

113TH CONGRESS
2^D 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.

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

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.

○