

# POLICY FOCUS

## Flexible Scheduling

RECIPES FOR RATIONAL GOVERNMENT FROM INDEPENDENT WOMEN'S FORUM

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### WHAT YOU NEED TO KNOW

As much as **17 percent** of the American workforce—which means about 25 million people—have irregular work schedules. They work in shifts or are on-call, which means that employers can assign them to work just shortly before that work period begins. While employers have long used shift workers, in recent years, employers have increasingly used “just-in-time” scheduling. Under this arrangement, employees must be available to work, and it’s up to the managers to decide whether to use them based on business needs.

There are obvious benefits for this approach: It’s efficient, meaning businesses can avoid costs when workers aren’t needed. And businesses can respond when workers request last-minute schedule changes. But just-in-time scheduling can create problems, too. When shifts are added at the last minute, it can be hard for workers to make plans and to have a reliable income. For example, it can be difficult for working parents to juggle childcare arrangements if their work schedule is unpredictable.

Lawmakers have sought to discourage employers from using these arrangements through law and regulation. However, these well-intended efforts can backfire on workers, making it more likely that employers will reduce workers’ hours, and automate and consolidate their workforce in response to higher employment costs. These regulations also overlook how employees benefit from this flexibility.

The best way to help workers is not to micromanage scheduling practices but to focus on job creation so workers can find employment relationships that meet their needs.

## WHY YOU SHOULD CARE

We want workers to have work arrangements that work for them. Unfortunately, regulations discouraging the use of just-in-time scheduling can hurt, rather than help, workers. These measures:

- **Limit Flexibility for Both Workers and Employers:** Often it's employees, rather than business managers, who request last-minute changes to schedules for personal reasons. Regulations that make it more difficult for businesses to change schedules will be less likely to be able to provide workers with the flexibility they need.
- **Lead to Fewer Hours and Lower Pay for Workers:** Forcing businesses to pay more anytime they have to change schedules without sufficient notice will encourage businesses to use fewer employees. Since most shift workers want more work and more opportunity to earn, this can create real hardship.
- **Result in Fewer Jobs:** Businesses faced with higher employment costs will look for opportunities to automate and consolidate jobs, particularly reducing part-time and lower paid positions. This is a big loss to people who are looking to get their foot in the door and build work experience.

A better way to help workers with unpredictable schedules would be to maximize options for workers in a strong, growing labor market.

## MORE INFORMATION

### Shift Workers and Scheduling Issues

Although **estimates vary**, as much as **17 percent** of American workers have irregular work schedules. They work in shifts or are on-call to work if their bosses need them. These workers disproportionately have **lower incomes**; women account for about **four in ten** full-time shift workers and nearly seven in ten part-time shift workers. Use of irregular shift workers is especially popular in service industries, where businesses need more flexibility to respond to seasonal needs and consumer demand.

Increasingly, businesses are also employing what is known as “just-in-time” scheduling. Businesses decide at the last minute, based on their business needs, whether they want a worker to show up for his or her shift. They can require that workers be available for that shift, but will not guarantee that they will use them; workers are paid for the time that they actually work, not for making themselves available.

The upsides of this approach for businesses are clear: Businesses reduce employment costs because they spend less money on workers who aren't needed. They have less risk of losing money when business is slow, making them more likely to succeed and profit.

There are upsides for workers, too: For example, if a worker has a sick child and is unable to work, the employer can accommodate this

request more easily when other workers are immediately available to cover the shift.

But this approach also has clear downsides for workers. Standing by for a shift can greatly inconvenience workers: It means they cannot travel too far from their workplace during their on-call hours or make other plans. When shifts are added at the last minute, it can be hard for working parents to find child care. When shifts are canceled, parents may be on the hook to pay for child care they no longer need. Therefore it's no surprise that shift/on-call workers are **much more likely** than regular-hour workers to report experiencing work-family conflict often. Workers may also end up working fewer hours than they need to make ends meet.

## Lawmakers Attempt to Protect Workers

Recognizing these challenges, lawmakers in some cities and even states are taking action to prevent the practice of just-in-time flexible scheduling.

**San Francisco** became first city to enact regulations to discourage just-in-time scheduling in 2015. New regulations require employers to pay workers if their schedules are changed with less than a week's notice.

Likewise, **Seattle's "secure scheduling" ordinance**, which took effect on July 1, 2017, closely resembles the San Francisco ordinance, except that employers must provide schedules to workers at least two weeks in advance. Seattle took the ordinance a step further, stipulating that workers receive additional wages for any changes

made to the schedule during the two-week period, even if a worker calls in sick.

Lastly, the **suite of regulations in New York**, known as **"Fair Work Week" legislation** targets restaurant chains and requires that fast-food employees receive their schedules two weeks in advance or employers will face a penalty between \$10 to \$75.

On August 8, 2017, **Oregon** became the first state to enact a "predictable scheduling" law. Beginning in July 2018, Oregon employers must give workers at least one week's notice before a scheduled shift. By 2020, employers will have to provide at least two week's notice or pay a worker double-time anytime shifts are added, moved to another time or date, or extended by 30 minutes or longer. If a worker's hours are reduced or if a shift is removed within the two-week advance period, the employer must pay 50 percent of the worker's regular rate of pay for each hour *not* worked.

Many labor activists plan to push similar regulations in other states. As, **Hannah Taube**, a spokeswoman for the Oregon Working Families Party, put it: "We hope Oregon is the first of many states to expand scheduling protections for workers."

The ultimate goal for the backers of these regulations, though, is a nationwide law. Sen. Elizabeth Warren and Rep. Rosa DeLauro **recently introduced a new bill** at the national level similar to Oregon's that would require employers to give workers their scheduled shifts at least two weeks in advance or face penalties.

Proponents argue these policies will provide employees with more predictability in their schedules as well as a stable paycheck, but they overlook how these measures inadvertently harm workers.

## Flexibility Is a Two-Way Street

When lawmakers propose restricting last-minute scheduling changes, they presume that it is always employers imposing changes on employees, and that employees would prefer to have their schedule fixed.

Yet flexibility is a two-way street. Christian Britschgi explained in an article for [Reason](#) that the penalty would not only be levied on businesses responding to their own business realities, but also employers responding to requests from employees:

The penalty might be triggered by the request of an employee, according to a University of Washington (UW) [study](#) commissioned to measure the impact of Seattle’s “secure scheduling” ordinance. The study found 80 percent of managers had within the previous two weeks of being surveyed changed schedules at the request of employees.

The reasons were as simple as illness (28 percent), recreation time (18.6 percent), or caring for a sick child (18 percent).

“Flexibility is a benefit all our employees enjoy,” one West Seattle manager told survey takers. “Employees’ needs dictate our schedule.” Penalties for changing schedules on short notice,

the manager said, would “take control of schedules away from the workers.”

Research suggests that’s what has happened in San Francisco. In a survey and study conducted by the [Employment Policy Institute](#), 35 percent of businesses admitted that they had responded to the regulation by offering their employees less flexibility in making scheduling changes.

Some officials have tried to mitigate this problem by giving companies exemptions from having to pay penalties when employees request the change in writing and allowing them to maintain a list of employees who volunteer to fill in for last-minute changes. However, managers faced with additional red tape and legal concerns will still have far less incentive to accommodate employees’ scheduling requests.

## Fewer Jobs and Lower Earnings

Employers faced with these new restrictions will find new ways to control their employment costs. This means that they will move more quickly to automate, so they have to employ fewer workers overall. This is a particular risk in the fast food and retail industries—which have been an important source of first jobs for teenagers and those looking to develop an employment history. As the cost of employment goes up, and the risks and headaches with managing a shift workforce increase, businesses will have a growing incentive to use more technology and fewer workers.

Employers will also change the mix of workers, seeking to hire fewer, more highly skilled employees in the place of part-time positions. Having fewer workers, and more full-time workers rather than part-time workers, reduces the risks associated with rescheduling. That can be good news for the few full-time workers, but bad news for those who prefer a part-time schedule while they go to school, spend time caring for family, or who are newly entering the workforce.

The Employment Policy Institute's study confirmed that businesses are taking these actions in San Francisco in response to the new rules: 21 percent of businesses reported offering fewer part-time positions; 17 percent reported offering fewer positions overall; 19 percent were scheduling fewer workers per shift; and six percent were sacrificing customer service. These cuts to hours and to employment opportunities are particularly troubling since most workers cite too little work and not enough earnings opportunities as their biggest challenges.

Even **Seattle City Council** recognized the unintended consequences of these regulations, and how they can inadvertently backfire on workers, writing:

A more predictable schedule, for example, is not always one that an employee would prefer. A schedule known with certainty is a cold comfort if it yields too little income to survive. Likewise, a schedule regulated to guarantee sufficient rest time runs the

risk of leaving some workers insufficient opportunity to earn a living.

There is a better solution: Focus efforts on making it easier, rather than harder, for businesses to grow and hire more workers so that people can find work opportunities—whether that is full-time or part-time shift work or a regularly scheduled position—that meet their unique needs.

### Better Ways to Help Workers

It's tempting to try to solve workers' problems—whether it's too-low wages or erratic work schedules—with laws and regulations. Yet as we've seen with these scheduling provisions, as with minimum wage laws, there are unintended consequences that backfire on workers, leaving them with less flexible workplaces and fewer earning opportunities.

Lawmakers should recognize that rather than trying to micromanage employment practices, they can better help workers by focusing on growing the economy to increase the number of jobs available so that all workers can find an employment situation that works for them. In a stronger labor market, employers would have to compete to attract workers by offering them better pay, hours, and benefits.

State and local lawmakers ought to look at simplifying and lowering taxes, and rolling back regulations such as licensing regimes that make it harder for people to enter new industries or start businesses as well as minimum wage laws, paid-leave mandates, or health insurance mandates that make hiring workers more expensive. These changes would reduce the cost of doing business, leaving employers with more to spend on their workforce.

## WHAT YOU CAN DO

- **Get Informed:** Learn more about flexible scheduling laws. Visit:
  - [Independent Women's Forum](#)
  - [Employment Policy Institute](#)
  - [Reason](#)
- **Talk to Your Friends:** Help your friends and family understand these important issues. Tell them about what's going on and encourage them to join you in getting involved.
- **Become a Leader in the Community:** Get a group together each month to talk about a political/

policy issue (it will be fun!). Write a letter to the editor. Show up at local government meetings and make your opinions known. Go to rallies. Better yet, organize rallies! A few motivated people can change the world.

- **Remain Engaged Politically:** Too many good citizens see election time as the only time they need to pay attention to politics. We need everyone to pay attention and hold elected officials accountable. Let your Representatives know your opinions. After all, they are supposed to work for you!

## ABOUT INDEPENDENT WOMEN'S FORUM

Independent Women's Forum (IWF) is dedicated to building support for free markets, limited government, and individual responsibility.

IWF, a non-partisan, 501(c)(3) research and educational institution, seeks to combat the too-common presumption that women want and benefit from big government, and build awareness of the ways that women are better served by greater economic freedom. By aggressively seeking earned media, providing easy-to-read, timely publications and commentary, and reaching out to the public, we seek to cultivate support for these important principles and encourage women to join us in working to return the country to limited, Constitutional government.

We rely on the support of people like you! Please visit us on our website [www.iwf.org](http://www.iwf.org) to get more information and consider making a donation to IWF.

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