

## A Cure for Just-In-Time Scheduling

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Charlotte Alexander, Anna Haley-Lock, and Nantiya Ruan, *Stabilizing Low-Wage Work: Legal Remedies for Unpredictable Work Hours and Income Instability*, 50 **Harv. C.R.-C.L. L. Rev.** 1 (2015) available at [SSRN](#).

Many readers were introduced to the concept of “just-in-time scheduling” when the *New York Times* explored the exhausting and chaotic work life of a Starbucks barista in August 2014. But the practice is certainly not limited to Starbucks. In response to this broader trend, groups like “OUR Walmart” are calling not only for higher wages and more full-time jobs, but for predictable and dependable scheduling, and left-leaning states and cities are beginning to mandate predictable work schedules for at least some workers. This emerging locus of advocacy and media attention is also the subject of [Stabilizing Low-Wage Work](#), a great new article by [Charlotte Alexander](#), [Anna Haley-Lock](#), and [Nantiya Ruan](#). The article analyzes comprehensively not only the problem of “just-in-time” scheduling for low-wage workers, but also the potential for either collective bargaining or state and local law to solve that problem.

Adapted from the practice of just-in-time manufacturing, just-in-time scheduling refers to the now-common practice of adjusting staffing levels in response to current conditions. While it is a problem for workers with many types of jobs, it has particularly taken hold in the service sector where, the article reports, “almost 30 percent of workers” have schedules with “variable start and end times.” Moreover, as the article shows, modern technology has made just-in-time scheduling attractive; employers can monitor and anticipate customer demand in close to real-time, sending workers home or canceling their shifts altogether if potential customers are staying home. Conversely, employers may want to call people in at a moment’s notice; this requires employees to wait by the phone, but seldom results in on-call pay. Federal law, particularly the Fair Labor Standards Act, does little to address this problem; when that law was drafted, the greater problem was that employers frequently demanded excessively long hours from workers.

A particular strength of this article is the way it braids workers’ voices with empirical research, creating an compelling picture of the havoc that erratic scheduling can wreak on workers’ lives. Among these harms are some that readers would probably expect—lost time with family, childcare emergencies, insufficient income—and some that might be more surprising, including the risk that workers can drop below the threshold number of work hours required for TANF and childcare subsidy benefits when they are repeatedly sent home from scheduled shifts.

What is the solution? The article points to two responses already in place for some sets of workers but far too little-known. First, collective bargaining agreements often guarantee that workers are compensated for last-minute schedule changes, though their provisions may be subject to limiting interpretations by arbitrators. Interestingly, the authors show that American CBAs are much more employer-friendly than some of their international counterparts; remarkably, Danish and German CBAs require that retail employers provide notice of 16 and 26 weeks, respectively, of workers’ schedules.

Second, some states have call-in and/or send-home pay provisions. However, the authors note a paucity of case law interpreting these provisions (especially call-in pay laws), offering a “likely explanation” that

“these laws are little-used and call-in pay rights under-enforced.” But the problems with these solutions do not end there—reflecting painstaking research, the authors show that even where states have adopted both call-in and send-home pay legislation, coverage is generally spotty, exceptions are numerous, and remedies are weak. Moreover, these statutes address just-in-time scheduling by providing disincentives but do not actually ban the practice or affirmatively guarantee workers a predictable schedule or a guaranteed number of work hours. And, perversely, these laws generally apply only when workers already have something resembling an established schedule; they do not provide protections from the most egregious scheduling practices, such as requiring workers to call in early in the morning to find out if they will work later that day.

Thus, the authors suggest a handful of common-sense reforms. They include: strengthening and broadening guaranteed pay provisions in state laws and CBAs; amending the FLSA to penalize employers’ use of fluctuating schedules; adopting a DOL interpretation of “on-call time” under the FLSA that would encompass workers who are unexpectedly called into work; and strengthening current union and worker campaigns for secure schedules. Certainly some of these proposals are more likely to come to pass than others in the current political environment, but that is a feature of the article, rather than a bug: it identifies multiple levers that would have maximum impact if all pulled together, but that will still help workers when pulled individually.

Some of the growing number of states and cities that have been focused on raising their minimum wages have now also turned their attention to the problem of erratic scheduling. This article will be valuable not only to advocates, but also to legislators in search of solutions and model language. (To the latter, I particularly commend the detailed tables at the end of the article, which list each state’s call-in and send-home pay laws, and from which I learned that Connecticut is alone in specifically protecting employees of “beauty shops” from last-minute call-ins or send-homes.) In sum, this article is a remarkably timely exploration of a significant problem, and also a joy to read.

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