

**REPORT**

# **Exploring the Legal Response to Unpredictable Scheduling Burdens for Women in the Workplace**

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# Exploring the Legal Response to Unpredictable Scheduling Burdens for Women in the Workplace

## EXECUTIVE SUMMARY

The COVID-19 pandemic has both revealed and exacerbated gender and racial inequities in the U.S. workforce. Women in hourly and low-paying jobs — especially Black and Latinx women — who work in industries with unpredictable scheduling practices have disproportionately faced low pay, insufficient benefits, job insecurity, and discrimination in the workplace. Unpredictable scheduling practices, which is most common in the food service, retail, grocery, and health services industries, subjects workers to irregular and inconsistent work hours and provides them with little to no control over their schedules. These practices have been shown to cause negative health outcomes, including increased stress, food and housing insecurity, and negative effects on mental and emotional wellbeing. Further, the systemic issues that have existed long before the ongoing pandemic — including an inadequate care infrastructure and insufficient legal protections — increase the burden on women to choose between work and family. Every day women are forced to make the impossible decision between working to maintain a semblance of financial security in jobs with irregular and inconsistent shifts or attending to the health and caregiving needs of themselves and their loved ones during the ongoing pandemic.

These burdens may vary tremendously depending upon where a woman lives and works. This is due, in part, to the fact that several cities and states have joined the growing movement to address unpredictable scheduling and the inequities it perpetuates through law and policy. These laws and policies range in terms of worker-protectiveness — from comprehensive, to minimal, to obstructive.

One state and six cities have enacted comprehensive packages of legal protections, commonly called “fair workweek laws.” Fair workweek laws specifically target unpredictable scheduling practices. These laws include all or several of the following legal provisions: advance scheduling notice, good faith estimates of worker hours, a stable schedule requirement, predictability pay, the right to rest between shifts, greater access to hours, the right to

request flexible scheduling, and anti-retaliation protections. Generally, fair workweek laws only apply to a small subset of hourly employees who work for large employers in specified industries.

The majority of U.S. jurisdictions have not passed a fair workweek law, though some have enacted narrowly tailored protections that regulate a discrete aspect of worker scheduling. Typically, these standalone protections — including laws that regulate days of rest, reporting pay, split shifts, and the right to request flexible scheduling — have been enacted at the state level and apply to most or all workers within the jurisdiction (and therefore are not tailored to serve certain populations or industries).

Other jurisdictions have not only failed to enact protective provisions but have chosen to restrict localities from passing predictable scheduling laws through state preemption. From 2015 to 2017, at least nine states have passed laws that prohibit local jurisdictions from passing fair workweek laws or standalone protections that regulate workplace scheduling (von Wilpert, 2017).

Though laws can serve as a layer of protection (or in cases of preemption, a barrier) between employers and workers, oftentimes the extent to which these laws are helping the population they serve to protect is unknown. In order to develop effective interventions to address unpredictable and unstable scheduling and its resulting harms in the United States, systematic evaluation of current laws and processes is necessary. However, this goal cannot be met without first identifying relevant laws and policies and understanding how they vary across jurisdictions. Legal epidemiology — the scientific study and deployment of law as a factor in the cause, distribution, and prevention of disease and injury in a population — provides an innovative framework to understanding the positive, negative, and incidental effects of laws on population health (Ramanathan, 2017).

A team from the Center for Public Health Law Research at Temple University’s Beasley School of Law drew on the principles of legal epidemiology to conduct a pilot assessment to capture and analyze the observable features of laws, in a sample of jurisdictions that regulate workplace

scheduling. The final sample selected for analysis included four cities and three states: Seattle, New York City, Chicago, Philadelphia, Oregon, New Hampshire, and Tennessee. Each jurisdiction was extensively researched to identify relevant statutes, regulations, ordinances, and rules related to workplace scheduling protections, which were then analyzed and summarized in this report. The team developed a research protocol that describes the scope of the project, search terms, inclusion and exclusion criteria, sampling criteria, and the quality control measures that were implemented throughout the course of the pilot assessment (see Appendix A).

The goal of the pilot assessment was to identify and analyze laws that seek to address unpredictable scheduling and its effects on women in the workplace prior to and during the COVID-19 pandemic. In doing so, the team conducted a rapid evidence assessment to search for evidence assessing the direct effects of laws in the sample jurisdictions.

Three published studies were identified — two that focus on laws in Seattle and one on laws in Oregon. Evidence evaluating the impact of these laws shows promise. Specifically, laws and ordinances regulating worker scheduling can be successful in addressing schedule instability, worker health, and worker happiness — including increased sleep quality and reductions in material hardship (Harknett et al., 2021; Loustaunau et. al, 2020; West Coast Poverty Center, 2019). However, frontline managers' exploitation of the broad and numerous exceptions to fair workweek laws, combined with a general lack of awareness or understanding of this complex area of regulation by employers and workers, can weaken the impact of these laws (Harknett et al., 2021; Loustaunau et. al, 2020; West Coast Poverty Center, 2019).

Overall, this pilot assessment led to the following key findings and recommendations for action:

- In recent years, a small number of jurisdictions have passed comprehensive fair workweek laws. Although these laws contain many of the same types of legal provisions, the details, and the exceptions, vary widely. Additionally, the applicability of these laws is limited, with variations in the types of industries, size of employers, and types of employees covered. Ultimately, many hourly workers are not covered by these fair workweek protections.
- Most jurisdictions have no laws protecting workers from unpredictable and unstable scheduling.
- Several states have moved in the opposite direction of passing fair workweek protections by enacting

preemptive laws that prevent localities from passing fair workweek ordinances and standalone protections.

- Researchers, advocates, and policymakers should work toward improving the existing legal landscape for workers. Specifically, we recommend continuing federal, state, and local advocacy efforts, as well as improving existing fair workweek laws by expanding their applicability, eliminating excess exceptions and loopholes, improving implementation and enforcement efforts, and increasing public awareness and education.
- More — and more timely — research is needed to evaluate existing laws, particularly in light of changes that have occurred as a result of the ongoing COVID-19 pandemic. Robust comparative research and evaluation is needed to determine which provisions are most effective in improving health outcomes for workers. Further, future research must focus on the impact of these laws on populations most harmed by unpredictable and unstable scheduling. Such evaluation is vital to ensure that legal interventions are evidence-based and not perpetuating existing inequities.

## INTRODUCTION

The COVID-19 pandemic has triggered an economic crisis and worsened gender and race disparities in U.S. workplaces. Women in hourly and low-paying jobs — including those working in food service, retail, grocery, and health services industries — have been recognized as “essential” workers but have nevertheless disproportionately faced job losses (Gould & Kassa, 2021). An estimated 3.4 million women lost their jobs between February 2020 and June 2021 (Kohler, Odiase, & Forden, 2021). Black, Latinx, Asian American, and Pacific Islander women working in low-paying hourly jobs have been especially impacted by these losses (Gould & Kassa, 2021). Although the economy has begun to grow and recover, women are being left behind in that recovery (Peck, 2021; Kohler, Odiase, & Forden, 2021).

These conditions are a product of deep-rooted systemic inequities in U.S. workplaces. Long before the pandemic began, women — especially Black and Latinx women— have disproportionately faced low pay, insufficient benefits, job insecurity, and discrimination in the workplace (Frye, 2020). Further, the United States lacks a robust care infrastructure to serve as a safety net for working caregivers (Palladino & Mabud, 2021). Women are more likely than men to leave their jobs, cut their hours, or delay returning to the workforce as a result of caregiving needs (Mason, 2020). The pandemic has only exacerbated unequal caregiving burdens, as women have been forced to make the impossible choice of either staying home to care for their loved ones or showing up to jobs with poor working conditions — including high exposure to the virus, inadequate protective measures, and insufficient wages and benefits (Cerullo, 2021; Boesche & Phadke, 2021).

Although the pandemic has further exposed these disparities, employers continue to subject workers to harmful practices that perpetuate inequity. Hourly workers, who make up nearly 60 percent of the U.S. workforce, have increasingly experienced lower wages, loss of benefits, and job insecurity (Harknett & Schneider, 2020). Moreover, hourly work has experienced a significant shift over the past several decades, moving away from regular and stable schedules to increasingly unpredictable and variable schedules (Henly, Lambert, & Dresser, 2021; Harknett & Schneider, 2020). Two-thirds of hourly workers report getting less than two weeks’ notice of their schedules, and half of those workers get less than one week’s notice (Schneider & Harknett, 2019). Those most impacted by unpredictable scheduling practices are Black and Latinx women, low-income workers, and workers in the service industry — particularly workers

Unpredictable scheduling practices provide workers with little to no control over their work schedule and resulting wages. Common unpredictable scheduling practices include:

- Erratic and inconsistent scheduling
- Little to no advance notice of scheduling shifts
- On-call shifts

These practices have been shown to materially harm workers and their families, by increasing stress, contributing to food and housing insecurity, and negatively affecting mental and emotional health.

in retail, hospitality, and food service (Boesch & Phadke, 2021; Golden, 2015; National Women’s Law Center, 2019b; Schneider & Harknett, 2019).

Unpredictable scheduling practices provide workers with little to no control over their work schedule and resulting wages. These practices include erratic schedules, little to no advance notice of scheduled shifts, and on-call shifts (which require workers to be available to work without knowing whether they will actually be required to work during that time). Workers with unpredictable schedules experience greater work-family conflicts, greater work stress, variable earnings, and childcare difficulties (Golden, 2015). They are significantly more likely to experience material hardship, including hunger and housing insecurity (Schneider & Harknett, 2019, pp. 4–6). Unpredictable scheduling also has measurable negative effects on parents’ and children’s mental and emotional wellbeing, contributing to the intergenerational transmission of inequity (Schneider & Harknett, 2019). Despite these findings, workplaces are more likely to blame low-income and Black workers for struggling to maintain work-life balance and find childcare (Dodson, 2013; Williams et al., 2013), rather than recognize how their own scheduling practices contribute to those struggles.

There has been a growing movement in recent years to address unpredictable scheduling and the inequities it perpetuates through both private and public policy. In 2015 and 2016, the Gap and other retail stores participated in a randomized controlled study of the effects of stable scheduling in the retail industry (Williams et al., 2018). Stores that participated in the study implemented various policies aimed at stabilizing worker schedules, including providing advance schedule notice, stabilizing shift structures, and guaranteeing a minimum number of hours to workers (Williams et al., 2018). The study found that

such policies not only benefitted workers by increasing schedule predictability and stability, but also benefitted employers by sharply increasing sales and productivity (Williams et al., 2018). After the pretest phase of the study, the Gap chose to implement advance notice policies and eliminated on-call scheduling (Williams et al., 2018). A few other corporations have implemented similar internal advance notice policies (e.g., CVS) or right to rest policies (e.g., Honda) (Enemark, 2021). However, despite growing evidence showing that these scheduling policies and practices improve both worker health and the bottom line (Kesavan et al., in press), most private companies have failed to voluntarily implement such practices on a wide scale.

Due to stagnation in the uptake of these policies by the private sector, advocates have turned to lawmakers to address the problem of precarious schedules. At the federal level, two bills that regulate employer scheduling have been recently introduced in Congress but have yet to pass: the Schedules That Work Act and the Part-Time Worker Bill of Rights Act. In the absence of federal protections, a number of state and local governments have enacted laws that aim to improve schedule predictability and stability (National Women's Law Center, 2019a). One state (Oregon) and six cities (Chicago, IL; Emeryville, CA; New York City, NY; Philadelphia, PA; San Francisco, CA; and Seattle, WA) have enacted comprehensive fair workweek laws, which require employers to provide advance scheduling notice and provide other scheduling protections to workers. However, as state and local laws gain momentum, private companies and lobbying groups have fought against their enactment, filing unsuccessful lawsuits challenging their validity and advocating for preemptive laws that prohibit localities from enacting predictable scheduling regulations (Lyden, 2020, pp. 121–22; New York City Hall, 2020; von Wilpert, 2017).

Early studies evaluating the impact of these laws have shown that laws and ordinances regulating worker scheduling can be successful in addressing schedule instability, worker health, and worker happiness — including increased sleep quality and reductions in material hardship (Harknett et al., 2021; Loustanaou et al., 2020; West Coast Poverty Center, 2019). No published studies analyze variances in these laws across jurisdictions. Comparative research could better assess which features of these laws are most successful in improving conditions for workers, particularly Black and Latinx women. Further, because some aspects of predictable scheduling laws were delayed or suspended as a result of the COVID-19 pandemic, research is needed to evaluate the effects of these laws before, during, and after the pandemic. Now

more than ever, law must be investigated as a primary intervention in health outcomes research.

This report describes a pilot assessment that focuses on laws that seek to address unpredictable scheduling practices and their impacts on women in the workplace prior to and during the COVID-19 pandemic. It provides an overview of the federal legal landscape and examines state laws and local ordinances regulating predictable scheduling. Seven jurisdictions — four cities (Seattle, New York City, Chicago, and Philadelphia) and three states (Oregon, New Hampshire, and Tennessee) — were sampled to identify key features of these laws across jurisdictions and historical trends over time. Appendix A to this report provides detailed information about the research methods used in this pilot assessment, including the selection of sample jurisdictions. In addition to the legal assessment, the authors include a short discussion of existing empirical evidence that evaluates the direct effects of fair workweek laws in two of the sample jurisdictions. The report concludes with key findings from the legal assessment, policy recommendations for advocates and policymakers, and a call for more robust and comparative research evaluating the effects of laws regulating workplace scheduling in the United States.

## FEDERAL LEGAL LANDSCAPE

The Fair Labor Standards Act (FLSA) provides wage and hour protections to workers in the United States (Boushey & Ansel, 2016, p. 15). The federal FLSA was enacted in 1938 and covers workplace issues including minimum wage, 40-hour workweeks and overtime pay, and child labor protections; however, the FLSA does not directly address predictable scheduling (Boushey & Ansel, 2016, p. 15). In recent years, members of Congress have introduced two bills that seek to improve worker scheduling at the federal level, but those bills have failed to pass.

In 2015, Senator Elizabeth Warren and Representative Rosa DeLauro introduced the Schedules That Work Act, a bill that directly addresses unpredictable scheduling (Boushey & Ansel, 2016, p.18). The bill was later reintroduced in 2017 and 2019 but has never come up for a vote (Lepore, 2021). The bills explicitly recognize the disproportionate impact that unpredictable scheduling has on women working low-wage jobs, and in response seeks to address the problem on a wide scale (Schedules That Work Act, 2019). Some protections would apply to nearly all workers in the United States (i.e., both full- and part-time, as well as hourly and salaried workers),

while others are limited to non-exempt workers<sup>1</sup> in the retail, food service, cleaning, hospitality, and warehouse industries. More specifically, several key provisions attempt to curtail irregular schedules and their resulting negative effects by requiring employers to provide advance notice of scheduling to employees — both an estimated schedule at the time of hire and the employee’s actual schedule two weeks in advance. The bill also requires employers to provide additional pay (“predictability pay”) to employees for schedule changes that occur with less than two weeks of advance notice. Further, employees would be granted the right to request flexible scheduling without repercussions, the right to reject shifts scheduled in close succession (“clopening shifts”), and the right to additional pay when working such shifts.

In 2020, Senator Elizabeth Warren, Representative Jan Schakowsky, and several others in Congress introduced the Part-Time Workers Bill of Rights Act, to specifically address workplace issues plaguing part-time workers (Maye, 2021, p. 3; Insider NJ, 2020). Among other things, the bill requires employers to provide newly available or existing hours and shifts to qualified employees before hiring new workers to fill those shifts (Part-Time Worker Bill of Rights Act of 2020). Like the Schedules That Work Act, the Part-Time Workers Bill of Rights Act has not come to a vote.

### **FAIR WORKWEEK LAWS**

Fair workweek laws are comprehensive packages of legal protections that specifically target unpredictable scheduling practices. They include multiple provisions that regulate workplace scheduling, including advance scheduling notice, predictability pay, and the right to rest between shifts, among others.

### **STANDALONE LAWS**

Standalone laws are legal protections that regulate discrete aspects of workplace scheduling. These laws are not passed as part of a comprehensive legal package or act and typically regulate issues related to, but not specifically targeting, unpredictable scheduling practices. Examples include day of rest laws and reporting pay laws.

### **PREDICTABLE SCHEDULING PREEMPTION LAWS**

Predictable scheduling preemption laws are restrictive laws passed at the state level that prohibit local jurisdictions from passing fair workweek laws or standalone protections regulating workplace scheduling.

As of August 2021, the federal government has failed to enact any legal protections that address common unpredictable scheduling practices by employers across the United States.

## **STATE AND LOCAL LEGAL LANDSCAPE**

In absence of federal law, some state and local governments have worked to fill legislative gaps in workplace safeguards, resulting in a patchwork of protections for workers across the country. Although some of these state and local laws have existed for decades, most were recently passed in response to growing public awareness and advocacy around unpredictable scheduling practices.

Today, there are several types of laws and legal provisions regulating workplace scheduling practices and related issues that range in terms of protectiveness — from comprehensive, to minimal, to obstructive. Some jurisdictions have enacted comprehensive packages of legal protections, most often called “fair workweek laws,” that specifically target unpredictable scheduling practices and regulate several aspects of worker scheduling. Fair workweek laws can include all, or a combination of the following legal provisions: advance scheduling notice, a stable schedule requirement, good faith estimates, predictability pay, the right to rest between shifts, greater access to hours, the right to request flexible scheduling, and anti-retaliation provisions (see Figure 1). Although fair workweek laws provide the most comprehensive set of protections to workers, they usually have limited applicability, applying only to certain workers within specified industries (most commonly, workers in the food service and retail industries). Importantly, this limited applicability means these laws generally exclude small businesses and only apply to employers with a large workforce.

The majority of U.S. jurisdictions have yet to enact a comprehensive fair workweek law, though some have enacted narrowly tailored protections that regulate a discrete aspect of worker scheduling. Typically, these standalone protections have been enacted at the state level and apply to most or all workers within the jurisdiction (and therefore are not tailored to serve certain populations or industries). Common standalone provisions include: day of rest laws, reporting pay laws, split shift laws, and right to request flexible scheduling laws.

<sup>1</sup> Non-exempt employees are entitled to certain protections under FLSA, which sets minimum wage and overtime pay requirements. Non-exempt workers are typically (but not exclusively) hourly employees paid at a set hourly rate.

Figure 1. Legal provisions commonly contained in fair workweek laws



At the other end of the continuum, some jurisdictions have not only failed to enact workplace scheduling laws but have chosen to restrict localities from passing such protections through preemption. Preemption is a legal doctrine that allows a higher level of government to limit, or prevent, the regulatory authority of a lower level of government. As the movement for fair workweek laws has grown, several states have enacted these harmful laws in response to mounting business pressure.

## Defining the State and Local Legal Provisions

### Fair Workweek Laws

Beginning in 2014, a small number of jurisdictions started to pass comprehensive fair workweek laws. San Francisco, CA, was the first jurisdiction to pass the law in 2014, which became effective in 2015 (effective dates indicate when the law takes effect and becomes enforceable). Oregon is the first and only state to enact a statewide fair workweek law. These laws have gained more momentum at the local level and have been passed in a total of six cities: Chicago, IL; Emeryville, CA; New York City, NY; Philadelphia, PA; San Francisco, CA; and Seattle, WA.<sup>2</sup> As of August 2021, seven U.S. jurisdictions have enacted a fair workweek law (see Figure 2).

Fair workweek laws specifically target unpredictable scheduling and contain several, or all, of the following legal provisions:

**Advance Scheduling Notice.** These provisions require employers to provide workers with notice by releasing written schedules a minimum number of days before

the first day of scheduled work. Typically, the amount of required notice ranges from 10 to 14 days. Some jurisdictions have staggered the implementation of the amount of notice required, so that the amount of required notice starts at a lower number but jumps to a higher number after the law has been in effect for a couple years.

**Good Faith Estimates.** These provisions require employers to provide a “good faith” estimate of the hours an employee can expect to work from week to week, as well as whether the employee will be expected to work on-call shifts. This estimate is typically required to be provided to new employees at the commencement of their employment and, for current employees, some jurisdictions also require an annual good faith estimate to be provided as well.

**Stable Schedule Requirement.** These provisions go beyond good faith estimate provisions and require employers to provide employees with a stable schedule, consisting of a regular, recurring set of shifts the employee will work each week.

**Predictability Pay.** These provisions require employers to compensate employees for any employer-initiated changes made to the schedule after the advance notice period. The amount of pay required varies across jurisdictions. Often, the amount will depend on the type of change and how soon before the scheduled shift the change occurred. Some jurisdictions have delayed, or suspended, predictability pay provisions as a result of the COVID-19 pandemic.

### Fair Workweek Laws



Figure 2. Seven jurisdictions have passed fair workweek laws. Jurisdictions are listed by the year the law took effect.

<sup>2</sup> Some researchers define fair workweek laws more broadly to include standalone protections, such as standalone access-to-hours laws. For the purposes of this report, we define fair workweek laws as laws that specifically target unpredictable scheduling practices and regulate several aspects of worker scheduling through a comprehensive package of protections that may include: advance scheduling notice, good faith estimates, stable schedule requirements, predictability pay, the right to rest between shifts, greater access to hours, the right to request flexible scheduling, and anti-retaliation provisions (see Figure 1).

**Right to Rest Between Shifts.** These provisions — also known as “clopening” protections — require an employer to gain the employee’s consent before scheduling that employee to work two shifts in close succession (e.g., a closing shift and an opening shift the next morning less than eight hours apart). In some jurisdictions, if an employee consents to work such shifts, employers are required to provide the employee with higher pay.

**Greater Access to Hours.** These provisions require employers to offer open work shifts to existing employees before hiring new employees to fill those shifts. These protections aim to address the fact that many workers, especially part-time and low-wage workers, are underemployed and want more hours than they are currently offered. In addition to the jurisdictions that have included these protections in their fair workweek laws, two cities (SeaTac, WA, and San Jose, CA) have passed a standalone greater access to hours law.

**Right to Request Flexible Scheduling.** These provisions protect employees from retaliation when they request flexible schedules and sometimes specify that workers may request flexible schedules due to caregiving responsibilities. Although employers are prohibited from retaliating against workers, they typically do not require employers to accommodate such requests. In addition to the jurisdictions that have included these protections in their comprehensive fair workweek laws, two states (New Hampshire and Vermont) have passed a standalone right-to-request law.

**Anti-Retaliation.** These provisions prohibit employers from retaliating against workers who exercise any of the rights guaranteed under a fair workweek law.

Some jurisdictions have also passed standalone laws that regulate discrete aspects of worker scheduling. These laws include:

**Day of Rest Laws.** Day of rest laws, which require employers to provide one day of rest in a work week, have existed in various forms for centuries. These laws derive from religious colonial laws requiring observation of the Sabbath, but they have evolved into secular laws seeking to protect laborers from

overwork (*McGowan v. Maryland*, 366 U.S. 420, 430–35 (1961)). Modern day of rest laws typically apply to most or all workers in a jurisdiction but sometimes have several exceptions and carve-outs, resulting in less protection for workers who may be most vulnerable to unpredictable scheduling. However, a few states’ laws target workers in certain industries. Some day of rest laws require the day of rest to be a scheduled, designated day, while others simply prohibit employers from requiring work seven consecutive days in a row (meaning that a worker’s rest day may vary week to week). The following states have a day of rest law currently in effect: CA, CT, IL, KY, MA, MD, ND, NH, NY, PA, TX, and WI.<sup>3</sup>

**Reporting Pay Laws.** Reporting pay laws require employers to pay employees for showing up to a shift, even if that employee is sent home without working. These laws may help curb employers from heavily relying on on-call and just-in-time scheduling practices (National Women’s Law Center, 2015). Some of these laws were implemented as early as the 1960s. Most reporting pay laws apply generally to all non-exempt employees,<sup>4</sup> although some states limit these laws to workers in certain industries. Reporting pay laws are currently in effect in the following jurisdictions: CA, CT, DC, MA, NH, NJ, NY, and RI.

**Split Shift Laws.** Split shift laws require employers to provide additional pay to workers who are required to work “split shifts” — shifts that include a gap of unpaid time on the same day (e.g., a shift requiring work from 11 a.m.–2 p.m. and 4 p.m.–7 p.m.). These laws typically apply to all non-exempt employees, but sometimes include several exceptions and carve-outs. Split shift laws are currently in effect in the following jurisdictions: CA, DC, and NY.

At the other end of the continuum, several states have used preemption to restrict local jurisdictions from enacting fair workweek and other standalone protections regulating workplace scheduling.

**Predictable Scheduling Preemption.** As the movement for fair workweek laws has gained momentum, several states have responded by passing laws that strip local governments of the power to regulate workplace scheduling via state preemptory

3 The laws in MD, ND, and TX apply only to retail workers (Md. Code, Labor and Employment, § 3-704; N.D. Cent. Code § 34-06-05.1; Tex. Labor Code § 52.001). PA’s law applies only to movie theater workers (43 PA. Cons. Stat. § 481). Domestic worker bill of rights laws—which sometimes require a day of rest—were scoped out of this research.

4 Non-exempt employees are entitled to certain protections under FLSA, which sets minimum wage and overtime pay requirements. Non-exempt workers are typically (but not exclusively) hourly employees paid at a set hourly rate.

power (von Wilpert, 2017). These laws are part of a larger movement by states to preempt localities from enacting workplace regulations and progressive policies more generally (Blair et al., 2020; see also Haddow, 2021; Lankachandra, 2020). Historically, state preemption is rooted in racism and can be traced to efforts by Southern states to limit the rights of Black people in the wake of Reconstruction (Blair et al., 2020). Today, state laws that preempt local authority and autonomy are often passed by disproportionately white legislatures and restrict the political power of Black and Latinx people, women, and low-income workers (Blair et al., 2020; see also Haddow, 2021). From 2015 to 2017, at least nine states passed laws preempting local governments from passing predictable scheduling laws: AL, AR, GA, IA, IN, KS, MI, OH, and TN (von Wilpert, 2017). Some of these provisions explicitly target predictable scheduling laws, while others preempt local workplace protections and regulations more generally.

is unknown. Legal epidemiology — the scientific study and deployment of law as a factor in the cause, distribution, and prevention of disease and injury in a population — provides an innovative framework to understanding the positive, negative, and incidental effects of laws on population health (Ramanathan, 2017). In conducting this pilot assessment, a team of three researchers drew on principles of legal epidemiology to capture and analyze the observable features of state statutes and regulations, and local ordinances, in a sample of jurisdictions that regulate workplace scheduling.

Specifically, the team conducted background research using legal databases (e.g., Westlaw) and secondary sources to write background memoranda. After reviewing and discussing the memoranda, the team consulted with subject matter experts to further conceptualize the scope of this project by identifying the sample jurisdictions and developing a list of legal variables for inclusion. The sample of states and localities were chosen based on several factors, including the breadth of relevant law within that jurisdiction, the demographic and political makeup of the jurisdiction, and whether there were empirical evaluations of the jurisdiction’s laws. The final sample selected for analysis included four cities and three states: Seattle, New York City, Chicago, Philadelphia, Oregon, New Hampshire, and Tennessee (see Table 1).

## STATE AND LOCAL ANALYSIS

Though laws can serve as a layer of protection between employers and workers, oftentimes the extent to which these laws are helping the population they serve to protect

TABLE 1: LEGAL ASSESSMENT RESULTS FOR SAMPLE JURISDICTIONS, AS OF AUGUST 1, 2021

LEGAL PROVISIONS	Seattle	New York City	Chicago	Philadelphia	Oregon	New Hampshire	Tennessee
Advance scheduling notice	✓	✓	✓	✓	✓	○	○
Good faith estimates	✓	○*	✓	✓	✓	○	○
Stable schedule requirement	○	✓	○	○	○	○	○
Predictability pay	✓	✓	✓	✓	✓	○	○
Right to rest between shifts	✓	✓	✓	✓	✓	○	○
Greater access to hours	✓	✓	✓	✓	○	○	○
Right to request flexible scheduling	✓	✓	✓	✓	✓	✓	○
Anti-retaliation	✓	✓	✓	✓	✓	○	○
Day of rest	○	✓	✓	○	○	✓	○
Reporting pay	○	✓	○	○	○	✓	○
Split shift	○	✓	○	○	○	○	○
Predictable scheduling preemption	○	○	○	○	✓	○	✓

✓ Jurisdiction has this provision

○ Jurisdiction does not have this provision

\*New York City formerly had a good faith estimate provision, but amended its fair workweek ordinance to replace that provision with a stable schedule requirement, effective July 2021.

The seven jurisdictions were split between two researchers to conduct extensive, independent research to identify all relevant statutes, regulations, ordinances, and rules within the project’s scope. The team used keyword searches to identify, capture, and analyze relevant law in each of the sample jurisdictions. After the initial jurisdictional-specific research was conducted, the researchers flagged several legal provisions and legal variables across the sample jurisdictions for redundant research to ensure accuracy.

Original and redundant research was supplemented by reviewing secondary sources and consultation with subject matter experts. The final jurisdictional analysis of relevant state and local law is described in detail jurisdiction by jurisdiction, beginning with Seattle, Washington. Throughout the course of the pilot assessment, the team developed a research protocol (see Appendix A) to ensure transparency and replicability. The research protocol describes the scope of the project, search terms, inclusion and exclusion criteria, sampling criteria, and quality control measures that were implemented throughout the project.

## Seattle, Washington

### Background

In 2016, Seattle passed one of the first comprehensive fair workweek laws, the Secure Scheduling Ordinance, which went into effect on July 1, 2017 (Fair Workweek Initiative, n.d.; Harknett et al., 2021, p. 5). Seattle’s ordinance contains several hallmark provisions, including advance scheduling notice, good faith estimates, predictability pay, access to hours, the right to rest between shifts, the right to request flexible scheduling, and anti-retaliation protections. Seattle’s ordinance is limited to certain employees in the retail and food service industries.

Seattle has not released official data about the number of workers covered by the ordinance, though recent census data show that approximately 60,191 people in Seattle

**TABLE 2: INDUSTRIES COVERED AND SIZE OF EMPLOYERS**

JURISDICTION	INDUSTRIES COVERED	EMPLOYERS COVERED
Seattle	Retail	500+ employees worldwide
	Food service	
New York City	Retail	20+ employees
	Fast food	30+ restaurants nationally
Chicago	Retail	100+ employees worldwide (250+ employees worldwide if nonprofit) AND 50+ employees must be covered employees
	Restaurants	
	Hotels	
	Building services	
	Healthcare	
	Manufacturing	
Philadelphia	Retail	250+ employees worldwide AND 30+ locations worldwide
	Food service	
	Hospitality	
Oregon	Retail	500+ employees worldwide
	Food service	
	Hospitality	

over the age of 16 work in covered industries.<sup>5</sup> However, the actual number of workers covered by the ordinance is likely significantly lower because it only applies to workers who are employed by large businesses.

Although Seattle workers are protected by the city's fair workweek law, Washington State has not enacted a fair workweek law nor any standalone protections.

## Legal Analysis

### Fair Workweek Law

Seattle's ordinance only applies to retail establishments and food service establishments that employ 500 employees worldwide (Seattle Mun. Code § 14.22.020(A)).<sup>6</sup> Additionally, to be covered by the ordinance, employees must work at a fixed point of sale location of a covered employer, and work in a physical location in Seattle at least 50 percent of the time (Seattle Mun. Code § 14.22.015).

Individual employees cannot waive any of the protections in the ordinance (Seattle Mun. Code § 14.22.145(B)). However, provisions of the ordinance can be waived in a collective bargaining agreement, so long as the waiver is clear and unambiguous, and the bargaining agreement contains "an alternative structure for secure scheduling that meets the public policy goals of" the ordinance (Seattle Mun. Code § 14.22.145(A)).

The Seattle Office of Labor Standards has the power to enforce the ordinance, including by investigating complaints and promulgating rules and guidelines for implementation and enforcement of the ordinance

#### SEATTLE'S FAIR WORKWEEK LAW APPLIES TO EMPLOYEES WHO WORK:

- In retail or food service establishments;
- At a physical location in Seattle at least 50% of the time; and
- For employers with 500+ employees worldwide.

(Seattle Mun. Code §§ 14.22.075, 14.22.085, 14.22.090). If the office finds that a violation has occurred, the employee may be entitled to compensation, liquidated damages, civil penalties, and attorney fees (Seattle Mun. Code § 14.22.095(A), (H)). Additionally, employers may be subject to fines ranging from \$500 to \$20,000 per violation (Seattle Mun. Code § 14.22.095(B)–(G)). Further, an employee may bring a civil cause of action in a court of competent jurisdiction for violations of the ordinance and may be awarded legal or equitable relief, damages, and attorney fees and costs (Seattle Mun. Code § 14.22.125(A)).

**Advance Scheduling Notice.** Employers must provide employees with 14 days' notice of their schedule (Seattle Mun. Code § 14.22.040(A)).<sup>7</sup> The schedule must be in writing, be posted in a conspicuous and accessible location, and must be in English and the primary languages of the employees (Seattle Mun. Code § 14.22.040(A), (D)).

**Good Faith Estimates.** At an employee's time of hire, an employer must provide a good faith estimate of the employee's schedule, which must include the median number of hours the employee is expected to work per week and whether the employee can expect to work on-call shifts (Seattle Mun. Code § 14.22.025(A)). Although an employer is not bound by the good faith estimate, they must initiate "an interactive process with the employee" if there is a significant change from the estimate (Seattle Mun. Code § 14.22.025(A)(2)). Additionally, employers must revise the good faith estimate once every year for existing employees (Seattle Mun. Code § 14.22.025(A)(1)).

**Predictability Pay.** If an employer wants to change the schedule within the above-described 14-day notice period, they must provide the employee with "timely notice" either in-person, by telephone, or in another electronic format (Seattle Mun. Code § 14.22.045(A)(1)).<sup>8</sup> Employees have the right to decline any such changes (Seattle Mun. Code § 14.22.045(A)(2)).

<sup>5</sup> Data is derived from the 2019 ACS 1-year estimated detailed table showing the number of people aged 16 and up employed in the following occupations: food preparation and service, and sales (including retail). Demographic data showing the breakdown of race in those occupations in Seattle is not available.

<sup>6</sup> Additionally, full service restaurants (a subset of food service establishments) must have 40 or more full service restaurant locations worldwide to be subject to the ordinance (Seattle Mun. Code § 14.22.020(A)(2)).

<sup>7</sup> For new hires and employees returning from a leave of absence, the employer need only provide a written work schedule that runs through the last date of the currently posted schedule (and thereafter must provide 14 days' notice) (Seattle Mun. Code § 14.22.040(B)).

<sup>8</sup> Seattle regulations explain that "timely notice" must "reflect[ ] the employer's good faith effort to contact the employee promptly and without undue delay after learning of the need for changing the employee's work schedule[,]" but does not otherwise provide guidance on what makes notice timely.

Employees are also entitled to additional pay (“premium pay”) if their employer changes their schedule during the notice period. Specifically, if the employer changes the schedule by either adding hours of work or changing the time of a shift (with no change to the number of hours), the employee is entitled to one hour of pay in addition to the wages earned during the shift (Seattle Mun. Code § 14.22.050(A)(1)). If the change in schedule results in a loss of hours (for instance, by shrinking a shift, canceling a shift, or canceling an on-call shift), the employee is entitled to one-half the rate of pay for the scheduled hours the employee does not work (Seattle Mun. Code § 14.22.050(A)(2)).

However, employees are not entitled to the above-described predictability pay in several circumstances (Seattle Mun. Code § 14.22.050(B)). Employees who voluntarily switch shifts among themselves, voluntarily request changes to their own schedule within the notice period, or voluntarily agree to work additional hours during a shift in response to unanticipated customer needs, are not entitled to

predictability pay (Seattle Mun. Code § 14.22.050(B)(1), (3), (5)).<sup>9</sup> Additionally, in certain circumstances, employees who volunteer to work in response to a mass communication about the availability of open hours are not entitled to predictability pay (Seattle Mun. Code § 14.22.050(B)(2); Seattle Office of Labor Standards, Rule 120-260). Nor are employees entitled to predictability pay if they accept additional hours pursuant to the ordinance’s access-to-hours provision (Seattle Mun. Code § 14.22.050(B)(4)). Further, employees are not entitled to predictability pay for schedule changes resulting from disciplinary action, threats to employees or property, failure of public utilities, or natural disasters (Seattle Mun. Code § 14.22.050(B)(6)-(9)).

As to the COVID-19 pandemic, the Office of Labor Standards has clarified that employers “do not need to provide premium pay for schedule changes if business operations cannot begin or continue due to recommendation of a public official, including public health officials” (Seattle Office of Labor Standards, n.d.). For instance, a restaurant may be exempt from

**TABLE 3: LEGAL ASSESSMENT RESULTS FOR SEATTLE, AS OF AUGUST 1, 2021**

LEGAL PROVISIONS	IS THERE A LAW?	ADDITIONAL DETAILS
Advance scheduling notice	YES	14 days' notice
Good faith estimates	YES	At time of hire
Stable schedule requirement	NO	.
Predictability pay	YES	Addition of hours or change in time shift: 1 hour of additional pay Reduction or cancellation of hours: 50% of pay of the cancelled hours
Right to rest between shifts	YES	10 hours
Greater access to hours	YES	Must be offered to current employees
Right to request flexible scheduling	YES	Employer must grant requests due to “major life events”
Anti-retaliation	YES	.
Day of rest	NO	.
Reporting pay	NO	.
Split shift laws	NO	.
Predictable scheduling preemption	NO	.

<sup>9</sup> If an employee wants to change their schedule within the 14-day notice period, they must follow certain procedures; however, an employer cannot require an employee to find a replacement worker if the change is due to an emergency, major life event, or reasons covered by other federal, state, or local laws (such as paid sick leave) (Seattle Mun. Code § 14.22.045(B)).

providing premium pay where it must switch to only providing delivery and takeout services in response to a public official's order, resulting in schedule changes less than 14 days in advance (Seattle Office of Labor Standards, 2021). Additionally, an employer may be exempt from providing premium pay if they learn that an employee has tested positive for COVID-19 and as a result, closes early and sends all employees home (Seattle Office of Labor Standards, 2021).

**Right to Rest Between Shifts.** Employers cannot schedule a shift or require an employee to work less than 10 hours after the end of the employee's prior shift without the employee's consent (Seattle Mun. Code § 14.22.035(A)). If an employee agrees to work such a shift, they are entitled to 1.5 times their scheduled rate of pay for the hours worked that are less than 10 hours apart (Seattle Mun. Code § 14.22.035(B)). However, this additional pay does not apply to split shifts (Seattle Mun. Code § 14.22.035(C)).<sup>10</sup>

**Greater Access to Hours.** Prior to hiring new employees or using a temporary staffing agency, employers must make any open hours and shifts available to current employees (Seattle Mun. Code § 14.22.055(A)). The employer must post detailed, written notice of available hours in a conspicuous and accessible location and must follow specified procedures in offering and scheduling those hours (Seattle Mun. Code § 14.22.055(B)–(D)).

**Right to Request Flexible Scheduling.** Employees have a right to request certain scheduling accommodations; specifically, they are entitled to request not to be scheduled during certain times or at certain locations, to identify preferred hours of work, and to identify any changes in their work availability (Seattle Mun. Code § 14.22.030(A)). If the request is not due to a major life event, the employer must engage in an interactive process with the employee but may grant or deny the request for any reason that is not unlawful (Seattle Mun. Code § 14.22.030(B)(1)). If the request is due to a major life event, and the employee provides any requested verifying information about the event, the employer must grant the request unless the employer has a bona fide reason to deny the request and must provide a written response detailing the reason for the denial (Seattle Mun. Code § 14.22.030(B)(2)).

**Anti-Retaliation.** Employers are prohibited from retaliating against employees who exercise their rights pursuant to the ordinance (Seattle Mun. Code § 14.22.070). There is a rebuttable presumption of retaliation if an employer takes an adverse action against an employee within 90 days of that employee's exercising of their rights (Seattle Mun. Code § 14.22.070(D)).

## New York City, New York

### Background

In May 2017, New York City passed a fair workweek law to provide employees in the fast food and retail industries with more consistent work schedules, which became effective on November 26, 2017. In July 2018, the ordinance was amended to add a provision to provide employees with the right to request schedule accommodations to attend to personal events, such as caregiving responsibilities. In January 2021, the New York City Council again amended the law in direct response to the COVID-19 pandemic (Klein & Pappas, 2021). The amendment, which went into effect in July 2021, requires fast food employers to provide every employee with a regular schedule of recurring shifts, prevents fast food employers from firing an employee or reducing an employee's hours by more than 15 percent without just cause, and requires that former employees that were discharged for economic purposes be rehired if additional hours are available.

New York City's law contains several key predictable scheduling protections for workers: advance scheduling notice, a stable schedule requirement, predictability pay, the right to rest, greater access to hours, the right to request flexible scheduling, and anti-retaliation provisions. Notably, New York City is the only jurisdiction to have implemented a stable schedule requirement. Unlike most other localities with a fair workweek law that applies to multiple industries, New York City's law has different requirements for fast food workers versus retail workers, and most of its protections apply only to fast food workers. However, its right-to-request provision is not limited to certain industries, but instead applies to most employees throughout the city.

<sup>10</sup> Seattle defines a split shift as a shift with hours that “are not consecutive and are interrupted by one or more employer-required, unpaid, non-working periods that are between one to four hours and that are not bona fide rest or meal periods” (Seattle Office of Labor Standards, Rule 120-200(2)).

An estimated 4 million people are covered by the New York City’s right-to-request provision — which applies to most employees in the city.<sup>11</sup> Most of the other predictable scheduling protections only apply to certain fast food workers in the city and recent data estimate that there are approximately 67,000 fast food workers in the city, 88 percent of whom are workers of color.<sup>12</sup>

In addition to the city’s fair workweek law, workers in New York City are protected by statewide standalone protections, including a day of rest law, a reporting pay law, and a split shift law.

## Legal Analysis

### Fair Workweek Law

New York City’s ordinance applies primarily to workers in fast food establishments and retail establishments (N.Y.C., N.Y., Admin. Code § 20-1201). To be subject to the requirements, the fast food establishment must serve food and drink, be part of a chain, and have 30 or more restaurants nationally (N.Y.C., N.Y., Admin. Code § 20-1201). For retail establishments to be covered, they must have 20 or more employees, and be primarily engaged in the sale of consumer goods at one or more stores within New York City (N.Y.C., N.Y., Admin. Code § 20-1201).

#### NEW YORK CITY’S FAIR WORKWEEK LAW APPLIES TO:

- Fast food establishments that\*:
  - serve food and drink;
  - are part of a chain; and
  - have 30+ restaurants nationally.
- Retail establishments that:
  - are primarily engaged in the sale of consumer goods;
  - have at least 1 store in NYC; and
  - have 20+ employees total.

\*Most provisions apply only to fast food establishments, while some provisions apply to retail establishments. Additionally, the right-to-request provision is not limited to either of those industries. Please see the text for further details.

The New York City Commissioner of Consumer and Worker Protection has the power to enforce the ordinance, as well as the power conduct outreach, education, and create an annual report documenting the administrative and civil actions taken by covered New York City employees (N.Y.C., N.Y., Admin. Code § 20-1207; N.Y.C., N.Y., Admin. Code § 20-1202; N.Y.C., N.Y., Admin. Code § 20-1203). Employers who violate any provision of the ordinance are subject to pay damages, from \$200 for violating advance notice requirement to \$2,500 for retaliation that results in an employee’s dismissal (N.Y.C., N.Y., Admin. Code § 20-1208). Additionally, employers who violate the ordinance are subject to a fine payable to the city: \$500 for the first violation, \$750 for the second violation within two years of the previous violation, and \$1,000 for each subsequent violation (N.Y.C., N.Y., Admin. Code § 20-1209).

Further, employees may bring a civil cause of action for violations of the ordinance in any court of competent jurisdiction (N.Y.C., N.Y., Admin. Code § 20-1211(a)). Employees need not file a complaint with the Department before filing a civil action in court; however, if an employee does choose to file a complaint with the Department, they must either withdraw their complaint or have the Department dismiss the complaint without prejudice before filing in court (N.Y.C., N.Y., Admin. Code § 20-1211(e)). The court action must be filed within two years of the violation (N.Y.C., N.Y., Admin. Code § 20-1211(d)). If the employee prevails, the court may order injunctive relief, damages, and attorney fees (N.Y.C., N.Y., Admin. Code § 20-1211(b)).

**Advance Scheduling Notice.** New York City’s law requires fast food employers to provide advance notice of an employee’s work schedule (N.Y.C., N.Y., Admin. Code § 20-1221(b)). An employer must provide 14 days’ notice (N.Y.C., N.Y., Admin. Code § 20-1221(b)). The schedule must be in writing, be posted in a conspicuous place that is readily accessible and visible to all employees, and span at least one full calendar week (N.Y.C., N.Y., Admin. Code § 20-1221(b); N.Y.C., N.Y., Admin. Code § 20-1221(c)(1)). Further, an employee who has experienced domestic violence or sexual assault may request that their schedule not be posted or transmitted to other employees (N.Y.C., N.Y., Admin. Rule § 7-605).

As for retail workers, employers must provide 72 hours’ notice of an employee’s work schedule (N.Y.

11 Data is derived from the 2019 ACS 1-year estimated detailed table showing the civilian employed population over the age of 16.

12 Data is based on analysis conducted by the Center for Popular Democracy (Center for Popular Democracy, 2019). The analysis does not define “people of color,” nor does it disaggregate the data by gender.

Admin. Code § 20-1252). The notice must be in writing and posted in a conspicuous place that is accessible and visible to all employees (N.Y. Admin. Code § 20-1252).

**Good Faith Estimates.** Prior to the 2021 amendments, fast food employers were required to provide a written good faith estimate of an employee's projected days and hours of work. However, this requirement has been replaced by the stable schedule requirement described below.

Retail employers are not required to provide a good faith estimate to their employees.

**Stable Schedule Requirement.** Since July 4, 2021, fast food employers must adopt scheduling practices that provide each employee with a stable schedule that consists of a predictable, regular set of recurring weekly shifts (N.Y.C., N.Y., Admin. Code § 20-1221(a)–(b)). The stable schedule must be provided in writing to the employee (N.Y.C., N.Y., Admin. Code § 20-1221(a)). Additionally, unless consent is received, an employer may not reduce an employee's regularly scheduled hours by “more than 15 percent from the highest total hours contained in such employee's regular schedule at any time within the previous 12 months” (N.Y.C., N.Y., Admin. Code § 20-1221(a)).

Retail employers are not required to provide a stable schedule to their employees.

**Predictability Pay.** If a fast food employer makes any changes to the posted work schedule, they must transmit it to the employee in writing within 24 hours of the change (N.Y.C., N.Y., Admin. Code § 20-1221(c)(2)). Additionally, any changes made to an employee's schedule within the above-described notice period (14 days) triggers several employee rights.

First, if the fast food employer adds to an employee's posted schedule within the notice period, the employee has the right to decline those additional hours (N.Y.C., N.Y., Admin. Code § 20-1221(d)). Second, if an employer adds hours of work or changes the date or time of a work shift (with no change in the number of hours) with less than 14 days' notice but at least seven days' notice to the employee, the employee is entitled to \$10 for the change in schedule (N.Y.C., N.Y., Admin. Code § 20-1222(a)(1)). Third, if an employer adds hours of work or changes the date or time of a work shift (with no change in the number of hours) with less than seven days' notice to the employee, the employee is entitled to \$15 for

the change in schedule (N.Y.C., N.Y., Admin. Code § 20-1222(a)(3)). Fourth, if an employer cancels a shift or subtracts hours from a shift with less than 14 days' notice but at least seven days' notice to the employee, the employee is entitled to \$20 for the change in schedule (N.Y.C., N.Y., Admin. Code § 20-1222(a)(2)). Fifth, if an employer cancels a shift or subtracts hours from a shift with less than seven days' notice to the employee, the employee is entitled to \$45 for the change in schedule (N.Y.C., N.Y., Admin. Code § 20-1222(a)(4)).

These schedule change and predictability pay requirements are subject to several exceptions. Specifically, a fast food employer is not required to provide predictability pay where operations cannot continue due to threats to employees or property, failure of public utilities, a public transportation shutdown, a natural disaster, or a state of emergency (N.Y. Admin. Code § 20-1222(c)). Additionally, a fast food employer is not required to provide predictability pay where employees request a schedule change in writing or voluntarily trade shifts with each other (N.Y. Admin. Code § 20-1222(c)). Finally, a fast food employer need not provide predictability pay where the schedule change requires the employer to provide overtime pay (N.Y. Admin. Code § 20-1222(c)).

Retail employers are not required to provide predictability pay for schedule changes. However, rather than being required to pay predictability pay for changes within the 72-hour notice period, retail employers are prohibited from scheduling employees for on-call shifts, cancelling shifts with less than 72 hours' notice, or requiring employees to work with less than 72 hours' notice without the employee's consent (N.Y. Admin. Code § 20-1251). These prohibitions are subject to several exceptions. Employers may make schedule changes within the notice period where operations cannot continue due to threats to employees or property, failure of public utilities, a public transportation shutdown, a natural disaster, or a state of emergency (N.Y. Admin. Code § 20-1251(b)). Additionally, employers may grant employee requests for time off within the notice period and allow employees to trade shifts with each other within the notice period (N.Y. Admin. Code § 20-1251(b)).

**Right to Rest Between Shifts.** Fast food employees have a right to decline any hours that are scheduled less than 11 hours after the end of the employee's prior shift or “spans two calendar days” (N.Y.C., N.Y.,

Admin. Code § 20-1231). However, an employee can consent to work a shift that begins less than 11 hours after the end of their prior shift, but that consent must be in writing (N.Y.C., N.Y., Admin. Code § 20-1231). If an employee chooses to work such a shift, that employee is entitled to be paid \$100 for that shift (N.Y.C., N.Y., Admin. Code § 20-1231). There is no right to rest provision for retail employees.

**Greater Access to Hours.** New York City’s ordinance requires fast food employers to offer any additional shifts that need to be filled first to existing employees or former employees who are qualified to do the work before attempting to hire new employees (N.Y.C., N.Y., Admin. Code § 20-1241(a)). When feasible,

employers should first offer additional shifts to former employees who were discharged for a “bona fide economic reason” within the past 12 months (N.Y.C., N.Y., Admin. Code § 20-1241(a)(1)). If the additional shifts are not filled by a former employee, the employer must then offer any additional shifts to all current employees (N.Y.C., N.Y., Admin. Code § 20-1241(a)(2)). When distributing additional shifts, the employer cannot violate federal, state or local discrimination laws (N.Y.C., N.Y., Admin. Code § 20-1241(d)). There is no access to hours provision for retail employees.

**Right to Request Flexible Scheduling.** Employees have a right to request flexible or modified working

**TABLE 4: LEGAL ASSESSMENT RESULTS FOR NEW YORK AS OF AUGUST 1, 2021**

LEGAL PROVISIONS	IS THERE A LAW?	ADDITIONAL DETAILS
Advance scheduling notice	YES	Fast food: 14 days’ notice Retail: 72 hours’ notice
Good faith estimates	NO*	.
Stable schedule requirement	YES	Fast food only Regular set of recurring weekly shifts
Predictability pay	YES	Fast food only Addition of hours or change in time of shift with 7-14 days’ notice: \$10 additional pay Addition of hours or change in time of shift with less than 7 days’ notice: \$15 additional pay Reduction in hours or cancellation of shift with 7-14 days’ notice: \$20 pay Reduction in hours or cancellation of shift with less than 7 days’ notice: \$45 pay
Right to rest between shifts	YES	Fast food only 11 hours
Greater access to hours	YES	Fast food only Must be offered to current employees and former employees
Right to request flexible scheduling	YES	All industries Employer must grant temporary work change request two times per year when the request is due to certain “personal events”
Anti-retaliation	YES	.
Day of rest	YES	24 consecutive hours of rest every calendar week
Reporting pay	YES	4 hours’ of minimum wage pay (or the number of hours for the scheduled shift, whichever is less)
Split shift laws	YES	1 hour of additional minimum wage pay
Predictable scheduling preemption	NO	.

\*New York City formerly had a good faith estimate provision, but amended its fair workweek ordinance to replace that provision with a stable schedule requirement, effective July 2021.

schedules (N.Y.C., N.Y., Admin. Code § 20-1262(a)). In July 2018, New York City added a provision to its fair workweek law to provide employees with the right to request schedule accommodations through the use of two temporary schedule changes within the calendar year to attend to personal events, such as caregiving responsibilities (N.Y.C., N.Y., Admin. Code § 20-1262(a)). These temporary schedule changes could include working remotely, changing the employee's work schedule, or even taking unpaid leave (N.Y.C., N.Y., Admin. Code § 20-1262(a)). Unlike other provisions in the fair workweek law, the right to request flexible scheduling applies to nearly all employees in the city (it is not limited to just fast food and retail workers).

**Anti-Retaliation.** Covered employers are prohibited from retaliating against all employees who exercise any right under the fair workweek law (N.Y.C., N.Y., Admin. Code § 20-1204). Employers are specifically prohibited from taking any of the following adverse actions in response to an employee's exercise of their rights: “threatening, intimidating, disciplining, discharging, demoting, suspending or harassing an employee, reducing the hours or pay of an employee, informing another employer that an employee has engaged in activities protected by this chapter, and discriminating against the employee, including actions related to perceived immigration status or work authorization” (N.Y.C., N.Y., Admin. Code § 20-1204).

**Day of Rest.** The state of New York requires certain employers to provide 24 consecutive hours of rest in every calendar week to their employees (N.Y. Lab. Law § 161(1)). Covered employees include those working in a factory, hotel, restaurant, and movie theaters, as well as domestic workers (N.Y. Lab. Law § 161(1)).

**Reporting Pay.** The state of New York has also implemented a regulation requiring reporting pay. Under N.Y. Comp. Codes R. & Regs. tit. 12 § 142-2.3, most employees are entitled to at least four hours of minimum wage pay—or the number of hours within the scheduled shift, whichever is less — for shifts where the employee reports for work (regardless of whether the employee is sent home

due to lack of work). Several types of employees are explicitly excluded from this protection, including: farm laborers, babysitters, certain executive and administrative professionals, and taxi drivers (N.Y. Comp. Codes R. & Regs. tit. 12 § 142-2.14).

**Split Shift.** The state of New York requires that covered employees are compensated for split-shifts, which are defined as any shift that includes nonconsecutive hours in the same day (unless the break is one hour or less in duration) (N.Y. Comp. Codes R. & Regs. tit. 12 § 142-2.4; N.Y. Comp. Codes R. & Regs. tit. 12 § 142-2.17). If an employee is scheduled for a split shift, they must be compensated with an additional hour of minimum wage pay (N.Y. Comp. Codes R. & Regs. tit. 12 § 142-2.4). Several types of employees are explicitly excluded from this protection, including: farm laborers, babysitters, certain executive and administrative professionals, and taxi drivers (N.Y. Comp. Codes R. & Regs. tit. 12 § 142-2.14).

## Chicago, Illinois

### Background

In July 2019, Chicago enacted its Fair Workweek Ordinance, which has been hailed as one of the most expansive fair workweek laws in the nation (Lyden, 2020, p. 116). Chicago's ordinance contains several key protections for workers: advance scheduling notice, good faith estimates, predictability pay, access to hours, the right to rest between shifts, the right to request flexible scheduling, and anti-retaliation protections. Most of its provisions went into effect in July 2020.<sup>13</sup> Like many other local fair workweek laws, Chicago's ordinance applies only to certain employees in designated industries. However, its applicability is broader compared to most other localities — it was the first fair workweek law to apply to more than just the retail, food service, and hospitality industries (Lyden, 2020, p. 116).

Although Chicago has not released official data about the number of workers covered by the ordinance, recent census data show that approximately 438,970 people in Chicago over the age of 16 work in covered industries.<sup>14</sup> The actual number of workers covered by the ordinance is likely

<sup>13</sup> In June 2021, the city council moved the Fair Workweek Ordinance from Chapter 1-25 to Chapter 6-110 in the municipal code.

<sup>14</sup> Data is derived from 2019 ACS 1-year estimated detailed tables showing occupation by race and sex. These numbers include data in the following occupations, as defined by ACS: health care practitioners, health care service workers, food preparation and service workers, building and maintenance workers, sales (including retail) workers, and production (i.e. manufacturing) workers.

significantly lower because it only applies to lower-income workers who are employed by large employers. Among women, Black women are overrepresented in the health care service industry, Latinx women are overrepresented in the building and maintenance, food preparation and service, retail, and manufacturing industries, and Asian women are overrepresented in the health care practitioner, health care service, food preparation and service, building and maintenance, and manufacturing industries.

In addition to Chicago's Fair Workweek Ordinance, employees in Chicago are protected by a statewide day of rest law. Illinois has not enacted any other standalone protections.

## Legal Analysis

### Fair Workweek Law

Chicago's fair workweek law applies only to certain employees in certain industries. The industries covered by the ordinance include: building services, health care, hotels, manufacturing, restaurants, retail, and warehouse services (Chicago Mun. Code § 6-110-020). To be covered by the protections in the ordinance, an employee must: (1) perform work as an employee (not a contractor) or as a temporary worker subject to certain conditions; (2) spend the majority of their working time physically present in Chicago; (3) perform the majority of their work in a covered industry; and (4) earn less than or equal to \$50,000 per year (if salaried) or \$26 per hour (if hourly) (Chicago Mun. Code § 6-110-020).

Additionally, Chicago's ordinance only applies to certain employers. To be subject to the ordinance's requirements, the employer must: (1) employ 100 or more employees globally (or, if a nonprofit employer, 250 or more

employees), at least 50 of whom are covered employees, and (2) be primarily engaged in a covered industry (Chicago Mun. Code § 6-110-020).

Generally, employees cannot be forced to waive their rights under the ordinance. However, covered employers and employees can waive the requirements of the ordinance in a bona fide collective bargaining agreement, so long as the waiver is clear and unambiguous (Chicago Mun. Code § 6-110-030). The ordinance does not interfere with any collective bargaining agreements that were in force on the effective date of the ordinance, nor does it prevent employees from bargaining for conditions or protections in excess of those laid out in the ordinance (Chicago Mun. Code § 6-110-030).

The Chicago Department of Business Affairs and Consumer Protection has the power to enforce the ordinance, as well as the power to promulgate rules and regulations in relation to administering and enforcing the ordinance (Chicago Mun. Code § 6-110-120). Employers who violate any provision of the ordinance are subject to a fine of \$300 to \$500 for each offense (Chicago Mun. Code § 6-110-130). Additionally, employers who violate the anti-retaliation provision are subject to a \$1,000 fine (Chicago Mun. Code § 6-110-100(b)).

Further, employees may bring a civil cause of action for violations of the ordinance, but only after they exhaust remedies with the Department by filing a complaint with the Department and the Department has closed the complaint (Chicago Mun. Code § 6-110-140(a)). The cause of action must be filed within two years of the violation (Chicago Mun. Code § 6-110-140(b)). If the employee prevails, they may recover damages, litigation costs, and attorney fees (Chicago Mun. Code § 6-110-140(c)). The private cause of action provision's effective date was delayed due to the COVID-19 pandemic, going into effect January 1, 2021.

#### CHICAGO'S FAIR WORKWEEK LAW APPLIES TO EMPLOYEES WHO:

- Working in building services, healthcare, hotels, manufacturing, restaurants, retail, and warehouse services;
- Spend the majority of their working time physically present in Chicago;
- Earn less than \$50,000/year or \$26/hour;
- Work for an employer with 100+ employees worldwide (or 250+ of nonprofit), at least 50 of whom are covered employees; and
- Work for an employer who is primarily engages in a covered industry.

**Advance Scheduling Notice.** Chicago's fair workweek ordinance requires employers to provide advance notice of an employee's work schedule (Chicago Mun. Code § 6-110-040(b)). The implementation of this part of the ordinance has been staggered, so that from July 1, 2020 to June 30, 2022, an employer must provide 10 days' notice, and beginning July 1, 2022, an employer must provide 14 days' notice (Chicago Mun. Code § 6-110-040(b)(1)). The schedule must be in writing, posted in a conspicuous place that is readily accessible and visible to all employees, and span at least one full calendar week (Chicago Mun. Code § 6-110-040(b)(1); Chicago Fair Workweek Rule 1.03(a)). An employer may change the schedule after

it is posted, without penalty, up until the required notice period (in other words, if an employer posts the schedule 20 days in advance, they may change and repost the schedule up until 10 days in advance until June 30, 2022) (Chicago Mun. Code § 6-110-040(b)(2)).

Employers are not subject to the advance notice requirement if their employees self-schedule or work in a venue that regularly hosts ticketed events (Chicago Mun. Code § 6-110-040(b)(3)).<sup>15</sup> Additionally, an employee who has experienced domestic violence or sexual assault — or who has a family member who has experienced domestic violence or sexual assault — may request that their schedule not be posted or transmitted to other employees (Chicago Mun. Code § 6-110-040(b)(4)).

**Good Faith Estimates.** Prior to or at the commencement of employment, an employer must provide a good faith estimate of an employee's projected days and hours of work (Chicago Mun. Code § 6-110-040(a)). The estimate must be in writing, cover the first 90 days of employment, and include the average number of weekly hours, any expectation regarding on-call shifts, and a subset of days or times that the employee can expect to work (Chicago Mun. Code § 6-110-040(a)(1)). An employee has the right to request a modification to the estimate, and an employer must consider (but need not accept) that request and provide a written determination of that request (Chicago Mun. Code § 6-110-040(a)(2)).

**Predictability Pay.** If an employer makes any changes to the posted work schedule, they must transmit it to the employee in writing within 24 hours of the change (Chicago Mun. Code § 6-110-050(c)). Additionally, any changes made to an employee's schedule within the above-described notice period (10 days, or 14 days beginning July 1, 2022) triggers several employee rights.<sup>16</sup>

First, if an employer adds hours to an employee's posted schedule within the notice period, the employee has the right to decline those additional hours (Chicago Mun. Code § 6-110-050(a)). Second, if an employer adds hours of work or changes the date or time of a work shift (with no change in the number of hours) within the notice period, the employee is

entitled to one hour of pay in addition to their regular rate of pay (Chicago Mun. Code § 6-110-050(b)(1)(A)–(B)).<sup>17</sup> Third, if an employer cancels a shift or subtracts hours from a shift within the notice period but with at least 24 hours' notice, the employee is also entitled to one hour of predictability pay (Chicago Mun. Code § 6-110-050(b)(1)(C)). Fourth, if an employer cancels a shift or subtracts hours from a shift with less than 24 hours' notice — including during the shift itself — the employee is entitled to at least 50 percent of the regular rate of pay for the scheduled shift (Chicago Mun. Code § 6-110-050(b)(2)).

These schedule changes and predictability pay requirements are subject to several exceptions. Critically, an employer is not required to provide predictability pay if the schedule change is “mutually agreed to” by the employer and employee and confirmed in writing (Chicago Mun. Code § 6-110-050(d)(3)). Additionally, no predictability pay is required where the schedule change is the result of a shift trade between employees, an employee request, disciplinary action by the employer for just cause, or certain events occurring to banquet events, ticketing events, or manufacturing or health care employees (Chicago Mun. Code § 6-110-050(d)(2), (4)–(9)). Further, these requirements do not apply to employees who self-schedule (Chicago Mun. Code § 6-110-050(d)(10)).

Finally, these schedule change and predictability pay requirements do not apply where the change is due to threats, public utility failures, acts of nature, war, civil unrest, strikes, or pandemics (Chicago Mun. Code § 6-110-050(d)(1)). The Commissioner of the Department of Business Affairs and Consumer Protection issued a rule in 2020 that clarified that the COVID-19 outbreak qualifies as a “pandemic” pursuant to the ordinance, and therefore these requirements do not apply to any schedule changes made because of the pandemic (Rule Pertaining to COVID-19 and Chapter 1-25). Specifically, the Commissioner explained that the Department will consider “a Work Schedule change to be ‘because’ of the pandemic only when the pandemic causes the Employer to materially change its operating hours, operating plan, or the goods or services

15 Self-scheduling is defined as “the practice of an employee to self-select work shifts without employer pre-approval pursuant to a mutually acceptable agreement.” (Chicago Mun. Code § 6-110-020).

16 However, changes of 15 minutes or less do not trigger predictability pay requirements (Chicago Fair Workweek Rule 1.04(a)).

17 The Department has clarified that an employee is entitled to one hour of predictability pay for each shift that is changed within the notice period (Chicago Fair Workweek Rule 1.04(d)–(f)).

provided by the Employer, which results in the Work Schedule change” (Rule Pertaining to COVID-19 and Chapter 1-25).

**Right to Rest Between Shifts.** Employees have a right to decline any hours that are scheduled less than 10 hours after the end of the employee’s prior shift (Chicago Mun. Code § 6-110-070(a)). However, an employee can consent to work a shift that begins less than 10 hours after the end of their prior shift, but that consent must be in writing (Chicago Fair Workweek Rule 1.06(a)). If an employee chooses to work such a shift, that employee is entitled to be paid a rate of 1.25 times their regular rate (Chicago Mun. Code § 6-110-070(b)).<sup>18</sup>

**Greater Access to Hours.** Chicago’s ordinance requires employers to offer any additional shifts that need to be filled first to existing employees who are qualified to do the work (Chicago Mun. Code § 6-110-060(a)). When practical, employers should

first offer additional shifts to part-time employees (Chicago Mun. Code § 6-110-060(b)(2)). If employees reject those shifts, the employer must then offer any additional shifts to temporary or seasonal workers who have worked for the employer for at least two weeks (Chicago Mun. Code § 6-110-060(a)). When distributing additional shifts, the employer cannot discriminate on the basis of several protected categories<sup>19</sup> (Chicago Mun. Code § 6-110-060(b)(1)).

**Right to Request Flexible Scheduling.** Employees have a right to request flexible or modified working schedules (Chicago Mun. Code § 6-110-080). This right includes, but is not limited to, requests for “additional shifts or hours; changes in days of work; changes in shift start and end times; permission to exchange shifts with other employees; limitations on availability; part-time employment; job sharing arrangements; reduction or change in work duties; or part-year employment” (Chicago Mun. Code § 6-110-080).

**TABLE 5: LEGAL ASSESSMENT RESULTS FOR CHICAGO, AS OF AUGUST 1, 2021**

LEGAL PROVISIONS	IS THERE A LAW?	ADDITIONAL DETAILS
Advance scheduling notice	YES	10 days’ notice
Good faith estimates	YES	Prior to or at commencement of employment
Stable schedule requirement	NO	.
Predictability pay	YES	Any change with more than 24 hours’ notice: 1 hour of additional pay Reduction or cancellation with less than 24 hours’ notice: 50% of pay of the originally scheduled shift
Right to rest between shifts	YES	10 hours
Greater access to hours	YES	Must be offered to existing employees
Right to request flexible scheduling	YES	No requirement to consider or grant requests
Anti-retaliation	YES	.
Day of rest	YES	24 consecutive hours of rest every calendar week
Reporting pay	NO	.
Split shift laws	NO	.
Predictable scheduling preemption	NO	.

<sup>18</sup> However, any hours in such a shift that are subject to overtime pay shall be paid as overtime (i.e., 1.5 times the regular rate of pay) (Chicago Fair Workweek Rule 1.06(e)).

<sup>19</sup> Those categories are: race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity or expression, disability, age, or marital or familial status (Chicago Mun. Code § 1-25-060(b)(1)).

**Anti-Retaliation.** Employers are prohibited from retaliating against employees who exercise any right under the Chicago ordinance (Chicago Mun. Code § 6-110-100(a)). Employers are specifically prohibited from taking any of the following adverse actions in response to an employee’s exercise of their rights: “termination, denial of promotion, negative evaluations, punitive schedule changes, punitive decreases in the desirability of work assignments, and other acts of harassment shown to be linked to such exercise of rights” (Chicago Mun. Code § 6-110-100(a)).

**Day of Rest.** In addition to Chicago’s fair workweek ordinance, employees in Chicago are protected by a statewide day of rest law. The day of rest law was enacted in 1935 but was amended as recently as 2018, and although it is not limited to certain specified industries (unlike the Chicago fair workweek ordinance), it outlines several types of employees who are not covered by its provisions through exceptions. For example, it does not apply to part-time employees who work 20 hours or less per calendar week, or to employees in the agriculture, coal mining, security guard, or administrative industries or professions (820 Ill. Comp. Stat. 140/2(b)). Additionally, the Illinois Director of Labor has the power to grant permits to employers authorizing employment on designated days of rest (820 Ill. Comp. Stat. 140/8; Ill. Admin. Code tit. 56, § 220.200). The Illinois Department of Labor has the power to enforce the day of rest provisions, as well as the power to promulgate rules and regulations relating to their administration and enforcement (820 Ill. Comp. Stat. 140/6). Employers who violate the provisions are subject to a fine of \$25 to \$100 (820 Ill. Comp. Stat. 140/7).

Employees in Illinois are entitled to 24 consecutive hours of rest in every calendar week (820 Ill. Comp. Stat. 140/2(a)). Employers are required to conspicuously post a schedule designating the day of rest for each employee no later than noon on the Friday before the workweek (820 Ill. Comp. Stat. 140/4; Ill. Admin. Code tit. 56, § 220.700). No employee can be required to work on their designated day of rest (820 Ill. Comp. Stat. 140/4; Ill. Admin. Code tit. 56, § 220.125).

## Philadelphia, Pennsylvania

### Background

In December 2018, Philadelphia passed its fair workweek ordinance to provide employees in the retail, hospitality, and food industry with more consistent work schedules, which became effective on April 1, 2020. However, the predictability pay provision of the ordinance was delayed until June 1, 2021 to provide businesses with relief during the COVID-19 pandemic. Philadelphia’s law contains several key protections for workers, including: advance scheduling notice, good faith estimates, predictability pay, the right to rest between shifts, greater access to hours, the right to request flexible scheduling, and anti-retaliation protections.

Although Philadelphia has not released official data about the number of workers covered by the law, recent data show that approximately 106,523 people in Philadelphia over the age of 16 work in retail and food preparation and service industries.<sup>20</sup> However, the actual number of covered workers is likely significantly lower because the law only applies to workers employed by certain large businesses. Notably, data show that, among women in those occupations, Latinx women are overrepresented in retail, and Asian women are overrepresented in both food service and retail.

### Legal Analysis

#### Fair Workweek Law

Philadelphia’s ordinance applies only to certain employees in certain industries. The industries covered by the ordinance are: retail, hospitality, and food service (Philadelphia, Pa., Code § 9-4601(4)). To be covered by the protections in the ordinance, an employee must: perform work as a full-time, part-time, seasonal, or temporary (not a contractor) employee (Philadelphia, Pa., Code § 9-4601(5)). Additionally, Philadelphia’s ordinance only applies to certain employers. To be subject to the ordinance’s requirements, the employer must: (1) employ 250 or more employees globally, and (2) have 30 or more locations worldwide. (Philadelphia, Pa., Code § 9-4601(4)). Finally, covered employers and employees can waive the requirements of the ordinance in a bona fide collective bargaining agreement, so long as the waiver is clear and unambiguous (Philadelphia, Pa., Code § 9-4610).

<sup>20</sup> Data is derived from 2019 ACS 1-year estimated detailed tables showing occupation by race and sex. These numbers include data from the following industries, as defined by ACS: food preparation and service occupations, and sales (including retail) occupations.

The Philadelphia Office of Benefits and Wage Compliance has the power to enforce the ordinance (Philadelphia, Pa., Code § 9-4611(2)). Employers who violate any provision of the ordinance are subject to damages, ranging from \$25 for failure to notify an employee to a change to the schedule during within the notice period and \$1,000 for failure to provide a current employee with greater access to hours before hiring a new employee (Philadelphia, Pa., Regulation 10). Additionally, the Office of Benefits and Wage Compliance may triple damages for employers who have a history of violating the protections provided in the fair workweek ordinance (Philadelphia, Pa., Regulation 10).

Further, employees may bring a civil cause of action for violations of the ordinance (Philadelphia, Pa., Code § 9-4611(7)). However, the commencement of a civil cause of action withdraws the complaint from the Office of Benefits and Wage Compliance (Philadelphia, Pa., Regulation 10(7)(a)). The cause of action must be filed within two years of the violation (Philadelphia, Pa., Regulation 10(9)). If the employee prevails, they may recover damages, litigation costs, and attorney fees (Philadelphia, Pa., Regulation 10(7)(c)).

**Advance Scheduling Notice.** Philadelphia requires employers to provide advance notice of an employee's work schedule (Philadelphia, Pa., Code § 9-4602(4)). The implementation of this part of the ordinance was staggered from April 1, 2020 to December 31, 2020 employers were required to provide 10 days' notice, and since January 1, 2021, employers must provide 14 days' notice (Philadelphia, Pa., Code § 9-4602(4); Philadelphia, Pa., Regulation 1.1).<sup>21</sup> The schedule must be in writing, be posted in a conspicuous place that is readily accessible and visible to all employees (Philadelphia, Pa., Code § 9-4602(4)).

**Good Faith Estimates.** Prior to or at the commencement of employment, an employer must provide a good faith estimate of an employee's projected days and hours of work (Philadelphia, Pa.,

Code § 9-4602(3)). The estimate must be in writing, cover the first 90 days of employment, and include the average number of weekly hours, any expectation regarding on-call shifts, and a subset of days or times that the employee can expect to work (Philadelphia, Pa., Code § 9-4602(1)). The Department of Labor's Office of Worker Protections requires that covered employers provide all new and existing employees with a written good faith estimate by July 1, 2020 (Cox & Chewning, 2020; Philadelphia, Pa., Regulation 1.1a).

**Predictability Pay.** If an employer makes any changes to the posted work schedule, the employer must provide the employee with notice prior to making the change and transmit it to the employee in writing within 24 hours of the change (Philadelphia, Pa., Code § 9-4602(5)). Additionally, any changes made to an employee's schedule within the above-described notice period (10 days, or 14 days beginning January 1, 2021) triggers several employee rights.<sup>22</sup>

First, if an employer adds to an employee's posted schedule within the notice period, the employee has the right to decline those additional hours (Philadelphia, Pa., Code § 9-4602(6)). Second, if an employer adds hours of work or changes the date or time of a work shift (with no change in the number of hours) within the notice period, the employee is entitled to one hour of pay in addition to their regular rate of pay (Philadelphia, Pa., Code § 9-4603(1)(a)). Third, if an employer cancels a shift or subtracts hours from a shift (regular or on-call) within the notice period, the employee is entitled to 50 percent of the regular rate of pay for the scheduled shift (Philadelphia, Pa., Code § 9-4603(1)(b)). Any changes to an employee's schedule within the notice period requires the employee's written consent (Philadelphia, Pa., Code § 9-4602(6)).

These schedule changes and predictability pay requirements are subject to several exceptions. Employees are not entitled to predictability pay for changes due to an employee's voluntary request, voluntary trade shifts among employees, or an employee's termination or other disciplinary measure (Philadelphia, Pa., Code § 9-4603(2)(a), (b), (f), (h)). Additionally, predictability pay does not apply when operations cannot continue due to threats, a public utility failure, a public transportation shutdown, a natural disaster, a state of emergency,

#### PHILADELPHIA'S FAIR WORKWEEK LAW APPLIES TO EMPLOYEES WHO WORK:

- In retail, hospitality, and food service industries; and
- For employers with 250+ employees and 30+ locations worldwide.

21 Implementation of the ordinance was delayed due to the public health crisis, with the ordinance becoming effective on April 1, 2020.

22 However, changes of 20 minutes or less do not trigger predictability pay requirements (Philadelphia, Pa., Code §9-4603(2)(d)).

or severe weather conditions (Philadelphia, Pa., Code § 9-4603(2)(c)). Employers are also not required to provide predictability pay for certain specified changes to ticketing events or banquet events (Philadelphia, Pa., Code § 9-4603(2)(i), (j)). Finally, employees are not entitled to predictability pay where they volunteer to work in response to a mass communication about the availability of additional hours, so long as the communication is due to another employee being unable to work (Philadelphia, Pa., Code § 9-4603(2)(e)).

The fair workweek ordinance became effective on April 1, 2020 (Cox & Chewning, 2020; Philadelphia, Pa., Regulation 1.1).<sup>23</sup> While the ordinance included a predictability pay provision for employer-initiated changes, the Office of Benefits and Wage Compliance chose to temporarily suspend enforcement of the predictability pay provision due to the pandemic and the “associated impacts on business activity” (Cox & Chewning, 2020). Without this provision, employees would not be compensated for changes made to the schedule after the advance notice period. However,

on June 1, 2021, the Office of Benefits and Wage Compliance began enforcing the predictability pay provision of the ordinance, requiring that employees are provided with predictability pay for employer-initiated changes made after advance notice period (Philadelphia, Pa., Code § 9-4603(1)).

**Right to Rest Between Shifts.** Employees have a right to decline any hours that are scheduled less than nine hours after the end of the employee’s prior shift or “during the nine hours following the end of a shift that spanned two days” (Philadelphia, Pa., Code § 9-4604(1)). However, an employee can consent to work a shift that begins less than nine hours after the end of their prior shift, but that consent must be in writing (Philadelphia, Pa., Code § 9-4604(1)). If an employee chooses to work such a shift, that employee is entitled to be paid \$40 for that shift (Philadelphia, Pa., Code § 9-4604(2)).

**Greater Access to Hours.** Philadelphia requires employers to offer any additional shifts that need to be filled first to existing employees who are qualified to do the work before attempting to hire additional

**TABLE 6: LEGAL ASSESSMENT RESULTS FOR PHILADELPHIA, AS OF AUGUST 1, 2021**

LEGAL PROVISIONS	IS THERE A LAW?	ADDITIONAL DETAILS
Advance scheduling notice	YES	14 days’ notice
Good faith estimates	YES	Prior to or at commencement of employment
Stable schedule requirement	NO	.
Predictability pay	YES	Addition of hours or changes to shift: 1 hour additional pay Reduction of hours or cancellation of shift: 50% of pay of the originally scheduled shift
Right to rest between shifts	YES	9 hours
Greater access to hours	YES	Must be offered to existing employees
Right to request flexible scheduling	YES	No requirement to consider or grant requests
Anti-retaliation	YES	.
Day of rest	NO	.
Reporting pay	NO	.
Split shift laws	NO	.
Predictable scheduling preemption	NO	.

<sup>23</sup> The law was enacted on December 20, 2018 and set to become effective on January 1, 2020. However, implementation of the ordinance, as well as key provisions, were delayed due to the public health crisis. The ordinance became effective on April 1, 2020 and the predictability pay provision of the ordinance became effective on June 1, 2021.

employees (Philadelphia, Pa., Code § 9-4605). When distributing additional shifts, the employer cannot discriminate on the basis of several protected categories (Philadelphia, Pa., Code § 9-4605(3)(b)).<sup>24</sup>

**Right to Request Flexible Scheduling.** Employees have a right to request flexible or modified working schedules (Philadelphia, Pa., Code § 9-4602(2)). This right includes, but is not limited to, “(a) requests not to be scheduled for work shifts during certain days or times or at certain locations; (b) requests not to work on-call shifts; (c) requests for certain hours, days, or locations of work; and (d) requests for more or fewer work hours” (Philadelphia, Pa., Code § 9-4602(2)).

**Anti-Retaliation.** Employers are prohibited from retaliating against employees who exercise any right under the Philadelphia ordinance (Philadelphia, Pa., Code § 9-4606(1)). Employers are specifically prohibited from taking any of the following adverse actions in response to an employee’s exercise of their rights: “threatening, intimidating, disciplining, discharging, demoting, suspending or harassing an employee; assigning an employee to a lesser position in terms of job classification, job security, or other condition of employment; reducing the hours or pay of an employee or denying the employee additional hours; and discriminating against the employee, including actions or threats related to perceived immigration status or work authorization” (Philadelphia, Pa., Code § 9-4606(2)).

### OREGON’S FAIR WORKWEEK LAW APPLIES TO EMPLOYEES WHO WORK:

- In retail, hospitality, and food service industries; and
- For employers with 500+ employees worldwide.

Recent data show that approximately 326,260 people in Oregon over the age of 16 work in retail and food preparation and service occupations.<sup>25</sup> However, the actual number of covered workers is likely significantly lower because the law only applies to workers employed by certain large businesses. Among women in those industries, Latinx, Asian, and Native American women are overrepresented in food preparation and service, and Asian women are overrepresented in retail.

### Legal Analysis

#### Fair Workweek Law

Oregon’s law applies only to certain employees in certain industries. The industries covered by the ordinance include retail, hospitality, and food service (Or. Rev. Stat. § 653.422(1)). Oregon’s law only applies to certain employers. To be subject to the requirements, the employer must employ 500 or more employees globally (Or. Rev. Stat. § 653.422(1)).

Employees can waive their right to predictability pay by agreeing to be placed on a standby list (Or. Rev. Stat. § 653.432(4)). Additionally, employers are not required to provide additional compensation, specifically predictability pay or compensation for working a “closing” shift, when the employee is covered by a collective bargaining agreement “that provides the employee a remedy equal to or better than the remedy provided by ORS 653.442 or 653.455” (Or. Admin. R. 839-026-0060).

The Oregon Commissioner of the Bureau of Labor has the power to enforce the ordinance (Or. Rev. Stat. § 653.480(1)). Employers who violate any provision of the ordinance are subject to a fine of \$1,000 (Or. Rev. Stat. § 653.480(3)(b)).<sup>26</sup> Further, employees may bring a civil cause of action for violations of the anti-retaliation

## Oregon

### Background

In August 2017, Oregon passed a fair workweek law to provide employees in the retail, hospitality, and food service industry with more consistent work schedules, which became effective in July 2018. Unlike other jurisdictions with fair workweek laws, Oregon has created a voluntary standby list system, which exempts employers from providing predictability pay to employees who consent to be on the list and be contacted when additional shifts arise.

<sup>24</sup> Those categories are: race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity, disability, age, marital or familial status, nor on the basis of family caregiving responsibilities or status as a student, and the employer may not distribute hours in a manner intended to avoid application of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18001 (Philadelphia, Pa., Code §9-4605(3)(b)).

<sup>25</sup> Data is derived from 2019 ACS 1-year estimated detailed tables showing occupation by race and sex. These numbers include data from the following industries, as defined by ACS: food preparation and service occupations, and sales (including retail) occupations.

<sup>26</sup> Employers will be subject to a \$500 fine for not displaying a poster of employees’ rights in a conspicuous and accessible place (Or. Rev. Stat. § 653.480(3)(a); Or. Rev. Stat. §653.460).

provision of the law (Or. Rev. Stat. § 659A.885(2)(b)).<sup>27</sup> However, the commencement of a civil cause of action precludes the employee from filing a complaint with the Commissioner of the Bureau of Labor (Or. Rev. Stat. § 659A.820(4)(a)). If the employee prevails, they may recover damages and attorney fees (Or. Rev. Stat. § 659A.885(1)).

**Advance Scheduling Notice.** Oregon requires employers to provide advance notice of an employee’s work schedule (Or. Rev. Stat. § 653.436). The implementation of this part of the ordinance was staggered so that from July 1, 2018 to June 30, 2020, an employer was required to provide seven days’ notice. Since July 1, 2020, an employer must provide 14 days’ notice (Or. Rev. Stat. § 653.436(1); Or. Admin. R. 839-026-0030). The schedule must be in writing, be posted in a conspicuous place that is readily accessible and visible to all employees (Or. Rev. Stat. § 653.436(2)).

**Good Faith Estimates.** At the commencement of employment, an employer must provide a good faith estimate of an employee’s projected days and hours of

work (Or. Rev. Stat. § 653.428(1)). The estimate must be in writing, cover the average number of hours an employee can expect in a one-month period, explain the voluntary standby list (providing written notice), and any expectation regarding on-call shifts (Or. Rev. Stat. § 653.428(1)). The good faith estimate can be based on schedule from a previous year for seasonal or episodic employees (Or. Rev. Stat. § 653.428(1)).

**Predictability Pay.** If an employer makes any changes to the posted work schedule, the employer must provide the employee with timely notice of the change (Or. Rev. Stat. § 653.436(5)(a)). Any changes made to an employee’s schedule within the above-described notice period (seven days, or 14 days beginning July 1, 2020) triggers several employee rights.<sup>28</sup>

First, if an employer adds to an employee’s posted schedule within the notice period, the employee has the right to decline those additional hours (Or. Rev. Stat. § 653.436(5)(b)). Second, if an employer adds hours of work, changes the date or time of a work shift (with no change in the number of hours), or schedules an employee for an additional

**TABLE 7: LEGAL ASSESSMENT RESULTS FOR OREGON, AS OF AUGUST 1, 2021**

LEGAL PROVISIONS	IS THERE A LAW?	ADDITIONAL DETAILS
Advance scheduling notice	YES	14 days’ notice
Good faith estimates	YES	At commencement of employment
Stable schedule requirement	NO	.
Predictability pay	YES	Addition of hours or changes to shift: 1 hour additional pay Reduction of hours, cancellation of shift, or not called in for on-call shift: 50% of pay of the originally scheduled shift
Right to rest between shifts	YES	10 hours
Greater access to hours	NO	.
Right to request flexible scheduling	YES	No requirement to grant requests
Anti-retaliation	YES	.
Day of rest	NO	.
Reporting pay	NO	.
Split shift laws	NO	.
Predictable scheduling preemption	YES	.

<sup>27</sup> The retaliation claim may not be related to the right to request flexible schedules, provided under Or. Rev. Stat. §653.450 (Or. Rev. Stat. § 659A.885(2)(b)).

<sup>28</sup> However, changes of 30 minutes or less do not trigger predictability pay requirements (Or. Rev. Stat. § 653.455(3)(a)).

shift (including an on-call shift) within the notice period, the employee is entitled to one hour of pay in addition to their regular rate of pay (Or. Rev. Stat. § 653.455(2)(a)). Third, if an employer cancels a shift, subtracts hours from a shift, or does not call an employee in for an on-call shift, the employee is entitled to at least 50 percent of the regular rate of pay for the scheduled shift (Or. Rev. Stat. § 653.455(2)(b)).

These schedule changes and predictability pay requirements are subject to several exceptions. Employees who voluntarily switch shifts among themselves, request changes to their schedule in writing, or consent to work additional hours to address unanticipated customer needs or unexpected employee absence are not entitled to predictability pay (Or. Rev. Stat. § 653.455(3)(b)–(d), (k)). Additionally, employees are not entitled to predictability pay for schedule changes resulting from disciplinary action, or when operations cannot continue due to threats, a public utility failure, or a natural disaster (Or. Rev. Stat. § 653.455(e)–(h)). Further, employers need not pay predictability pay where operations change because of alterations to or cancellation of a ticketed event (Or. Rev. Stat. § 653.455(i)).

Finally, and crucially, employers may maintain a standby list of employees that the employer will use to offer additional hours to employees (Or. Rev. Stat. § 653.432). However, predictability pay is not required when “an employer requests that an employee on a voluntary standby list work additional hours [...] and the employee consents to work the additional hours” (Or. Rev. Stat. § 653.455(3)(j)). Thus, an employee on the standby list who accepts additional hours is not entitled to predictability pay (Or. Rev. Stat. § 653.432(4)).

**Right to Rest Between Shifts.** Employees have a right to decline any hours that are scheduled less than 10 hours after the end of the employee’s prior shift or within “the first 10 hours following the end of a work shift or on-call shift that spanned two calendar days” (Or. Rev. Stat. § 653.442(1)). However, an employee can consent to work a shift that begins less than 10 hours after the end of their prior shift (Or. Rev. Stat. § 653.442(1)). If an employee chooses to work such a shift, that employee is entitled to be paid a rate of 1.5 times their regular rate (Or. Rev. Stat. § 653.442(2)).<sup>29</sup>

**Right to Request Flexible Scheduling.** Employees have a right to request flexible or modified working schedules (Or. Rev. Stat. § 653.450(1)). This right includes, but is not limited to, requests to not be scheduled to work certain shifts during certain times or at specific locations and “limitations or changes in the employee’s work schedule availability, including but not limited to child care needs” (Or. Rev. Stat. § 653.450(1)).

**Anti-Retaliation.** Employers are prohibited from retaliating against employees who exercise any right under the Oregon law (Or. Rev. Stat. § 653.470). Employers are specifically prohibited from taking any of the following adverse actions in response to an employee’s exercise of their rights: “retaliate or in any way discriminate against an individual with respect to hire or tenure or any other term or condition of employment because the individual has inquired about the provisions” of the law (Or. Rev. Stat. § 653.470(2)).

**Predictable Scheduling Preemption.** Oregon’s fair workweek law explicitly preempts local jurisdictions from enacting laws regulating workplace scheduling (Or. Rev. Stat. § 653.490(2)). However, it creates an exception for certain public workers, allowing local governments to enact such regulations for workers who are employed or contracted by the local government (Or. Rev. Stat. § 653.490(3)).

## New Hampshire

### Background

New Hampshire has not enacted a fair workweek law. However, the state has enacted a day of rest law, a reporting pay law, and a right-to-request law over the course of several decades. These laws generally apply to all employees across the state, with some exceptions. Recent data estimate that there are approximately 735,493 workers over the age of 16 in the state.<sup>30</sup>

### Legal Analysis

**Right to Request Flexible Scheduling.** New Hampshire prohibits employers from retaliating against employees for requesting flexible work schedules (N.H. Rev. Stat. § 275:37-b). However, the law explicitly states that an employer is not required

29 This requirement does not apply to “split-shifts” that take place in one calendar day (Or. Admin. R. 839-026-0040).

30 Data is derived from the 2019 ACS 1-year estimated detailed table showing the civilian employed population over the age of 16.

to accommodate any request for a flexible schedule, and an employee cannot sue an employer for failing to accommodate such a request (N.H. Rev. Stat. § 275:37-b). The statute is not limited to certain specified industries and applies to most workers throughout the state.<sup>31</sup> It was enacted in 2016, around the same time many other predictable scheduling and fair workweek protections were being introduced and enacted across the nation (Fair Workweek Initiative, n.d.).

The labor commissioner has the power to enforce the right-to-request law, including by taking “appropriate action” in response to employee complaints (N.H. Rev. Stat. § 275:38). However, despite explicitly prohibiting employer retaliation against an employee for requesting a flexible schedule, the law is silent as to whether an employee can bring a cause of action for violations of the anti-retaliation provision.

**Day of Rest.** New Hampshire requires employers to provide a designated day of rest to their employees (N.H. Rev. Stat. §§ 275:32, 275:33). Specifically, the law requires employers to provide one 24-hour period to each employee per week (either on Sunday

or another designated day), and the employer cannot require an employee to work on that designated day (N.H. Rev. Stat. §§ 275:32, 275:33). The law was first enacted in 1933 and recently amended in 2018 to clarify that an employee can choose to work on their designated day of rest (but cannot be required to do so); prior to 2018, an employee was not allowed to work in their day of rest (Whitley, 2018).

Unlike New Hampshire’s other standalone laws, the day of rest provisions do not apply to several industries and employees. For example, the laws do not apply to employees in “hospitals, nursing homes, orphanages, and homes for the aged” (N.H. Rev. Stat. § 275:33-a); employees who work for certain manufacturing and transportation establishments (N.H. Rev. Stat. § 275:34); and several types of service employees, including janitors, caretakers, newspaper workers, farm workers, retail store workers, and hotel and restaurant workers (N.H. Rev. Stat. § 275:35). Further, employers and employees can agree to waive the day of rest requirement “after approval of the labor commissioner where it appears for the best interests of all parties concerned” (N.H. Rev. Stat. § 275:33-b).

**TABLE 8: LEGAL ASSESSMENT RESULTS FOR NEW HAMPSHIRE, AS OF AUGUST 1, 2021**

LEGAL PROVISIONS	IS THERE A LAW?	ADDITIONAL DETAILS
Advance scheduling notice	NO	.
Good faith estimates	NO	.
Stable schedule requirement	NO	.
Predictability pay	NO	.
Right to rest between shifts	NO	.
Greater access to hours	NO	.
Right to request flexible scheduling	YES	No requirement to grant requests
Anti-retaliation	NO	.
Day of rest	YES	One designated 24-hour rest period per week
Reporting pay	YES	2 hours’ of regular rate of pay
Split shift laws	NO	.
Predictable scheduling preemption	NO	.

<sup>31</sup> However, by definition, employees do not include “persons engaged in domestic service in the home of the employer, or in agricultural service, or in temporary or seasonal employment, or employees of any social club, fraternal, charitable, educational, religious, scientific or literary association, no part of the net earnings of which inures to the benefit of any private individual” (N.H. Rev. Stat. § 275:36).

Any employer who violates the day of rest provisions is subject to a fine of not more than \$50 (N.H. Rev. Stat. § 275:32). The laws do not otherwise specify any enforcement mechanisms.

**Reporting Pay.** New Hampshire's reporting pay law was first enacted in 1985. The legislative history of the bill shows that it was intended to apply to scenarios where an employee is called into work but is then sent home without working and without pay (*Nashua Young Women's Christian Association v. State*, 134 N.H. 681, 683–84 (N.H. Sup. Ct. 1991) (citing to committee hearing minutes)). In 1991, the Supreme Court of New Hampshire held that the law does not apply to employees who were scheduled in advance to work less than two hours (*Nashua Young Women's Christian Association v. State*, 134 N.H. at 684–85).<sup>32</sup>

Under the current law, employers must pay employees two hours' worth of their regular pay on any day that an employee reports to work at their employer's request (N.H. Rev. Stat. § 275:43-a).<sup>33</sup> However, if an employer makes a "good faith effort" to notify an employee not to report to work, the employer need not pay wages pursuant to this provision (N.H. Rev. Stat. § 275:43-a). If an employee reports to work despite the employer's attempt to notify them, the employee must perform any duties assigned by the employer (N.H. Rev. Stat. § 275:43-a).

The reporting pay statute is not limited to certain industries and applies to most employers and employees,<sup>34</sup> but there are several statutory and regulatory exceptions. First, the law does not apply to ski and snowboard instructors (N.H. Rev. Stat. § 275:43-a). Second, the law does not apply to employees who report to work but then request to leave (due to illness or emergency), so long as a written explanation is entered on the employee's time records (N.H. Code Admin. R. Ann. Lab. 803.03(h)). Third, the law does not apply to certain health care

employees who voluntarily make schedule changes to meet the needs of their clients (N.H. Code Admin. R. Ann. Lab. 803.03(j)). Fourth, labor regulations clarify that, consistent with the 1991 New Hampshire Supreme Court holding, the statute does not apply to employees who are consistently required to work less than two hours per work day, so long as those employees are notified in writing upon hire (N.H. Code Admin. R. Ann. Lab. 803.03(i)).

An employee cannot waive their rights under the reporting pay law (N.H. Rev. Stat. § 275:50). The labor commissioner has the power to enforce the law, including by evaluating complaints, conducting investigations, and issuing decisions (N.H. Rev. Stat. § 275:51). Additionally, an employee may bring a private cause of action in any court of competent jurisdiction to recover unpaid wages and liquidated damages (N.H. Rev. Stat. § 275:53).

## Tennessee

### Background

Tennessee has failed to enact any laws protecting workers from unpredictable scheduling practices. Instead, the state has preempted localities from passing predictable scheduling ordinances, resulting in a regulatory vacuum.<sup>35</sup> Tennessee has been described as having "one of the most formidable preemption landscapes in the country" (Partnership for Working Families, 2019, p. 5). The state is particularly hostile to workplace protections and preempts localities from enacting various labor protections, including minimum wage increases, anti-discrimination protections, and paid leave laws (Partnership for Working Families, 2019, pp. 12–14; Economic Policy Institute, 2019).

Recent data show that approximately 506,815 people in Tennessee work in food service and retail, the industries that are most likely to be covered by a fair workweek

32 One judge dissented from the ruling, finding instead that the statute was unambiguous and intended to create a minimum two-hour workday because "[t]he effort of making one's self available for labor mandates at least two hours of pay" (134 N.H. at 685).

33 The reporting pay statute was amended in 2021 to clarify the language around an exception to the law (applying to ski and snowboard instructors), but the substance of the law remains the same (2021 New Hampshire Laws Ch. 23 (H.B. 303)). The amended version of the law went into effect on July 5, 2021.

34 By definition, employers do not include "employers of domestic labor in the home of the employer, or farm labor where less than 5 persons are employed." N.H. Rev. Stat. § 275:42(I).

35 Vacuum preemption occurs when a state prohibits a locality from legislating on a topic without setting statewide standards through state-level law or policy.



**TABLE 9: LEGAL ASSESSMENT RESULTS FOR TENNESSEE, AS OF AUGUST 1, 2021**

LEGAL PROVISIONS	IS THERE A LAW?	ADDITIONAL DETAILS
Advance scheduling notice	NO	.
Good faith estimates	NO	.
Stable schedule requirement	NO	.
Predictability pay	NO	.
Right to rest between shifts	NO	.
Greater access to hours	NO	.
Right to request flexible scheduling	NO	.
Anti-retaliation	NO	.
Day of rest	NO	.
Reporting pay	NO	.
Split shift laws	NO	.
Predictable scheduling preemption	YES	Specifically prohibits localities from passing laws that regulate employee scheduling

law.<sup>36</sup> Yet, the regulatory vacuum created by Tennessee leaves workers across the state vulnerable to precarious scheduling and its effects.

### Legal Analysis

**Predictable Scheduling Preemption.** In April 2017, Tennessee passed a law prohibiting local governments from “adopt[ing] or enforc[ing] any ordinance, regulation, resolution, policy, or any other legal requirement that regulates or imposes a requirement upon an employer pertaining to employee scheduling except when necessary to avoid creating a public or private nuisance” (Tenn. Code § 7-51-1802(f)). Research did not reveal any case law discussing the provision.

The law was a standalone bill and there is no publicly available legislative history that explains the purpose of or motivation behind the bill. Prior to the enactment of the preemption law, it appears that no Tennessee locality regulated employer scheduling; thus, the law was likely enacted proactively in response to the growing national

movement of predictive scheduling laws (Blair et al., 2020; Doroghazi, 2017). The law was codified into an already-existing statute that preempts Tennessee localities from enacting several other workplace protections (Tenn. Code § 7-51-1802).<sup>37</sup>

## KEY FINDINGS: LEGAL ASSESSMENT

- There is no federal law regulating predictable scheduling for workers in the U.S.
- Most jurisdictions have no law protecting workers from unpredictable and unstable scheduling. Although several jurisdictions have standalone laws regulating discrete and disparate issues related to workplace scheduling—such as day of rest laws and right to request laws—there is little to no research evaluating the effectiveness of such laws.
- Several states have moved in the opposite direction, enacting preemption laws that prevent localities from passing fair workweek laws and standalone protections.

<sup>36</sup> Data is derived from the 2019 ACS 1-year estimated detailed table showing the number of people aged 16 and up employed in the following occupations: food preparation and service, and sales (including retail).

<sup>37</sup> For instance, the full statute prohibits localities from enacting ordinances that expand employer anti-discrimination rules, require employers to provide health insurance to their employees, or mandate employers to implement family or sick leave policies.

- Since 2014, a few jurisdictions (one state and six cities) have filled in the gaps in federal legislation by passing comprehensive fair workweek laws. Although these laws typically contain many of the same types of legal protections, the details and exceptions to those protections vary widely. Additionally, the applicability of these laws is limited, with variations in the types of industries, size of employers, and types of employees covered. Ultimately, many hourly workers are not covered by these laws' protections.

## RAPID EVIDENCE ASSESSMENT

Unpredictable scheduling has been shown to increase worker stress and work-family conflict, disrupting work-family harmony (Golden, 2015). Further, workers with unpredictable schedules are significantly more likely to experience hunger, housing insecurity, and negative impacts on their children's wellbeing (Schneider & Harknett, 2019). As Black and Latinx workers are disproportionately represented in industries where unpredictable scheduling is prevalent, such as the retail and service sector, these workers are most likely to be disproportionately exposed to these negative outcomes (Schneider & Harknett, 2019).

Laws that aim to address schedule instability and improve health outcomes for workers have the potential to offer a layer of protection between employers and employees. However, research assessing the direct effects of legal interventions remains uncommon in many areas of health policy (Ibrahim et al., 2017), and the study of predictable scheduling laws is no exception.

In conducting this pilot assessment, the research team conducted a search for evidence assessing the direct effects of laws in the sample jurisdictions.<sup>38</sup> To identify relevant studies, the team conducted searches in legal databases such as Westlaw, in academic databases such as Google Scholar, on state and local legislature websites, and on the internet broadly. These searches were supplemented by reviewing secondary sources analyzing the health effects of unpredictable scheduling as well as secondary sources discussing fair workweek laws generally. Additionally, the

research team consulted with subject matter experts about past, current, and future evaluations. Three published studies were identified — two that focus on Seattle and one on Oregon. Study findings are briefly summarized below.

### Seattle Secure Scheduling Ordinance: Years 1 and 2

In addition to providing protection for some Seattle workers, Seattle's fair workweek law also mandates an in-depth evaluation of the on-the-ground effects of those protections (Seattle Mun. Code § 14.22.130(A); Harknett et al., 2021).<sup>39</sup>

#### Year 1 Worker Impact & Employer Implementation Report (December 2019)

Researchers from the Secure Scheduling Working Group collaborated with the West Coast Poverty Center to conduct the Year 1 worker impact evaluation, which focused on both worker impact and employer implementation (West Coast Poverty Center, 2019). In the worker impact section of the first-year evaluation, the researchers examined the experience of 755 Seattle workers before the implementation of the Seattle's Secure Scheduling ordinance to establish a baseline and 624 Seattle workers after the implementation of the ordinance — 146 of the 624 (23.4 percent) were also interviewed during the baseline assessment (West Coast Poverty Center, 2019). Researchers found that the ordinance had successfully decreased unpredictable scheduling for workers across several measures (West Coast Poverty Center, 2019). Specifically, they found the share of workers who received their schedule 14 days in advance increased by 20 percent, and the number of workers who received additional compensation for employer-initiated schedule changes more than doubled (West Coast Poverty Center, 2019, pp. 20–21). However, researchers also found that the ordinance did not have a significant impact in other areas; for instance, there was no significant change in the number of workers who were required to be available for on-call shifts, and no significant change in the number of employer-initiated shift changes (West Coast Poverty Center, 2019, pp. 20–21).

The Year 1 evaluation also included an employer implementation study to examine how frontline managers were implementing the ordinance. Researchers surveyed

<sup>38</sup> Future studies examining employer implementation of fair workweek laws in New York City, Chicago, and Philadelphia are forthcoming (see West Coast Poverty Center, 2019, p. 32).

<sup>39</sup> The ordinance requires the city to contract with academic researchers to conduct an in-depth evaluation of the impact of the ordinance on employers and employees after the first and second year of its implementation (Seattle Mun. Code § 14.22.130(A)). The stated purpose of the evaluation is to inform the city council of possible areas for revision of the ordinance, as well as to determine other industries that should be covered by the ordinance (Seattle Mun. Code § 14.22.130(B)–(C)).

37 frontline managers at covered businesses (West Coast Poverty Center, 2019). They found that, although nearly all managers were familiar with the ordinance, many lacked knowledge about the law's specific requirements and were unable to comply with those requirements completely and consistently (West Coast Poverty Center, 2019, pp. 34–43). Specifically, while most managers were able to consistently comply with the advance notice and right to rest provisions (finding those provisions easy to understand), most managers found that the predictability pay provisions — as well as its exceptions — were difficult to understand and therefore implement (West Coast Poverty Center, 2019, pp. 10–11, 46–56). Many managers noted that they actively tried to avoid predictability pay requirements; for example, managers utilized the mass communication exception to predictability pay requirements to avoid providing additional pay when workers took on extra shifts after the notice period (West Coast Poverty Center, 2019, pp. 11, 50–53). Further, many managers noted that they lacked sufficient support from their companies to learn about and properly implement the ordinance (West Coast Poverty Center, 2019, pp. 59–64).

#### **Year 2 Worker Impact Report (January 2021)**

Researchers from the Shift Project conducted the Year 2 worker impact evaluation, which focused solely on workers' experiences after implementation of the ordinance (Harknett et al., 2021).<sup>40</sup> Researchers from the Shift Project surveyed 759 covered workers before implementation of the ordinance to establish a baseline and 441 workers two years after implementation of the Secure Scheduling Ordinance — 182 of the 441 (41.3 percent) were also surveyed during the baseline assessment, the Year 1 assessment, or both (Harknett et al., 2021). The second-year evaluation confirmed that the ordinance had successfully improved workers' schedule predictability and stability (Harknett et al., 2021). The researchers found an improvement in the number of workers who received advance notice of their schedules, and also found that there was a decrease in the number of workers who experienced employer-initiated schedule changes and a reduction in both on-call shifts and clopening shifts (Harknett et al., 2021).<sup>41</sup> Further, the Year 2 evaluation found that the ordinance led to improvements in several measures of quality of life, including increases in happiness and sleep quality and reductions in material hardship (Harknett et al., 2021). However, the authors of the study cautioned that the evaluation concluded before the commencement

of the COVID-19 pandemic and thus did not reflect how the effects of the ordinance might be changed by pandemic conditions (Harknett et al., 2021).

#### **Persistent Unpredictability: Assessment the Impacts of Oregon's Employee Work Schedules Law**

Researchers at the University of Oregon conducted a study on the impact of Oregon's fair workweek law on employees (including management), by completing in-depth interviews with 75 workers and 23 managers (Loustaunau et al., 2020). The study found that managers were encouraged to get workers to sign on to the voluntary standby list to avoid providing predictability pay (Loustaunau et al., 2020). Additionally, many workers shared that they were asked to sign a waiver, stating that employer-initiated changes to the schedule were actually voluntary changes requested by the employee, in order to waive predictability pay (Loustaunau et al., 2020). Some employees reported feeling as though they had no choice but to sign the waiver, as they would be unable to receive additional hours otherwise (Loustaunau et al., 2020). Researchers also found that employers framed employer-initiated changes and requests for an employee to work late, leave early, or begin a shift early as changes that the employee volunteered to make to avoid having to provide predictability pay. The fair workweek law was created to compensate employees for last minute changes. However, with the voluntary standby list and the use of waivers, employees are rarely being provided with predictability pay.

Additionally, the study found that Oregon's Bureau of Labor and Industries lacks sufficient funds to adequately enforce the state fair workweek law or provide education to workers (Loustaunau et al., 2020). Without these enforcement measures, Oregon's Bureau of Labor and Industries relies solely on individual complaints from employees stating that “we're assuming that companies are compliant unless workers come forward and say that they are experiencing a violation, but we aren't investing any collective resources in educating workers or empowering them to participate in the enforcement process” (Loustaunau et al., 2020, pp. 17).

Moreover, the study found that employees who file a complaint with the Bureau of Labor and Industries are left waiting for a response that may never come with no additional recourse (Loustaunau et al., 2020).

<sup>40</sup> The Year 2 Employer Implementation Report—focusing on frontline managers' experience with the ordinance—is forthcoming and expected later in 2021.

<sup>41</sup> Some of these changes were within the study's margin of error and therefore should be viewed with caution (Harknett et al., 2021, pp. 16–18).

## KEY FINDINGS: RAPID EVIDENCE ASSESSMENT

The rapid evidence assessment identified three published studies that evaluated the effects of fair workweek laws in Seattle and Oregon. Together, these studies found five common themes:

- Fair workweek laws have the potential to improve stable scheduling and workers' lives.
- Both the implementation and enforcement of fair workweek laws are key to their success and where successfully implemented, these laws have had demonstrable positive effects. Workers saw improvements in schedule predictability and stability, as well as increases in happiness and sleep quality and reductions in material hardship.
- Oftentimes, managers are tasked with implementing the law, which can be complex and difficult to understand. The lack of training and education initiatives results in managers failing to comply with these laws fully or consistently.
- Broad and numerous exceptions to fair workweek provisions (particularly to predictability pay requirements), combined with employers exploiting those exceptions, can weaken the reach and positive effect of these laws.
- More research is needed to evaluate the effect of the COVID-19 pandemic on these laws, particularly since some provisions were delayed or suspended in response to the pandemic.

## RECOMMENDATIONS

Laws regulating workplace scheduling are growing in popularity and have gained momentum over the past decade. However, most jurisdictions do not have a comprehensive fair workweek law, resulting in a patchwork of discrete and disparate standalone protections in some jurisdictions, and no protection at all in many others. Further, preemption laws have blocked local jurisdictions from enacting workplace protections in several states. As a result, many hourly workers across the nation lack legal protection from the harms of unpredictable and unstable scheduling practices.

Although the harms of unstable and unpredictable work scheduling have been well founded, there is a dearth of research evaluating the effect of laws that regulate scheduling practices. However, early evaluations of fair workweek laws in Seattle and Oregon show promise —

where the laws have been successfully implemented, evidence demonstrates that they have succeeded in reducing unpredictable scheduling practices and improving workers' health and wellbeing. Importantly, these evaluations also point to several challenges facing governments, employers, and workers in successfully implementing fair workweek laws. Further, these evaluations confirm that fair workweek laws apply to only a small subset of hourly workers, ultimately leaving behind many who are most vulnerable to unpredictable scheduling harms.

Based on this pilot assessment of laws regulating workplace scheduling and our review of the current evidence, we determined that more research and comparative evaluations could lead to a deeper understanding of these laws, their impacts, and their potential to improve population health. We outline several recommendations for researchers, advocates, and policymakers; however, we caution that these recommendations are not meant to be exhaustive.

### Use Law to Achieve Greater Workplace Protection for Workers in the United States

**Continue federal advocacy efforts.** Federal law can create widespread protection for workers across the U.S. The federal government also has the authority to supersede and reverse state preemption of local authority. As states continue to enact laws that prevent and limit local governments from protecting workers through preemption, the time for federal action is now.

**Continue state and local advocacy efforts.** Although a federal fair workweek law has the potential to have the most far-reaching impact — and the ability to reach workers in jurisdictions that have otherwise preempted workplace regulations — we recognize that federal legislation is often slow-moving and that currently-proposed federal legislation addressing workplace scheduling has seen little movement since its inception in 2015. Thus, we urge advocates and policymakers to also focus on enacting, improving, and expanding state and local legislation regulating workplace scheduling.

**Federal, state, and local policymakers and advocates should consider the successes and challenges of existing fair workweek laws.** The most comprehensive fair workweek laws include all of the following legal protections: advance scheduling notice, good faith estimates of worker hours (or, in New York City, a stable schedule requirement), predictability pay, the right to rest between shifts, greater access to hours, the right to request flexible scheduling, and anti-retaliation protections. In

addition to passing comprehensive fair workweek laws or standalone protections, advocates and policymakers should consider focusing on the following provisions when championing and drafting new legislation or amending existing laws and ordinances at the state and local level:

- **Expanding applicability.** Broader applicability to all employees would provide more employees with legal protection. By including other low wage industries with prevalent unpredictable scheduling practices (as seen in Chicago), fair workweek laws can have a greater impact on workers and, in turn, better serve the disproportionate number of Black and Latinx women employed by these industries. Standalone laws passed at the state-level, such as reporting pay laws and split-shift laws, often apply to most or all workers. However, most fair workweek laws only apply to workers in the service industry, such as the retail, fast food, and hospitality industries. Newly enacted or amended laws should expand applicability to more industries, as well as to employees who work for smaller employers. Going a step further, new laws could expand applicability to all hourly workers — similar to some state standalone protections, as well as other labor and workplace laws (such as federal overtime requirements).
- **Eliminate excess exceptions and legal loopholes.** Excess exceptions can create loopholes for employers to circumvent workplace protections intended for their employees. This is especially glaring in the enforcement of predictability pay requirements. In fact, existing fair workweek laws contain numerous exceptions that ultimately prevent workers from being compensated for the addition, reduction, or change in hours for a shift. Ultimately, these exceptions undermine the effectiveness of these laws' ability to ensure workers have stable schedules or are compensated for last-minute changes. Since employers have been found to exploit exceptions, legislatures should work to close these loopholes so that fair workweek laws can more successfully reduce schedule instability.
- **Proactive intervention through implementation and enforcement efforts.** Fair workweek laws were created in response to the issue of precarious scheduling, with the goal of providing workers with more stability and predictability in their lives. However, implementation and enforcement of existing laws continue to be an issue. Numerous enforcement agencies regulating unpredictable

scheduling laws do not have the funding or capacity to independently investigate employer compliance with the law (Loustaunau et al., 2020). To ensure compliance, enforcement agencies need to conduct proactive investigations of employers that employ covered employees, rather than relying primarily (or even exclusively) on worker-initiated complaints. Further, fair workweek laws should consider developing practical and feasible implementation and enforcement mechanisms within the law itself (e.g., the need for public education, designating a dedicated enforcement agency within the government, and proactive investigations).

- **Increase public awareness and education campaigns.** As laws are passed and amended, policy stakeholders should prioritize public awareness and education campaigns to increase the knowledge base for all those that may benefit from being informed. Employees cannot assert rights that they are unaware of. Since many enforcement agencies primarily, or even exclusively, rely on employee complaints to address allegations of noncompliance, additional funding and training must be conducted to ensure that employees are aware of their rights. This can be as simple as having “know your rights” posters conspicuously posted in plain terms and multiple languages, or as extensive as having regular employee trainings. Relatedly, employers — particularly frontline managers tasked with on-the-ground implementation of scheduling provisions — often misunderstand the complexities of fair workweek laws. State and local agencies tasked with enforcing these laws should provide training and education to employers so that those implementing these provisions on the ground fully understand the law.

### More – and More Timely – Evaluation of Laws

More — and more timely — research evaluating the direct effects of law regulating predictable scheduling is needed. The Seattle and Oregon evaluations demonstrate that fair workweek laws have the potential to improve hourly workers' lives. However, they also highlight some of the challenges presented by current iterations of these fair workweek laws. These studies focus on legal effects within their respective jurisdictions and no comparative research evaluating laws across jurisdictions was identified. Given the wide variation among laws — including differences in pay and notice requirements, enforcement mechanisms, and the numerous exceptions to predictability pay — robust comparative research and evaluation is needed to



better determine which provisions are most effective in improving health outcomes for workers.

Further, the COVID-19 pandemic has drastically altered workplaces in the U.S., especially for hourly workers in health care and service industries. Future research must include evaluation of how the pandemic has affected implementation and enforcement of laws regulating worker scheduling. To build upon this pilot assessment and existing evaluations, future research can utilize legal epidemiology to measure the effects of predictable scheduling laws across jurisdictions and over time. Legal evaluations using these methods can help to identify the most (and least) effective legal provisions for advocates and policymakers.

Critically, future research should focus on who benefits from these laws and who gets left behind. We know that women — especially Black and Latinx women — are most burdened by unpredictable scheduling and its harms. We also know that the current landscape of these laws is patchy at best, with many laws applying only to people working for large corporations in certain industries. Thus, future research must evaluate the effect of fair workweek laws on the populations most harmed by unpredictable and unstable scheduling. Such evaluation is vital to ensure that legal interventions are evidence-based and not perpetuating existing inequities. ○

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# APPENDIX A, RESEARCH PROTOCOL

**Date of Protocol:** Written in August 2021, edited in October 2021

## Scope

A team of three lawyers conducted a pilot legal assessment to capture and analyze observable features of state statutes and regulations, and local ordinances and rules, in a sample of jurisdictions that regulate workplace scheduling.

The report which originated from this research provides an overview of the federal legal landscape, and examines state laws and local ordinances regulating predictable scheduling. Seven jurisdictions — four cities (Seattle, New York City, Chicago, and Philadelphia) and three states (Oregon, New Hampshire, and Tennessee) — were sampled to identify key features of these laws across jurisdictions. In addition to the legal assessment of these seven jurisdictions, the researchers conducted a rapid evidence assessment to identify existing empirical evidence that evaluates the direct effects of fair workweek laws in the sample jurisdictions. Based on this research, the team developed policy recommendations for advocates and policymakers.

## Primary Data Collection

**Project Dates:** May 2021–October 2021

### Dates Covered in this Report

This report broadly discusses the history of laws, when relevant and available, and the legal assessment (which focused on the sample jurisdictions) captured the state of the law as of August 1, 2021.

### Databases Used and Data Collection Methods

The research team consisted of two legal researchers and one supervisor. Westlaw Next, state legislature websites, and city codes and regulations websites were used to conduct a legal scan and identify which jurisdictions had laws in effect as of August 1, 2021, that seek to address unpredictable scheduling. Subject matter experts, Elaine Zundl and Daniel Schneider from the Shift Project, Rachel Deutsch from The Center for Popular Democracy, Laura Narefsky and Julie Vogtman from the National Women's Law Center, and Susan Lambert from the University of Chicago were consulted to assist with defining the scope of the laws included in the legal assessment and to discuss empirical evidence and policy recommendations related to this topic. The research team also conducted internet searches using Google to find secondary sources to supplement their research, including resources developed by [The Center for Popular Democracy](#), the [National Women's Law Center](#), the [Shift Project](#), the [Economic Policy Institute](#), and the [Partnership for Working Families](#).

Once laws were identified, the team performed a legal assessment by conducting extensive, independent research to identify all relevant statutes, regulations, and ordinances in the project's scope. Each jurisdiction was assessed to verify whether they had a law related to the legal provisions (i.e., key legal variables) in scope. The following legal provisions were coded and published throughout the report: advance scheduling notice, good faith estimates of worker hours, a stable schedule requirement, predictability pay, the right to rest between shifts, greater access to hours, the right to request flexible scheduling, anti-retaliation protections, day of rest, reporting pay, split shift, and predictable scheduling preemption.

## Search Terms

### Keyword searches included:

- unpredictable scheduling
- fair workweek
- predictability pay
- right-to-request
- predictive scheduling
- predicatable scheduling
- employee scheduling
- day of rest
- one day rest
- reporting pay
- call-in pay
- split shift
- flexible /3 schedul!
- predictable /3 schedul!

Slight permutations of these keyword searches (to include and exclude quotations and/or dashes) were also used in the search engine (e.g., day of rest and “day of rest”)

The team also reviewed laws that were internally referenced by in-scope laws found through keyword searches. Additionally, the team reviewed surrounding laws by looking at the tables of contents in statutory codes and ordinances to ensure that all relevant laws were captured.

## Inclusion and Exclusion Criteria

The research team included background information on proposed federal legislation regulating workplace scheduling to provide context for the state and local jurisdictional analysis. However, the primary focus on the report is on state and local laws that seek to address unpredictable scheduling in the workplace. The research team excluded U.S. territories.

### The following variables were included:

- **Fair workweek laws:** are also commonly known as predictable scheduling laws. We define these laws as comprehensive packages of protections that specifically target unpredictable scheduling practices and regulate several aspects of worker scheduling. They include all, or a combination of, the specific provisions described below.
  - **Advance scheduling notice:** requires employers to provide employees with notice by releasing written schedules a minimum number of days before the first day of scheduled work.
  - **Stable schedule requirement:** requires employers to provide employees with a stable schedule consisting of a regular, recurring set of shifts that the employee will work each week.
  - **Good faith estimate:** requires employers to provide an estimate of the hours an employee can expect to work from week to week, as well as whether the employee will be expected to work on-call shifts.
  - **Predictability pay:** requires employers to compensate employees for employer-initiated

changes made to the schedule after the advance notice period. New York City uses the term “schedule change premium” instead of predictability pay.

- **Right to rest between shifts:** (“clopening protections”) requires employers to gain the employee’s consent (and sometimes provide additional pay) before scheduling that employee to work two shifts in close succession (e.g., a closing shift and an opening shift the next morning).
- **Greater access to hours:** requires employers to offer open work shifts to existing employees before hiring new employees to fill those shifts.
- **Right to request flexible scheduling:** protects employees from retaliation when they request flexible schedules and sometimes specify that workers may request flexible schedules due to caregiving responsibilities.
- **Anti-retaliation:** prohibits employers from retaliating against employees who exercise any of the rights guaranteed under a fair workweek law.
- **Day of rest:** requires employers to provide one day of rest in a work week for each employee — a 24-hour period where an employee is not required to work.
- **Reporting pay:** requires employers to pay employees for showing up to a shift, even if that employee is sent home without working.
- **Split shift:** require employers to provide additional pay to employees who are required to work “split shifts” — shifts that include a gap of unpaid time on the same day (e.g. a shift requiring work from 11 a.m.–2 p.m. and 4 p.m.–7 p.m.).
- **Preemption:** prevents local governments from enacting laws regulating workplace scheduling.
- **Case law:** (court cases that establish law through precedential decisions) interpreting the meaning, scope, or applicability of statutes and regulations addressing workplace scheduling was included (e.g., see New Hampshire).

The following variables were excluded:

- Part-time parity laws (requiring part-time and full-time workers to be treated equally with respect to pay, benefits) (e.g., San Francisco Retail Workers Bill of Rights)
- “Just cause” protections (requiring employers to have just cause to fire an employee) were broadly excluded; however, these provisions were briefly described where they were part of a fair workweek law (e.g., New York City)
- Domestic Workers’ Bill of Rights laws
- Private employer policies
- Laws applicable to only government employees, police officers, and firefighters
- Laws addressing whether reporting pay counts toward overtime computation
- Laws requiring employers to make reasonable accommodations to employees with respect to religious days of rest and holidays
- When fair workweek laws were challenged in court, but legality of the statute and regulate was upheld, the underlying case law confirming legality was excluded from the report

### Information about the Sample Jurisdictions Included in the Report

The sample jurisdictions were selected based on several factors, including:

- The extent the jurisdiction has laws regulating predictable scheduling. Researchers aimed to choose several jurisdictions with fair workweek laws to demonstrate the differences between

those laws across jurisdictions, as well as one jurisdiction with no fair workweek law but several standalone protections, and one jurisdiction with a restrictive preemption law and no other protections in place.

- The demographic and political makeup of the jurisdiction. Researchers aimed to include jurisdictions with varied levels of racial and ethnic diversity. Researchers also tried to avoid including exclusively progressive jurisdictions.
- The existence of empirical assessments of the laws in that jurisdiction. Researchers aimed to include jurisdictions whose laws have been evaluated for their impact on public health outcomes.
- The geographic location of the jurisdiction. Researchers aimed to include jurisdictions across the United States.

#### Specific selection decisions are described below:

- New York City was selected due to its comprehensive, though narrow, fair workweek ordinance for fast food employees. Additionally, New York City has one of the most demographically diverse populations.
- Philadelphia and Chicago were selected, in part, to demonstrate how jurisdictions formally changed or delayed implementation of their fair workweek laws during the COVID-19 pandemic. Chicago's ordinance also applies to more industries than most other fair workweek laws.
- Oregon was selected because of its unique voluntary standby provision and since it is currently the only state with a comprehensive fair workweek law.
- Tennessee was selected to explore preemption laws that prevent localities from enacting laws that address unpredictable scheduling.
- San Francisco was initially added to our list of jurisdictions during the background/policy research phase of the project. However, after speaking with the *Time's Up, Measure Up* team, we decided that San Francisco would not add much to the current landscape, as we already included several progressive West Coast jurisdictions.
- New Jersey was initially considered as a sample jurisdiction because it has a statewide reporting-pay law. However, after further research, New Hampshire was chosen in place of New Jersey because, in addition to a reporting-pay law, New Hampshire also has a day-of-rest law and a right-to-request law. Further, although both states are in the northeast, New Hampshire is typically viewed politically as a less progressive and more of a “purple” state.
- Seattle was added to the sample of jurisdictions because its predictable scheduling ordinance requires in-depth evaluations of the on-the-ground effects of the ordinance in the first and second year after enactment, and those evaluations provide valuable empirical evidence as to the impact of predictable scheduling laws.

#### Information about Demographic Data Included in the Report

In the background section for each sample jurisdiction, researchers included brief demographic data about that jurisdiction. That data was primarily derived from [2019 ACS 1-year estimated detailed tables](#) showing sex and race of workers by occupation of the civilian population older than 16 years old. Please visit [this website](#) for more information about ACS data definitions and methods.

#### Information about the Rapid Evidence Assessment Included in the Report

In addition to searching for in-scope laws for each sample jurisdiction, the research team also conducted a search for published evaluations assessing the direct effects of those laws. To identify these evaluations, the team conducted searches in legal databases (e.g., Westlaw), in academic databases (e.g., Google Scholar), on state and local legislature websites, and on the internet broadly

(e.g., Google). These searches were supplemented by reviewing references in secondary sources analyzing the health effects of unpredictable scheduling, as well as secondary sources discussing fair workweek laws generally. The team also consulted subject matter experts about past, current, and future evaluations.

## Quality Control

### Research

Two researchers independently conducted legal scans to determine which jurisdictions had enacted laws within the scope of the report. This research was supplemented by reviewing secondary sources. Once the universe of laws were reviewed, the team developed the sampling criteria and selected the seven jurisdictions to include in the report.

The sample of seven jurisdictions were split amongst the two researchers to conduct extensive, independent research to identify all relevant statutes, regulations, ordinances, and rules in the project's scope. Jurisdictional research was supplemented by reviewing secondary sources and consulting with subject matter experts.

### Redundant Research

After the initial background and jurisdiction-specific research was conducted, the researchers flagged areas for consultation and redundant research. Specific redundant research measures are described below.

- To ensure accuracy in the state and local legal landscape section of the report, two researchers independently conducted legal scans to determine:
  - Which states and local jurisdictions had fair workweek laws;
  - Which states had day of rest laws;
  - Which states had reporting pay laws; and
  - Which states had split shift laws.
- Additionally, two researchers independently researched and reviewed the following specific provisions in our sample jurisdictions to ensure all in-scope laws were captured and correctly described:
  - The 2021 amendments to New York City's fair workweek law;
  - New York state's day of rest, reporting pay, and split shift laws;
  - New York City's predictability pay requirements and exceptions;
  - Philadelphia's predictability pay requirements and exceptions;
  - Oregon's predictability pay requirements and exceptions;
  - The applicability of New York City's fair workweek law;
  - The applicability of Philadelphia's fair workweek law; and
  - The applicability of Oregon's fair workweek law.

The final report was closely reviewed by a subset of our subject matter experts, as acknowledged in the body of the report.