

**SUBSTITUTE AMENDMENT TO THE AMENDMENT IN  
THE NATURE OF A SUBSTITUTE TO H.R. 3459  
OFFERED BY MS. BONAMICI**

Strike all after the enacting clause and insert the following:

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

2 (a) **SHORT TITLE.**—This Act may be cited as the  
3 “Schedules That Work Act”.

4 (b) **FINDINGS.**—Congress finds the following:

5 (1) The vast majority of the United States  
6 workforce today is juggling responsibilities at home  
7 and at work. Women are primary breadwinners or  
8 co-breadwinners in 63 percent of families in the  
9 United States.

10 (2) Despite the dual responsibilities of today’s  
11 workforce, both hourly and salaried workers often  
12 have little ability to make changes to their work  
13 schedules when those changes are needed to accom-  
14 modate family responsibilities.

15 (3)(A) Low-wage working mothers are more  
16 likely to be raising children on their own than high-  
17 er-wage working mothers. For example, more than  
18 half of mothers in low-wage jobs who have very

1 young children are single parents, compared to less  
2 than one-third of all working mothers who have very  
3 young children.

4 (B) At the same time, low-wage workers have  
5 the least control over their work schedules and the  
6 most unpredictable schedules. For example—

7 (i) roughly half of low-wage workers re-  
8 ported very little or no control over the timing  
9 of the hours they were scheduled to work;

10 (ii)(I) many workers in low-wage jobs re-  
11 ceive their work schedules with very little ad-  
12 vance notice; and

13 (II) 41 percent of workers who are ages 26  
14 through 32 (referred to in this section as “early  
15 career workers”) in hourly jobs report getting  
16 their work schedules a week or less in advance;

17 (iii) some workers in low-wage jobs are  
18 sent home from work when work is slow with-  
19 out being paid for their scheduled shift;

20 (iv)(I) many employers have adopted “just-  
21 in-time” scheduling, which bases workers’  
22 schedules on perceived consumer demand and  
23 often results in workers being given very little  
24 advance notice of their work schedules; and

1 (II) in some industries, the use of “call-in  
2 shift” requirements—requirements that workers  
3 call in to work to find out whether they will be  
4 scheduled to work later that day—have become  
5 common practice; and

6 (v)(I) 20 to 30 percent of workers in low-  
7 wage jobs struggle with being required to work  
8 extra hours with little or no notice; and

9 (II) in a typical month, for the 74 percent  
10 of early-career workers in hourly jobs who re-  
11 port fluctuations in their work hours, those  
12 hours typically fluctuate by more than an 8-  
13 hour day of work and pay per week.

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

16 (A) provide necessary care for children and  
17 other family members, including securing and  
18 maintaining stable child care;

19 (B) access and receive needed care for the  
20 workers’ own serious health conditions;

21 (C) pursue workforce training;

22 (D) get or keep a second job, which many  
23 part-time workers need to make ends meet;

24 (E) plan for and access transportation to  
25 reach worksites; and

1 (F) qualify for and maintain eligibility for  
2 needed public benefits and work supports, such  
3 as child care subsidies and benefits under the  
4 supplemental nutrition assistance program, due  
5 to fluctuations in income and work hours.

6 (5) Twenty-six percent of workers on irregular  
7 or on-call schedules and 19 percent of workers on  
8 rotating or split shift schedules experience work-fam-  
9 ily conflict, as compared to 11 percent of workers on  
10 regular work schedules.

11 (6) Unpredictable and unstable schedules are  
12 common in a wide range of occupations, including  
13 food preparation and service, retail sales, and clean-  
14 ing occupations. According to data from the Bureau  
15 of Labor Statistics for early-career adults, 64 per-  
16 cent of food service workers, 50 percent of retail  
17 workers, and 40 percent of cleaning workers know  
18 their schedules only a week or less in advance. The  
19 average variation between the least and most hours  
20 worked in a single month is 70 percent for food  
21 service workers, 50 percent for retail workers, and  
22 40 percent for cleaning workers.

23 (7) Food service workers, retail workers, and  
24 cleaning workers are among the lowest-paid workers.  
25 The median pay for workers in those 3 occupations

1 is between \$9.20 and \$10.57 per hour, and women  
2 make up more than half of the workers in those oc-  
3 cupations. Workers in those occupations account for  
4 nearly 18 percent of workers in the economy, which  
5 is more than 24,000,000 workers.

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

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

16 **SEC. 2. DEFINITIONS.**

17 As used in this Act:

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

20 (A) the identifiable burden of additional  
21 costs to an employer, including the cost of pro-  
22 ductivity loss, retraining or hiring employees, or  
23 transferring employees from one facility to an-  
24 other facility;

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

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

8 (D) a significant detrimental effect on  
9 business performance;

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

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

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

20 (2) CAREER-RELATED EDUCATIONAL OR TRAIN-  
21 ING PROGRAM.—The term “career-related edu-  
22 cational or training program” means an educational  
23 or training program or program of study offered by  
24 a public, private, or nonprofit career and technical  
25 education school, institution of higher education, or

1 other entity that provides academic education, career  
2 and technical education, or training (including reme-  
3 dial education or English as a second language, as  
4 appropriate), that is a program that leads to a rec-  
5 ognized postsecondary credential (as identified under  
6 section 122(d) of the Workforce Innovation and Op-  
7 portunity Act), and provides career awareness infor-  
8 mation. The term includes a program allowable  
9 under the Workforce Innovation and Opportunity  
10 Act (29 U.S.C. 3101 et seq.), the Carl D. Perkins  
11 Career and Technical Education Act of 2006 (20  
12 U.S.C. 2301 et seq.), or the Higher Education Act  
13 of 1965 (20 U.S.C. 1001 et seq.), without regard to  
14 whether or not the program is funded under the cor-  
15 responding Act.

16 (3) CAREGIVER.—The term “caregiver” means  
17 an individual with the status of being a significant  
18 provider of—

19 (A) ongoing care or education, including  
20 responsibility for securing the ongoing care or  
21 education, of a child; or

22 (B) ongoing care, including responsibility  
23 for securing the ongoing care, of—

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

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

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

10 (A) under age 18; or

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

13 (5) COMMERCE TERMS.—The terms “com-  
14 merce” and “industry or activity affecting com-  
15 merce” have the meanings given the terms in section  
16 101 of the Family and Medical Leave Act of 1993  
17 (29 U.S.C. 2611).

18 (6) COVERED EMPLOYER.—

19 (A) IN GENERAL.—The term “covered em-  
20 ployer”—

21 (i) means any person engaged in com-  
22 merce or in any industry or activity affect-  
23 ing commerce who employs 15 or more em-  
24 ployees (described in paragraph (9)(A));

1 (ii) includes any person who acts, di-  
2 rectly or indirectly, in the interest of such  
3 an employer to any of the employees (de-  
4 scribed in paragraph (9)(A)) of such em-  
5 ployer;

6 (iii) includes any successor in interest  
7 of such an employer; and

8 (iv) includes an agency described in  
9 subparagraph (A)(iii) of section 101(4) of  
10 the Family and Medical Leave Act of 1993  
11 (29 U.S.C. 2611(4)), to which subpara-  
12 graph (B) of such section shall apply.

13 (B) RULE.—For purposes of determining  
14 the number of employees who work for a person  
15 described in subparagraph (A)(i), all employees  
16 (described in paragraph (9)(A)) performing  
17 work for compensation on a full-time, part-time,  
18 or temporary basis shall be counted, except that  
19 if the number of such employees who perform  
20 work for such a person for compensation fluc-  
21 tuates, the number may be determined for a  
22 calendar year based upon the average number  
23 of such employees who performed work for the  
24 person for compensation during the preceding  
25 calendar year.

1           (C) PERSON.—In this paragraph, the term  
2           “person” has the meaning given the term in  
3           section 3 of the Fair Labor Standards Act of  
4           1938 (29 U.S.C. 203).

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

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

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

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

20                (B) a State employee described in section  
21                304(a) of the Government Employee Rights Act  
22                of 1991 (42 U.S.C. 2000e–16c(a));

23                (C) a covered employee, as defined in sec-  
24                tion 101 of the Congressional Accountability

1 Act of 1995 (2 U.S.C. 1301), other than an ap-  
2 plicant for employment;

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

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

8 (F) an employee of the Library of Con-  
9 gress; or

10 (G) an employee of the Government Ac-  
11 countability Office.

12 (10) EMPLOYER.—The term “employer” means  
13 a person—

14 (A) who is—

15 (i) a covered employer, as defined in  
16 paragraph (6), who is not described in any  
17 of clauses (ii) through (vii);

18 (ii) an entity employing a State em-  
19 ployee described in section 304(a) of the  
20 Government Employee Rights Act of 1991;

21 (iii) an employing office, as defined in  
22 section 101 of the Congressional Account-  
23 ability Act of 1995;

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

4 (v) an employing agency covered  
5 under subchapter V of chapter 63 of title  
6 5, United States Code;

7 (vi) the Librarian of Congress; or

8 (vii) the Comptroller General of the  
9 United States; and

10 (B) who is engaged in commerce (including  
11 government), in the production of goods for  
12 commerce, or in an enterprise engaged in com-  
13 merce (including government) or in the produc-  
14 tion of goods for commerce.

15 (11) FAMILY RELATIONSHIP.—The term “fam-  
16 ily relationship” means a relationship with—

17 (A) a child, spouse, domestic partner, par-  
18 ent, grandchild, grandparent, sibling, or parent  
19 of a spouse or domestic partner; or

20 (B) any individual related to the employee  
21 involved by blood or affinity, whose close asso-  
22 ciation with the employee is the equivalent of a  
23 family relationship described in subparagraph  
24 (A).

1           (12) GRANDCHILD.—The term “grandchild”  
2 means the child of a child.

3           (13) GRANDPARENT.—The term “grandparent”  
4 means the parent of a parent.

5           (14) MINIMUM NUMBER OF EXPECTED WORK  
6 HOURS.—The term “minimum number of expected  
7 work hours” means the minimum number of hours  
8 an employee will be assigned to work on a weekly or  
9 monthly basis.

10          (15) NONEXEMPT EMPLOYEE.—The “non-  
11 exempt employee” means an employee who is not  
12 employed in a bona fide executive, administrative, or  
13 professional capacity, as defined for purposes of sec-  
14 tion 13(a)(1) of the Fair Labor Standards Act of  
15 1938 (29 U.S.C. 213(a)(1)).

16          (16) PARENT.—The term “parent” means a bi-  
17 ological or adoptive parent, a stepparent, or a person  
18 who stood in a parental relationship to an employee  
19 when the employee was a child.

20          (17) PARENTAL RELATIONSHIP.—The term  
21 “parental relationship” means a relationship in  
22 which a person assumed the obligations incident to  
23 parenthood for a child and discharged those obliga-  
24 tions before the child reached adulthood.

1           (18) PART-TIME EMPLOYEE.—The term “part-  
2           time employee” means an individual who works  
3           fewer than 30 hours per week on average during any  
4           1-month period.

5           (19) RETAIL, FOOD SERVICE, OR CLEANING EM-  
6           PLOYEE.—The term “retail, food service, or cleaning  
7           employee” means an individual nonexempt employee  
8           who is employed in any of the following occupations,  
9           as described by the Bureau of Labor Statistics  
10          Standard Occupational Classification System (as in  
11          effect on the day before the date of enactment of  
12          this Act):

13                (A) Retail sales occupations consisting of  
14                occupations described in 41–1010 and 41–  
15                2000, and all subdivisions thereof, of such Sys-  
16                tem, which includes first-line supervisors of  
17                sales workers, cashiers, gaming change persons  
18                and booth cashiers, counter and rental clerks,  
19                parts salespersons, and retail salespersons.

20                (B) Food preparation and serving related  
21                occupations as described in 35–0000, and all  
22                subdivisions thereof, of such System, which in-  
23                cludes supervisors of food preparation and serv-  
24                ing workers, cooks and food preparation work-  
25                ers, food and beverage serving workers, and

1 other food preparation and serving related  
2 workers.

3 (C) Building cleaning occupations as de-  
4 scribed in 37–2011, 37–2012 and 37–2019 of  
5 such System, which includes janitors and clean-  
6 ers, maids and housekeeping cleaners, and  
7 building cleaning workers.

8 (20) SECRETARY.—The term “Secretary”  
9 means the Secretary of Labor.

10 (21) SERIOUS HEALTH CONDITION.—The term  
11 “serious health condition” has the meaning given  
12 the term in section 101 of the Family and Medical  
13 Leave Act of 1993 (29 U.S.C. 2611).

14 (22) SIBLING.—The term “sibling” means a  
15 brother or sister, whether related by half blood,  
16 whole blood, or adoption, or as a stepsibling.

17 (23) SPLIT SHIFT.—The term “split shift”  
18 means a schedule of daily hours in which the hours  
19 worked are not consecutive, except that—

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

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

1 (24) SPOUSE.—

2 (A) IN GENERAL.—The term “spouse”  
3 means a person with whom an individual en-  
4 tered into—

5 (i) a marriage as defined or recog-  
6 nized under State law in the State in  
7 which the marriage was entered into; or

8 (ii) in the case of a marriage entered  
9 into outside of any State, a marriage that  
10 is recognized in the place where entered  
11 into and could have been entered into in at  
12 least 1 State.

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

17 (25) STATE.—The term “State” has the mean-  
18 ing given the term in section 3 of the Fair Labor  
19 Standards Act of 1938 (29 U.S.C. 203).

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

1           (27) WORK SCHEDULE CHANGE.—The term  
2           “work schedule change” means any modification to  
3           an employee’s work schedule, such as an addition or  
4           reduction of hours, cancellation of a shift, or a  
5           change in the date or time of a work shift, by an  
6           employer.

7           (28) WORK SHIFT.—The term “work shift”  
8           means the specific hours of the workday during  
9           which an employee works.

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

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

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

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

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

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

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

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

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

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

11 (A) either granting or denying the request;

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

18 (C) in the event of a denial, stating the  
19 reason for denial, including whether any such  
20 reason is a bona fide business reason.

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

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

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

1 **SEC. 4. REQUIREMENTS FOR REPORTING TIME PAY, SPLIT**  
2 **SHIFT PAY, AND ADVANCE NOTICE OF WORK**  
3 **SCHEDULES FOR RETAIL, FOOD SERVICE,**  
4 **CLEANING, OR SECRETARY'S DESIGNATED**  
5 **EMPLOYEES.**

6 (a) REPORTING TIME PAY REQUIREMENT.—An em-  
7 ployer shall pay a retail, food service, or cleaning employee  
8 or a designated employee, in an additional occupation des-  
9 ignated by the Secretary, under section 8(a)(2) as appro-  
10 priate for coverage under this Act (referred to in this Act  
11 as “a retail, food service, cleaning, or Secretary’s des-  
12 ignated employee”)—

13 (1) for at least 4 hours at the regular rate of  
14 pay of the employee involved for each day on which  
15 the retail, food service, cleaning, or Secretary’s des-  
16 ignated employee reports for work, as required by  
17 the employer, but is given less than four hours of  
18 work, except that if the employee’s scheduled hours  
19 for a day are less than 4 hours, such employee shall  
20 be paid for the scheduled hours of the employee in-  
21 volved for that day if given less than the scheduled  
22 hours of work; and

23 (2) for at least 1 hour at the regular rate of  
24 pay of the employee involved for each day the retail,  
25 food service, cleaning, or Secretary’s designated em-  
26 ployee is given specific instructions to contact the

1 employer of the employee involved, or wait to be con-  
2 tacted by the employer, less than 24 hours in ad-  
3 vance of the start of a potential work shift to deter-  
4 mine whether the employee must report to work for  
5 such shift.

6 (b) SPLIT SHIFT PAY REQUIREMENT.—An employer  
7 shall pay a retail, food service, cleaning, or Secretary’s  
8 designated employee for one additional hour at the em-  
9 ployee’s regular rate of pay for each day during which the  
10 employee works a split shift.

11 (c) ADVANCE NOTICE REQUIREMENT.—

12 (1) INITIAL SCHEDULE.—On or before a new  
13 retail, food service, cleaning, or Secretary’s des-  
14 ignated employee’s first day of work, the employer  
15 shall inform the employee in writing of the work  
16 schedule of the employee involved and the minimum  
17 number of expected work hours the employee will be  
18 assigned to work per month.

19 (2) PROVIDING NOTICE OF NEW SCHEDULES.—  
20 Except as provided in paragraph (3), if a retail, food  
21 service, cleaning, or Secretary’s designated employ-  
22 ee’s work schedule changes from the work schedule  
23 of which the employee was informed pursuant to  
24 paragraph (1), the employer shall provide the em-  
25 ployee with the new work schedule of the employee

1 involved not less than 14 days before the first day  
2 of the new work schedule. If the expected minimum  
3 number of work hours that a retail, food service,  
4 cleaning, or Secretary's designated employee will be  
5 assigned changes from the number of which the em-  
6 ployee involved was informed pursuant to paragraph  
7 (1), the employer shall also provide notification of  
8 that change, not less than 14 days in advance of the  
9 first day this change will go into effect. Nothing in  
10 this subsection shall be construed to prohibit an em-  
11 ployer from providing greater advance notice of a re-  
12 tail, food service, cleaning, or Secretary's designated  
13 employee's work schedule than is required under this  
14 section.

15 (3) WORK SCHEDULE CHANGES MADE WITH  
16 LESS THAN 24 HOURS' NOTICE.—An employer may  
17 make work schedule changes as needed, including by  
18 offering additional hours of work to retail, food serv-  
19 ice, cleaning, or Secretary's designated employees  
20 beyond those previously scheduled, but an employer  
21 shall be required to provide one extra hour of pay  
22 at the employee's regular rate for each shift that is  
23 changed with less than 24 hours' notice, except in  
24 the case of the need to schedule the employee due  
25 to the unforeseen unavailability of a retail, food serv-

1 ice, cleaning, or Secretary's designated employee  
2 previously scheduled to work that shift.

3 (4) NOTIFICATIONS IN WRITING.—The notifica-  
4 tions required under paragraphs (1) and (2) shall be  
5 made to the employee involved in writing. Nothing  
6 in this subsection shall be construed as prohibiting  
7 an employer from using any additional means of no-  
8 tifying a retail, food service, cleaning, or Secretary's  
9 designated employee of the work schedule of the em-  
10 ployee involved.

11 (5) SCHEDULE POSTING REQUIREMENT.—Every  
12 employer employing any retail, food service, clean-  
13 ing, or Secretary's designated employee, subject to  
14 this Act shall post the schedule and keep it posted  
15 in a conspicuous place in every establishment where  
16 such employee is employed so as to permit the em-  
17 ployee involved to observe readily a copy. Availability  
18 of that schedule by electronic means accessible by all  
19 retail, food service, cleaning, or Secretary's des-  
20 ignated employees, of that employer shall be consid-  
21 ered compliance with this subsection.

22 (6) EMPLOYEE SHIFT TRADING.—Nothing in  
23 this subsection shall be construed to prevent an em-  
24 ployer from allowing a retail, food service, cleaning,  
25 or Secretary's designated employee to work in place

1 of another employee who has been scheduled to work  
2 a particular shift as long as the change in schedule  
3 is mutually agreed upon by the employees. An em-  
4 ployer shall not be subject to the requirements of  
5 paragraph (2) or (3) for such voluntary shift trades.

6 (d) **PAY STUB TRANSPARENCY.**—Any pay provided  
7 to an employee pursuant to subsection (a), (b), or (c)(3)  
8 (referred to in this paragraph as “additional pay”) shall  
9 be included in the employee’s regular paycheck. The em-  
10 ployer shall identify, in the corresponding written wage  
11 statement or pay stub, the total number of hours of addi-  
12 tional pay provided for the pay period involved and wheth-  
13 er the additional pay was due to the requirements of sub-  
14 section (a)(1), the requirements of subsection (a)(2), the  
15 requirements of subsection (b), or the requirements of  
16 subsection (c)(3).

17 (e) **EXCEPTION.**—The requirements in subsections  
18 (a) through (d) shall not apply during periods when reg-  
19 ular operations of the employer are suspended due to  
20 events beyond the employer’s control.

21 **SEC. 5. PROHIBITED ACTS.**

22 (a) **INTERFERENCE WITH RIGHTS.**—It shall be un-  
23 lawful for any employer to interfere with, restrain, or deny  
24 the exercise or the attempt to exercise, any right of an  
25 employee as set forth in section 3 or of a retail, food serv-

1 ice, cleaning, or Secretary's designated employee as set  
2 forth in section 4.

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

15 (c) INTERFERENCE WITH PROCEEDINGS OR INQUIR-  
16 IES.—It shall be unlawful for any person to discharge or  
17 in any other manner discriminate against any individual  
18 because such individual—

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

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

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

4 **SEC. 6. REMEDIES AND ENFORCEMENT.**

5           (a) INVESTIGATIVE AUTHORITY.—

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

12          (2) OBLIGATION TO KEEP AND PRESERVE  
13          RECORDS.—Each employer shall make, keep, and  
14          preserve records pertaining to compliance with this  
15          Act in accordance with regulations issued by the  
16          Secretary under section 8.

17          (3) REQUIRED SUBMISSIONS GENERALLY LIM-  
18          ITED TO AN ANNUAL BASIS.—The Secretary shall  
19          not under the authority of this subsection require  
20          any employer to submit to the Secretary any books  
21          or records more than once during any 12-month pe-  
22          riod, unless the Secretary has reasonable cause to  
23          believe there may exist a violation of this Act or any  
24          regulation or order issued pursuant to this Act, or  
25          is investigating a charge pursuant to subsection (c).

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

6           (b) CIVIL ACTION BY EMPLOYEES.—

7           (1) LIABILITY.—Any employer who violates sec-  
8           tion 5(a) (with respect to a right set forth in sub-  
9           section (a), (b), or (c)(3) of section 4) or subsection  
10          (b) or (c) of section 5 (referred to in this section as  
11          a “covered provision”) shall be liable to any em-  
12          ployee affected for—

13                   (A) damages equal to the amount of—

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

20                           (ii) in a case in which wages, salary,  
21                           employment benefits (as so defined), or  
22                           other compensation have not been denied,  
23                           lost, or owed to the employee, any actual  
24                           monetary losses sustained by the employee  
25                           as a direct result of the violation;

1           (B) interest on the amount described in  
2           subparagraph (A) calculated at the prevailing  
3           rate;

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

18          (D) such equitable relief as may be appro-  
19          priate, including employment, reinstatement,  
20          and promotion.

21          (2) RIGHT OF ACTION.—An action to recover  
22          the damages or equitable relief set forth in para-  
23          graph (1) may be maintained against any employer  
24          (including a public agency) in any Federal or State

1 court of competent jurisdiction by any one or more  
2 employees for and on behalf of—

3 (A) the employees; or

4 (B) the employees and other employees  
5 similarly situated.

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

11 (4) LIMITATIONS.—The right provided by para-  
12 graph (2) to bring an action by or on behalf of any  
13 employee shall terminate on the filing of a complaint  
14 by the Secretary in an action under subsection (c)(3)  
15 in which a recovery is sought of the damages de-  
16 scribed in paragraph (1)(A) owing to an employee by  
17 an employer liable under paragraph (1) unless the  
18 action described is dismissed without prejudice on  
19 motion of the Secretary.

20 (c) ACTIONS BY THE SECRETARY.—

21 (1) ADMINISTRATIVE ACTION.—The Secretary  
22 shall receive, investigate, and attempt to resolve  
23 complaints of violations of this Act in the same man-  
24 ner that the Secretary receives, investigates, and at-  
25 tempts to resolve complaints of violations of sections

1       6 and 7 of the Fair Labor Standards Act of 1938  
2       (29 U.S.C. 206 and 207), and may issue an order  
3       making determinations, and assessing a civil penalty  
4       described in paragraph (3) (in accordance with para-  
5       graph (3)), with respect to such an alleged violation.

6           (2) ADMINISTRATIVE REVIEW.—An affected  
7       person who takes exception to an order issued under  
8       paragraph (1) may request review of and a decision  
9       regarding such an order by an administrative law  
10      judge. In reviewing the order, the administrative law  
11      judge may hold an administrative hearing con-  
12      cerning the order, in accordance with the require-  
13      ments of sections 554, 556, and 557 of title 5,  
14      United States Code. Such hearing shall be conducted  
15      expeditiously. If no affected person requests such re-  
16      view within 60 days after the order is issued under  
17      paragraph (1), the order shall be considered to be a  
18      final order that is not subject to judicial review.

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

21           (A) paragraph (1), (2), (4), or (5) of sec-  
22      tion 4(c), or section 4(d), shall be subject to a  
23      civil penalty in an amount to be determined by  
24      the Secretary, but not to exceed \$100 per viola-  
25      tion; and

1 (B) subsection (b) or (c) of section 5 shall  
2 be subject to a civil penalty in an amount to be  
3 determined by the Secretary, but not to exceed  
4 \$1,100 per violation.

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

8 (A) restrain violations of this Act;

9 (B) award such equitable relief as may be  
10 appropriate, including employment, reinstatement,  
11 and promotion; and

12 (C) in the case of a violation of a covered  
13 provision, recover the damages and interest described  
14 in subparagraphs (A) through (C) of  
15 subsection (b)(1).

16 (d) LIMITATION.—

17 (1) IN GENERAL.—Except as provided in paragraph  
18 (2), an action may be brought under this section  
19 not later than 2 years after the date of the last  
20 event constituting the alleged violation for which the  
21 action is brought.

22 (2) WILLFUL VIOLATION.—In the case of such  
23 action brought for a willful violation of section 5,  
24 such action may be brought within 3 years of the

1 date of the last event constituting the alleged viola-  
2 tion for which such action is brought.

3 (3) COMMENCEMENT.—In determining when an  
4 action is commenced by the Secretary under this  
5 section for the purposes of this subsection, it shall  
6 be considered to be commenced on the date when the  
7 complaint is filed.

8 (e) OTHER ADMINISTRATIVE OFFICERS.—

9 (1) BOARD.—In the case of employees described  
10 in section 2(9)(C), the authority of the Secretary  
11 under this Act shall be exercised by the Board of Di-  
12 rectors of the Office of Compliance.

13 (2) PRESIDENT; MERIT SYSTEMS PROTECTION  
14 BOARD.—In the case of employees described in sec-  
15 tion 2(9)(D), the authority of the Secretary under  
16 this Act shall be exercised by the President and the  
17 Merit Systems Protection Board.

18 (3) OFFICE OF PERSONNEL MANAGEMENT.—In  
19 the case of employees described in section 2(9)(E),  
20 the authority of the Secretary under this Act shall  
21 be exercised by the Office of Personnel Management.

22 (4) LIBRARIAN OF CONGRESS.—In the case of  
23 employees of the Library of Congress, the authority  
24 of the Secretary under this Act shall be exercised by  
25 the Librarian of Congress.

1           (5) COMPTROLLER GENERAL.—In the case of  
2           employees of the Government Accountability Office,  
3           the authority of the Secretary under this Act shall  
4           be exercised by the Comptroller General of the  
5           United States.

6 **SEC. 7. NOTICE AND POSTING.**

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

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

19 **SEC. 8. REGULATIONS.**

20          (a) SECRETARY OF LABOR.—

21                (1) IN GENERAL.—Except as provided in sub-  
22          sections (b) through (f), not later than 180 days  
23          after the date of enactment of this Act, the Sec-  
24          retary shall issue such regulations as may be nec-  
25          essary to implement this Act.

1           (2) REGULATIONS REGARDING ADDITIONAL OC-  
2           CUPATIONS TO BE COVERED.—

3           (A) IN GENERAL.—In carrying out para-  
4           graph (1), the Secretary shall issue regulations  
5           that specify a process the Secretary will follow  
6           to identify and designate additional occupa-  
7           tions, for purposes of section 4(a), that are ap-  
8           propriate for coverage under this Act. Non-  
9           exempt employees in such occupations shall be  
10          considered to be designated employees for pur-  
11          poses of this Act.

12          (B) CRITERIA.—The regulations shall pro-  
13          vide that the Secretary shall so designate an  
14          additional occupation—

15                 (i) in which not less than 10 percent  
16                 of workers employed in the occupation gen-  
17                 erally—

18                         (I) receive advance notice of their  
19                         work schedules less than 14 days be-  
20                         fore the first day of the work sched-  
21                         ules; or

22                         (II) experience fluctuations in the  
23                         number of hours the employees are  
24                         scheduled to work on a daily, weekly,  
25                         or monthly basis; or

1 (ii) for which the Secretary deter-  
2 mines such designation is appropriate.

3 (C) DATA REVIEW.—In issuing the regula-  
4 tions, the Secretary shall specify the process by  
5 which the Department of Labor will review data  
6 from stakeholders, and data collected or gen-  
7 erated by the Department, in making those des-  
8 ignations.

9 (b) BOARD.—

10 (1) IN GENERAL.—Not later than 180 days  
11 after the date of enactment of this Act, the Board  
12 of Directors of the Office of Compliance shall issue  
13 such regulations as may be necessary to implement  
14 this Act with respect to employees described in sec-  
15 tion 2(9)(C). The procedures applicable to regula-  
16 tions of the Board issued for the implementation of  
17 the Congressional Accountability Act of 1995 (2  
18 U.S.C. 1301 et seq.), prescribed in section 304 of  
19 that Act (2 U.S.C. 1384), shall be the procedures  
20 applicable to regulations issued under this sub-  
21 section.

22 (2) CONSIDERATION.—In prescribing the regu-  
23 lations, the Board shall take into consideration the  
24 enforcement and remedies provisions concerning the  
25 Board, and applicable to rights and protections

1 under the Family and Medical Leave Act of 1993  
2 (29 U.S.C. 2611 et seq.), under the Congressional  
3 Accountability Act of 1995 (2 U.S.C. 1301 et seq.).

4 (3) MODIFICATIONS.—The regulations issued  
5 under paragraph (1) to implement this Act shall be  
6 the same as substantive regulations issued by the  
7 Secretary to implement this Act, except to the extent  
8 that the Board may determine, for good cause  
9 shown and stated together with the regulations  
10 issued by the Board, that a modification of such  
11 substantive regulations would be more effective for  
12 the implementation of the rights and protections  
13 under this Act.

14 (c) PRESIDENT.—

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

20 (2) CONSIDERATION.—In prescribing the regu-  
21 lations, the President shall take into consideration  
22 the enforcement and remedies provisions concerning  
23 the President and the Merit Systems Protection  
24 Board, and applicable to rights and protections

1 under the Family and Medical Leave Act of 1993,  
2 under chapter 5 of title 3, United States Code.

3 (3) MODIFICATIONS.—The regulations issued  
4 under paragraph (1) to implement this Act shall be  
5 the same as substantive regulations issued by the  
6 Secretary to implement this Act, except to the extent  
7 that the President may determine, for good cause  
8 shown and stated together with the regulations  
9 issued by the President, that a modification of such  
10 substantive regulations would be more effective for  
11 the implementation of the rights and protections  
12 under this Act.

13 (d) OFFICE OF PERSONNEL MANAGEMENT.—

14 (1) IN GENERAL.—Not later than 180 days  
15 after the date of enactment of this Act, the Office  
16 of Personnel Management shall issue such regula-  
17 tions as may be necessary to implement this Act  
18 with respect to employees described in section  
19 2(9)(E).

20 (2) CONSIDERATION.—In prescribing the regu-  
21 lations, the Office shall take into consideration the  
22 enforcement and remedies provisions concerning the  
23 Office under subchapter V of chapter 63 of title 5,  
24 United States Code.

1           (3) MODIFICATIONS.—The regulations issued  
2           under paragraph (1) to implement this Act shall be  
3           the same as substantive regulations issued by the  
4           Secretary to implement this Act, except to the extent  
5           that the Office may determine, for good cause shown  
6           and stated together with the regulations issued by  
7           the Office, that a modification of such substantive  
8           regulations would be more effective for the imple-  
9           mentation of the rights and protections under this  
10          Act.

11          (e) LIBRARIAN OF CONGRESS.—

12           (1) IN GENERAL.—Not later than 180 days  
13           after the date of enactment of this Act, the Librar-  
14           ian of Congress shall issue such regulations as may  
15           be necessary to implement this Act with respect to  
16           employees of the Library of Congress.

17           (2) CONSIDERATION.—In prescribing the regu-  
18           lations, the Librarian shall take into consideration  
19           the enforcement and remedies provisions concerning  
20           the Librarian of Congress under title I of the Fam-  
21           ily and Medical Leave Act of 1993 (29 U.S.C. 2611  
22           et seq.).

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

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

8 (f) COMPTROLLER GENERAL.—

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

14 (2) CONSIDERATION.—In prescribing the regu-  
15 lations, the Comptroller General shall take into con-  
16 sideration the enforcement and remedies provisions  
17 concerning the Comptroller General under title I of  
18 the Family and Medical Leave Act of 1993.

19 (3) MODIFICATIONS.—The regulations issued  
20 under paragraph (1) to implement this Act shall be  
21 the same as substantive regulations issued by the  
22 Secretary to implement this Act, except to the extent  
23 that the Comptroller General may determine, for  
24 good cause shown and stated together with the regu-  
25 lations issued by the Comptroller General, that a

1 modification of such substantive regulations would  
2 be more effective for the implementation of the  
3 rights and protections under this Act.

4 **SEC. 9. RESEARCH, EDUCATION, AND TECHNICAL ASSIST-**  
5 **ANCE PROGRAM AND SURVEYS.**

6 (a) IN GENERAL.—The Secretary shall provide infor-  
7 mation and technical assistance to employers, labor orga-  
8 nizations, and the general public concerning compliance  
9 with this Act.

10 (b) PROGRAM.—In order to achieve the objectives of  
11 this Act—

12 (1) the Secretary, acting through the Adminis-  
13 trator of the Wage and Hour Division of the Depart-  
14 ment of Labor, shall issue guidance on compliance  
15 with this Act regarding providing a flexible, predict-  
16 able, or stable work environment through changes in  
17 the terms and conditions of employment as provided  
18 in section 3(a); and

19 (2) the Secretary shall carry on a continuing  
20 program of research, education, and technical assist-  
21 ance, including—

22 (A)(i) conducting pilot programs that im-  
23 plement fairer work schedules, including by pro-  
24 moting cross training, providing three weeks or  
25 more advance notice of schedules, providing em-

1 employees with a minimum number of hours of  
2 work, and using computerized scheduling soft-  
3 ware to provide more flexible, predictable, and  
4 stable schedules for employees; and

5 (ii) evaluating the results of such pilot pro-  
6 grams for employees, employee's families, and  
7 employers;

8 (B) publishing and otherwise making avail-  
9 able to employers, labor organizations, profes-  
10 sional associations, educational institutions, the  
11 various communication media, and the general  
12 public the findings of studies regarding fair  
13 work scheduling policies and other materials for  
14 promoting compliance with this Act;

15 (C) sponsoring and assisting State and  
16 community informational and educational pro-  
17 grams; and

18 (D) providing technical assistance to em-  
19 ployers, labor organizations, professional asso-  
20 ciations, and other interested persons on means  
21 of achieving and maintaining compliance with  
22 the provisions of this Act.

23 (c) CURRENT POPULATION SURVEY.—The Secretary,  
24 acting through the Commissioner of the Bureau of Labor

1 Statistics, and the Director of the Bureau of the Census  
2 shall—

3 (1) include in the Current Population Survey  
4 questions on—

5 (A) the amount of fluctuation in the num-  
6 ber of hours the employee is scheduled to work  
7 on a daily, weekly or monthly basis;

8 (B) the extent of advance notice an em-  
9 ployee receives of the employee's work schedule;  
10 and

11 (C) the extent to which an employee has  
12 input in the employee's work schedule; and

13 (2) conduct at regular intervals the Contingent  
14 Worker Supplement, the Work Schedules and Work  
15 at Home Supplement, and other relevant supple-  
16 ments (as determined by the Secretary), to the Cur-  
17 rent Population Survey.

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

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

1 **SEC. 11. EXEMPTION.**

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

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

7 (a) **IN GENERAL.**—Nothing in this Act shall be con-  
8 strued as superseding, or creating or imposing any re-  
9 quirement in conflict with, any Federal, State, or local  
10 regulation or other law (including the Americans with Dis-  
11 abilities Act of 1990 (42 U.S.C. 12101 et seq.), the Fam-  
12 ily and Medical Leave Act of 1993 (29 U.S.C. 2611 et  
13 seq.), the National Labor Relations Act (29 U.S.C. 151  
14 et seq.), the Fair Labor Standards Act of 1938 (29 U.S.C.  
15 201 et seq.), and title VII of the Civil Rights Act of 1964  
16 (42 U.S.C. 2000e et seq.)).

17 (b) **RELATIONSHIP TO COLLECTIVE BARGAINING**  
18 **RIGHTS.**—Nothing in this Act shall be construed to dimin-  
19 ish or impair the rights of an employee under any valid  
20 collective bargaining agreement.

