

**SUBSTITUTE AMENDMENT TO THE AMENDMENT IN
THE NATURE OF A SUBSTITUTE TO H.R. 1180
OFFERED BY *Mr. DeSaulnier***

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 fluctuates,
21 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(e).

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.



