 U.S.C. 151  
13 et seq.), and title VII of the Civil Rights Act of 1964 (42  
14 U.S.C. 2000e et seq.)), nor shall anything in this Act be  
15 construed to diminish or impair the rights of an employee  
16 under any valid collective bargaining agreement.

○