INFLEXIBLE SCHEDULING:

How Employees, Employers, and Consumers are Hurt by Predictive Scheduling Laws

The American Consumer Institute
Center for Citizen Research

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Overview

A growing number of states and localities – including Philadelphia, New York City, Washington, D.C., San Francisco, Seattle, Chicago and the state of Oregon – are adopting scheduling mandates that require employers to provide their employees with advance notice of their work schedules (two weeks is common) and be subject to fines if they change employee schedules within certain timeframes.[1] These so-called *predictive scheduling* mandates are spreading quickly, but policymakers should carefully consider their unintended consequences.

Advocates argue that tighter scheduling mandates are needed to deter last minute scheduling changes that can be costly and disruptive to workers. However, these laws severely limit an employer's flexibility to accommodate employee requests for time off, inhibit offers of additional hours for employees who want to pick up extra shifts, and can significantly increase the cost of doing business, especially for small firms.

While many businesses across the U.S. use flexible scheduling to attract and retain employees, as well as to accommodate changing market conditions, predictive scheduling mandates impose an overly restrictive, one-size-fits-all model that would take away the flexibility that workers want and restrict their opportunities to work. Such mandates harm employers and employees of every type and size, raising employment costs, reducing economic output, and deterring job creation.

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[*] The American Consumer Institute is a nonprofit educational and research organization. For more information about the Institute, visit www.TheAmericanConsumer.Org.

[1] "State and City Laws mandate Predictive Employee Scheduling," QuickBooks, T Sheets, Updated January 2018, https://www.tsheets.com/resources/predictive-scheduling-laws.

The Evidence: Scheduling Mandates Equals Work Hours for Jobholders

There's no doubt that last-minute changes to work schedules can be a headache for some workers, but there is no evidence that this is a widespread issue in the U.S., or that predictive scheduling mandates are an appropriate solution. Even without restrictive scheduling requirements, the problem of employees being forced to work an unexpected shift is not pervasive.

Scheduling decisions in American workplaces are more collaborative and sensitive to employee preferences than many advocates of predictive scheduling policies suggest. An exhaustive study of scheduling practices in the retail sector by the University of Chicago interviewed 139 store managers located in midwestern and eastern states and found that about half of changes to posted schedules were employee-initiated; the most common employee-initiated schedule change involved coworkers switching shifts or covering for one another.[2] Eighty-six percent of the managers also said that employee preferences were important in scheduling staff. Moreover, management-initiated changes to posted schedules are infrequent: "The most frequently occurring management-initiated adjustments are reductions in hours when consumer demand is less than anticipated and those made to save hours for future weeks or to recapture additional hours used on a prior day. About a quarter of managers report that they decrease hours weekly or only a few times a month."[3]

A stated goal of predictive scheduling mandates is to encourage employers to hire full-time workers, under the assumption that many part-time employees would rather work full-time if given the opportunity. However, in San Francisco, which passed the nation's first predictive scheduling mandates in 2014, just one in seven part-time workers are estimated to be working that schedule involuntarily. This suggests that predictive scheduling mandates that

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[2] Susan Lambert and Julia Henly, "Work Scheduling Study: Managers' Strategies for Balancing Business Requirements with Employee Needs," University of Chicago School of Social Service Administration, May 2010, https://cpb-us-w2.wpmucdn.com/voices.uchicago.edu/dist/3/1174/files/2018/06/univ_of_chicago_work_scheduling_manager_report_6_25_0-1gq8rxc.pdf.

[3] Ibid.

incentivize employers to rely more on full-time workers may actually run counter to workers' own preferences.[4]

A similar analysis in Washington, D.C., which adopted a predictive scheduling law in 2015, came to similar conclusions.[5] Many hourly employees value the scheduling flexibility that their jobs provide to help them balance going to school, taking care of their families, or working another job. According to the National Retail Federation, 76 percent of former retail employees and 66 percent of current retail employees have taken advantage of flexible scheduling.[6] And 40 percent of retail workers say they've been at their job longer than anticipated because the scheduling flexibility suits their needs.[7]

A study of "CitiSales," an anonymous Fortune 100 retail company, surveyed more than 6,000 employees in 388 stores throughout the country and found that nearly three-quarters of employees reported that they were satisfied or always satisfied with their weekly schedule during the past month. Seventy-six percent of employees reported having some to a lot of input into their weekly schedule, and the same percentage said that their schedule preferences are considered almost always or always."[8]

Employers respond to predictive scheduling mandates by making work schedules more rigid and less adaptable to the dynamic needs of their employees. Workers who previously valued the opportunity to pick up an occasional extra shift on short notice may lose this ability, reducing their income. At the same time, the administrative burdens of complying with the regulations make employers reluctant to hire workers, particularly for part-time, variable-hour

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[4] Aaron Yelowitz and Lloyd Corder, "Weighing Priorities for Part-Time Workers," Employment Policies Institute, May 2016, https://www.epionline.org/wp-content/uploads/2016/05/EPI_WeighingPriorities-32.pdf.

[5] Lloyd Corder and Aaron Yelowitz, "Fairness vs. Flexibility: An Evaluation of the District of Columbia's Proposed Scheduling Regulations," Employment Policies Institute, March 2016, http://www.yelowitz.com/EPI_FairnessFlexibility_v2.pdf.

[6] "Retail's Value on a Resume," National Retail Federation, https://6a83cd4f6d8a17c1b6dd-0490b3ba35823e24e2c50ce7533598b0.ssl.cf1.rackcdn.com/retail-on-a-resume-one-pager.pdf.

[7] "Scheduling," National Retail Federation, Policy Issues, https://nrf.com/on-the-hill/policy-issues/scheduling.

[8] Jennifer Dl Swanberg, Jacquelyn B. James, Mamta U. Ojah, Mac Werner and Sharon P. McKenchnie, "CitiSales Jobs That Work Study," CitiSales, Issue Brief No. 1, undated, https://www.bc.edu/content/dam/files/centers/cwf/research/publications3/researchreports/Introduction%20to%20the%20CitiSales%20Study.

positions – even though, as noted above, the vast majority of part-time workers are satisfied with their schedules. Shift-swapping – which requires extensive documentation under most predictive scheduling laws – is also discouraged, further reducing workers' flexibility.

In addition to reducing scheduling flexibility that many employees value, there is growing evidence that predictive scheduling policies have broader negative effects, especially on small businesses. A survey conducted by the Employment Policy Institute found that businesses affected by scheduling regulations offered fewer jobs, scheduled fewer employees per shift, and reduced customer service.[9]

Employers noted a shift in store culture away from open communication toward more scripted dialogue in order to minimize the risk that their actions could be construed as "coercive" under the ordinance. Employers also argued that the ordinance failed to consider the realities of the retail industry, where labor needs can fluctuate unexpectedly based on sales volume and consumer demand. By limiting employers' ability to adjust staffing levels at short-notice, predictive scheduling policies jeopardized business profitability. Employers also said that the high penalties for violating the ordinance had made them especially careful to avoid situations that could trigger these costs, resulting in last-minute unfilled shifts going unfilled, even when employees were willing to fill them.

Feedback from several employers on San Francisco's predictive scheduling ordinance highlights the policy's real-world impact:

- Employers are unable to adjust staffing levels based upon changes in consumer demand, since offering part-time employees additional hours or reducing hours triggers an obligation to pay costly penalties;

[9] Aaron Yelowitz and Lloyd Corder, "Weighing Priorities for Part-Time Workers: An Early Evaluation of San Francisco's Formula Retail Scheduling Ordinance," Employment Policies Institute, May 2016, https://www.epionline.org/wp-content/uploads/2016/05/EPI_WeighingPriorities-32.pdf.

- Employees do not always know their availability to provide input for a two-week schedule and are frustrated with the hours and days of work they ultimately are provided;
- Part-time employees who want additional hours of work, even last-minute offers, are not getting those hours because of the penalties that employers face; and
- Employee requests for schedule changes after the schedule is posted often cannot be accommodated, and employees are frustrated with the lack of flexibility.[10]

San Francisco's business community is also being harmed. A report by the California Retailers Association in 2015 warned that "the impact upon the local economy could become significant with decreased retail profitability, lower retail sales taxes, and the reduction in work hours and income to employees across the City."[11]

Market incentives already give employers strong reasons to voluntarily adopt advance scheduling practices that balance business needs with workers' scheduling preferences. An employer who consistently calls employees to work on short notice is unlikely to retain a quality workforce or stay in business long. On the other hand, employers who take care to give employees ample notice of scheduling decisions, and input in those decisions, will attract and retain more productive workers. Employers know this very well.

A survey of 200 human resource managers revealed that family-friendly policies, including flexible schedules, are the single most important factor in attracting and retaining employees.[12] Strict government mandates that ignore workers' needs do more harm than

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[10] "Mandated Predictability Jeopardizes Workplace Flexibility," 2018, California Business Issues, CalChamber, January 2018, https://advocacy.calchamber.com/wp-content/uploads/policy/issues-guide/2018/Labor-Employment-Mandated-Predictability-2018.pdf.

[11] Lon Hatamiya, "A Practical Analysis of San Francisco's Predictive Scheduling and Fair Treatment For Formula Retail Employees Ordinance," California's Retailers Association, December 2015, https://www.oregonlegislature.gov/dembrow/WGitemsscheduling/6-23%20Cal%20Retailers%20Assn%20analysis%20of%20SF%20FRERO.pdf.

[12] "Facts About Flexible Schedules," Family Friendly New Mexico Business Toolkit, Undated, https://www.nmfamilyfriendlybusiness.org/wp-content/uploads/2018/02/FlexibleSchedules-FFNM-Fact-Sheet-Jan-2018.pdf.

good. Expanding these policies would be a grave mistake and repealing those that already exist should be a priority for policymakers.

Empirical research shows that employees in retail are overwhelmingly satisfied with their schedules and value the opportunity to make scheduling changes on short notice. In jurisdictions that have adopted predictive scheduling rules, particularly San Francisco, these mandates have caused employers to reduce scheduling flexibility and take defensive precautions to avoid incurring penalties. Moreover, business operations have been negatively affected, leading to fewer jobs and a decline in customer service.

Local Market Impacts

Real-world examples of the unintended consequences that accompany mandated predictive scheduling, including increases in business costs and reductions in employment, are already evident in cities that have recently implemented these regulations.

Seattle

Billed as a way to ensure stable income and consistent hours to low-wage workers, Seattle's predictive scheduling ordinance has backfired. Simone Barron, who works in a full-service restaurant in Seattle, has witnessed the "damaging and limiting effects" of the policy in workplaces around the city. With more than 30 years of experience in the service industry, Barron has bussed tables, washed dishes, supervised staff, and managed businesses. Barron writes:

> "Restrictive scheduling removes the flexibility on which the hospitality industry is built. I've worked in restaurants in cities around the U.S. This career has allowed me to raise a son, pay rent, put myself through school and have the flexibility to pursue my hobbies. Restrictions on how I pick up extra shifts, work a double shift or work the close-open shift will no longer be allowed with my employer being penalized. The barrier will create financial losses, too. I will be unable to work large events or parties if they occur outside

my regular work schedule. This will directly impact my ability to earn a living and provide for my family."[13]

New York

Earlier this year, policymakers in New York State abandoned an effort to require employers to give workers extra "call-in pay" if they were on-call but not asked to come in, sent home early, or had a shift canceled less than 72 hours before it was scheduled to start. The decision came after an outpouring of objections from small and medium-sized businesses. "I learned a lesson many, many years ago," said Bob Duffy, CEO of the Rochester Chamber of Commerce. "Government cannot impact the market. The market will always adjust and make decisions, so as rules come down and put pressure on business owners, they're going to take a step back, because they have to make a profit….I think sometimes when government tries to make a rule, they don't remember or maybe don't understand that a lot of these CEOs and business owners care about their employees like family members and do take steps to do this. They also have to make money and stay in business."[14]

New York City's predictive scheduling ordinance has been challenged in court by a coalition of restaurants arguing that quick-service operators have faced hundreds of thousands of dollars in penalties and have lost control over their ability to hire.[15] "Over the past year, this so-called 'Fair Work Week Law' has resulted in large premium payments, additional administrative costs and increased difficulty providing fast and flexible customer service for the 1,796 affected New York City restaurants," said Matt Haller of the International Franchise Association.[16]

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[13] Simone Barron, "Save restaurant workers from restrictive scheduling practices," *Seattle Times,* February 15, 2019, https://www.seattletimes.com/opinion/save-restaurant-workers-from-restrictive-scheduling-practices/.
[14] Beth Adams, "New York labor department puts predictive scheduling regulations on hold," *WXXI News*, February 28, 2019, https://www.wxxinews.org/post/new-york-labor-department-puts-predictive-scheduling-regulations-hold.
[15] Peter Romeo, "Restaurants lodge court challenge of predictive scheduling," *Restaurant Business*, December 4, 2018, https://www.restaurantbusinessonline.com/workforce/restaurants-lodge-court-challenge-predictive-scheduling.
[16] Ron Ruggless, "Industry groups challenge NYC predictive scheduling law," *Nation's Restaurant News*, December 5, 2018, https://www.nrn.com/workforce/industry-groups-challenge-nyc-predictive-scheduling-law.

San Francisco

To avoid punitive fines, employers often respond to predictive scheduling mandates by making work schedules more rigid and less adaptable to the dynamic needs of their employees. Workers who previously valued the opportunity to pick up an occasional extra shift on short notice may lose this ability, reducing their income.

A study conducted by the Employment Policy Institute surveyed 52 businesses affected by San Francisco's 2014 predictive scheduling ordinance and found that employers were reacting to the policy in a variety of unintended ways, including offering fewer jobs, scheduling fewer employees per shift, and reducing customer service.[17]

Employer Reactions to Predictive Scheduling

Operational Changes Made Since the Adoption of the Scheduling Ordinance	Share of All Retail Businesses (N=52)
Offering employees less flexibility to make schedule changes	35%
Changing the hiring composition of full-time vs. part-time employees	13%
Offering fewer part-time positions	21%
Offering fewer jobs across the board	17%
Scheduling fewer employees per shift	19%
Reducing customer service	6%

An independent report prepared on behalf of the California Retailers Association in 2015 found that San Francisco's ordinance had resulted in difficult challenges for both

[17] Aaron Yelowitz and Lloyd Corder, "Weighing Priorities for Part-Time Workers: An Early Evaluation of San Francisco's Formula Retail Scheduling Ordinance," Employment Policies Institute, May 2016, https://www.epionline.org/wp-content/uploads/2016/05/EPI_WeighingPriorities-32.pdf.

employers and employees.[18] In surveys, employees revealed that they often did not know their own availability two weeks in advance (the predictive scheduling period mandated in the ordinance) and were frustrated that they could not change their schedules or request additional work hours when needed.

State Impacts

Demand and Supply Effects

The cost of predictive scheduling regulation varies tremendously from jurisdiction to jurisdiction, and can be influenced by a number of factors: the number of days required for advance notification of scheduling; the severity and escalation of fines; how is a predictive wage defined and calculated; the handling of overtime; and which industries, hourly occupations and firm sizes are subject to regulations; as well as a host of other factors.

If employers do not follow regulations as planned, they can be subjected to heavy fines. In Oregon, if employers need to call in an employee for coverage on short notice, "employers also must pay workers a fee."[19] New York imposes $500 penalties for first violations, with recurring fees between $750 and $1,000.[20]

On the demand side, predictive scheduling can create scheduling problems for employers in instances of increased or decreased sales and volumes of business. Some employees may gladly volunteer for more hours, but volunteers are often treated by the same predictive scheduling requirements as others. Some employees may close a store one evening and reopen it the next morning, but predictive scheduling regulations may prevent this "clopening," even when these employees want these additional hours. Some employees may want to be on-call, just in case additional hours become available. In these cases, hourly

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[18] Lon Hatamiya, "A Practical Analysis of San Francisco's Predictive Scheduling and Fair Treatment for Formula Retail Employees Ordinance," The Hatamiya Group, December 2015, https://www.oregonlegislature.gov/dembrow/WGitemsscheduling/6-23%20Cal%20Retailers%20Assn%20analysis%20of%20SF%20FRERO.pdf.

[19] Kat Tornone, "Oregon Becomes First State to Require Predictive Scheduling," HRDive, August 10, 2017.

[20] Specific civil penalties are outline in New York City's regulations, at §20-1209.

employees are clearly disadvantaged by these regulations, because they lose an opportunity to work more hours, earn more pay and progress in the business.

Making changes to schedules on short notice due to changes in demand can be costly, as employers may need to pay premiums or guarantee a minimum number of hours or both. As the cost of rescheduling increases, businesses pay more, or they let their customer service falter – both costly choices. As the price of labor increases, employers may choose to operate understaffed.

Alternatively, on the supply side, unexpected events, such as absenteeism, puts pressure on employers to call in employees to cover temporary staffing shortages. In some instances, employees are not sure of their availability to work two weeks in advance. As such, requiring work schedules to be set two weeks in advance could mean these employees are overlooked. In any case, predictive scheduling clearly ties employers' hands from being properly staffed.

Scheduling uncertainty is often caused by absenteeism – including employees that are late to work, have traffic delays and accidents, need to leave early due to a family emergency, unexpected issues involving childcare and elderly relatives, illnesses, conflicts with school and classes, depression, injuries, low morale, job hunting and quitting jobs unannounced. Just like demand-side scheduling pressures, backfilling absenteeism will affect business operations.

Estimation of Costs

To illustrate the potential burden that these rules place on businesses, we measure the cost associated with scheduling employees on short notice due to absenteeism. The cost of absenteeism has been estimated to cost approximately $2,660 per shift worker, and lost U.S. productivity of $225.8 billion per year, according to some reports.[21] With these staggering costs

[21] "Shift Work and Absenteeism: The Bottom Line Killer," Circadian, October 14, 2014, https://circadian.com/blog/item/43-shift-work-absenteeism-the-bottom-line-killer.html; and Craig Fearon, "How Absenteeism is Killing Your Bottom Line," SumTotal Blog, June 19, 2017, https://www.sumtotalsystems.com/blog/2017/06/absenteeism-killing-bottom-line/.

aside, predictive scheduling could require employers to call in unscheduled employees to cover for absent employees. Rules that require a predictive pay, minimum time slots (typically 4 hours of paid time), and other factors could cause employers to incur additional expenses. Simply calling for volunteers to fill in does not remove the requirement for predictive pay. If an ill employee comes in the next day, but the employer finds a backup, a cancellation by the employer in less than a 24-hour period could require pay for the number of hours scheduled or four hours.[22]

Whether employers offer sick pay or not, the inflexibility of scheduling becomes an additional cost of the business as it relates to absenteeism. According to the Bureau of Labor Statistics, the average full-time wage and salary works are absent 2.9 times accounting for a loss of 1.5% of hours usually worked.[23] Taking into account the number of hourly workers in each state and the average hourly wage, we estimate the number of hours lost due to absenteeism, and then apply industry multipliers to gauge the effect on gross state product and jobs.

If we assume that one quarter of these hours are needed to reschedule absent employees and a similar number of costs to compensate for predictive scheduling due to demand requirements, an illustration of the rough magnitude of the costs can be calculated and is presented in Table 4 below. This calculation makes no attempt to estimate the cost of compliance, fines, lost quality of service and other factors, but it is designed to illustrate the relative costs that arise from modest changes in regulations.

The results show that restrictions from flexible scheduling can be costly for both employers and employees. **Table 1** shows that the cost of predictive scheduling may result in a loss of nearly $44 billion in economic output and a loss of a half million jobs. While predictive scheduling may be presented as fair for workers, its unintended consequences spell doom for some businesses and workers.

[22] "Fair Workweek Ordinance," Emeryville, California, Predictability Pay Calculations, as set forth in Section 5-39.04(c), on page 5, part g, http://ci.emeryville.ca.us/1136/Fair-Workweek-Ordinance.
[23] Bureau of Labor Statistics, Labor Force Statistics from the Current Population, 2018, www.bls.gov.

Table 1: Job Losses from Predictive Scheduling
Cost of Managing Fluctuations in Personnel

	Direct Cost ($M)	Output ($M)	Earnings ($M)	Jobs
Alabama	$269	$506	$156	6,667
Alaska	$51	$83	$26	929
Arizona	$458	$895	$285	10,404
Arkansas	$155	$288	$89	3,689
California	$3,117	$6,542	$2,054	65,230
Colorado	$353	$766	$242	8,111
Connecticut	$295	$548	$165	5,319
Delaware	$70	$123	$34	1,271
District of Columbia	$53	$92	$25	956
Florida	$1,138	$2,265	$729	26,919
Georgia	$582	$1,290	$399	15,146
Hawaii	$84	$152	$49	1,682
Idaho	$97	$171	$54	2,273
Illinois	$913	$2,067	$626	19,944
Indiana	$432	$875	$264	10,364
Iowa	$210	$384	$116	4,830
Kansas	$174	$337	$97	3,662
Kentucky	$249	$478	$139	5,308
Louisiana	$244	$446	$141	5,531
Maine	$76	$138	$45	1,723
Maryland	$398	$734	$213	7,245
Massachusetts	$576	$1,108	$335	10,856
Michigan	$695	$1,400	$443	16,976
Minnesota	$437	$934	$287	10,267
Mississippi	$133	$235	$71	3,064
Missouri	$380	$793	$229	9,087
Montana	$61	$101	$32	1,396
Nebraska	$126	$237	$73	2,937
Nevada	$219	$401	$126	4,567
New Hampshire	$103	$185	$55	1,912
New Jersey	$554	$1,142	$333	10,985
New Mexico	$111	$186	$58	2,411
New York	$1,469	$2,762	$812	26,695
North Carolina	$604	$1,242	$385	14,002
North Dakota	$55	$93	$27	1,108
Ohio	$758	$1,621	$494	18,640
Oklahoma	$205	$393	$123	4,713
Oregon	$270	$523	$161	5,615
Pennsylvania	$886	$1,880	$562	20,576
Rhode Island	$72	$129	$37	1,376
South Carolina	$241	$471	$145	5,765
South Dakota	$56	$98	$30	1,267
Tennessee	$397	$863	$260	8,918
Texas	$1,792	$4,065	$1,258	41,192
Utah	$191	$404	$125	4,920
Vermont	$39	$65	$20	806
Virginia	$539	$1,049	$316	11,540
Washington	$593	$1,138	$353	11,737
West Virginia	$97	$157	$46	2,009
Wisconsin	$411	$820	$255	9,992
Wyoming	$36	$55	$17	748
Total	**$21,523**	**$43,731**	**$13,417**	**473,282**

Summary

Predictive scheduling results in many unintended consequences that produce adverse impacts for workers, businesses, and consumers. The qualitative and quantitative analysis presented here show that predictive scheduling is harmful for employers and employees, because it adds a burden to production and reduces flexible scheduling that hourly workers want. The result means lower service quality, lower levels of economic output, fewer hours for workers, fewer jobs, and less pay. As predictive scheduling appears in cities, employers and workers would be wise to move elsewhere.