

Persistent Unpredictability

Assessing the Impacts
of Oregon's Employee
Work Schedules Law

Lola Loustaunau,
Larissa Petrucci,
Ellen Scott,
and Lina Stepick

University of Oregon





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Executive Summary

In 2017, Oregon passed the first statewide legislation to regulate unpredictable scheduling practices in retail, food service, and hospitality establishments that employ more than 500 workers worldwide. To examine the initial impact of the new scheduling law in Oregon, in the summer of 2019, our University of Oregon Labor Education and Research Center (LERC) and Sociology Department research team conducted in-depth interviews with 75 workers and 23 managers and schedulers in businesses across the state that are affected by the new requirements of the law.¹ Below, we provide brief findings on how our respondents experience each component of the law.

Findings:

Workers are experiencing some improvements in scheduling due to the law:

Right to Rest Between Shifts, which requires employers to schedule workers with at least 10 hours between their shifts, to avoid ‘clopening’ shifts that prevent workers from getting adequate rest, has been implemented across industries.

Input into Work Schedule (Right to Request) allows workers to identify limitations or changes in work schedule availability without retaliation. Though we found workers generally have the right to request, many workers maintain open availability to the extent possible because they need more hours.

Advance Notice of Work Schedules, which requires employers to provide written work schedules 7 calendar days before the first day of the work schedule, has been implemented fairly consistently. Effective July 1, 2020, 14 days advance notice will be required.

Continued scheduling challenges:

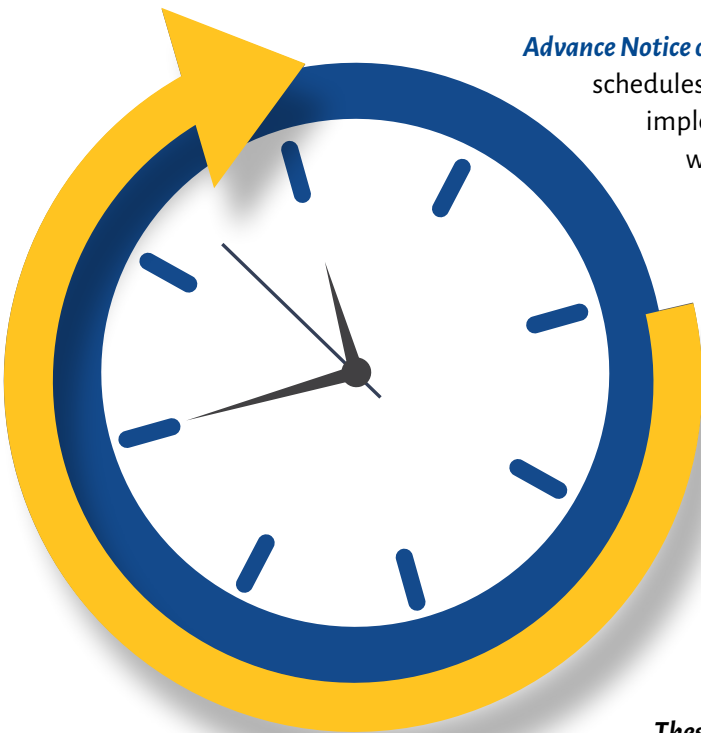
Frequent Last Minute Schedule Changes: Workers reported receiving changes in their schedules within the 7 day window, ranging from a couple of times each month to every day. Predictability pay was designed in part to discourage such last minute changes, or to compensate workers when such changes are necessary, but this appears compromised by the exceptions that allow schedule changes without such compensation.

Avoiding Paying Workers Predictability Pay: Though the law requires that workers be compensated for last minute schedule changes, companies strongly discourage managers from paying predictability pay and use a variety of mechanisms to avoid it.

These include:

- **Voluntary Standby List:** SB 828 includes a provision that allows employers to ask workers to sign a voluntary standby list indicating their willingness to work additional hours. Workers who sign this list are not entitled to be compensated for

¹ Additionally, we followed up with a representative sample of our original worker respondents in the last two weeks of April 2020 to learn how workers are navigating the COVID-19 crisis. Findings from these follow-up interviews will be shared in a forthcoming brief.





last minute work schedule changes. Managers told us that they were instructed to encourage workers to sign on to the voluntary standby list to avoid predictability pay and other requirements of the law. One manager shared their experience of being instructed by their company's human resources about how to "**combat the whole thing [the requirements of the law].... The standby list was the biggest thing they were offering. So we can have people that want more hours or want to be on call when there's other hours that are there, they can be on that standby list. So that was a large part of kind of getting around the new system.**"

- **One-Off Waivers of Predictability Pay for Each Schedule Change:** Many workers reported being asked to sign a form stating that they voluntarily changed their schedule, waiving predictability pay each time their schedule was changed. Several workers reported that they felt they had no choice but to sign the waivers because they needed the hours.
- **Requesting Workers to 'Volunteer' for Schedule Changes:** Many workers and managers shared that their managers request that workers 'volunteer' to accept employer-initiated last minute schedule changes to stay late, come in early, or leave earlier than they had originally been scheduled to work. As long as the requests are framed as the employee's choice and used the words 'volunteer' or 'voluntarily,' then managers shared that they believed that meant the employer is exempt from predictability pay.

Finally, we found some particular circumstances that the law did not address, which led to challenges for workers:

Inadequacy of Hours: Companies consistently schedule workers for fewer hours than they need, which increases the pressure workers feel to accept last minute schedule changes. A manager of one retail store shared that they believe that most of their workers are on the voluntary standby list "because they're hungry for the hours." Without adequate hours, many workers said their priority was getting more hours rather than receiving compensation for last minute changes.

Lack of Knowledge about and Challenges with Enforcement of the Law: We found that understandings and interpretations of the law varied widely--for both workers and managers--particularly with respect to predictability pay and the voluntary standby list. We found that the primary way that workers hear about the law is from their managers, but many managers do not know details about the law and numerous workers had not heard about several provisions of the law. Workers who had tried to advocate for enforcement had difficulty getting a response from the state enforcement agency, which lacks adequate resources for comprehensive, proactive enforcement.

Introduction

Oregon Senate Bill 828:

In 2017, Oregon passed the first statewide legislation to regulate unpredictable scheduling practices in retail, food service, and hospitality establishments that employ more than 500 workers worldwide. While the law does not directly target some of the most difficult aspects of unpredictable scheduling, including a guarantee of minimum work hours or consistent days and shifts, the other provisions of the law, including advance notice and predictability pay to compensate workers for last minute schedule changes, are intended to lead to less variation in schedules from week to week.

The passage and rulemaking processes for SB 828 were guided by stakeholder input from both business and labor interests. Business groups mobilized to oppose the passage of SB828 and were successful in securing significant changes to the law in the final weeks before its passage. These changes include that the requirement of 14 days advance notice of schedules was phased in more gradually with 7-days notice required for the first year of implementation, the scope of the businesses covered was narrowed from companies with 50 employees to those with 500 or more employees globally, and a voluntary standby list provision was added. Business stakeholders emphasized that these changes made SB828 substantially more amenable to businesses, while workers and worker advocates stressed that these large concessions effectively undermine the original intent of the law to stabilize workers' schedules.

To examine the initial impact of the new scheduling law in Oregon, in the summer of 2019, we conducted in-depth interviews with 75 workers and 23 managers and supervisors who have scheduling responsibilities in businesses across the state that are affected by the new requirements of the law. Below, we provide brief findings on how our respondents experience each component of the law.

Retail, Food Services, and Hospitality Workers in Oregon:²

SB828 covers Oregon workers in retail, food services, and hospitality companies with 500 or more employees globally. In Oregon, together these industries overall represent about 20% of the workforce, with the largest share being in retail. Nearly 78% of workers in these industries are frontline workers, while about 13% are first-line supervisors and 9% are upper level managers and involved in business and finance. For this report

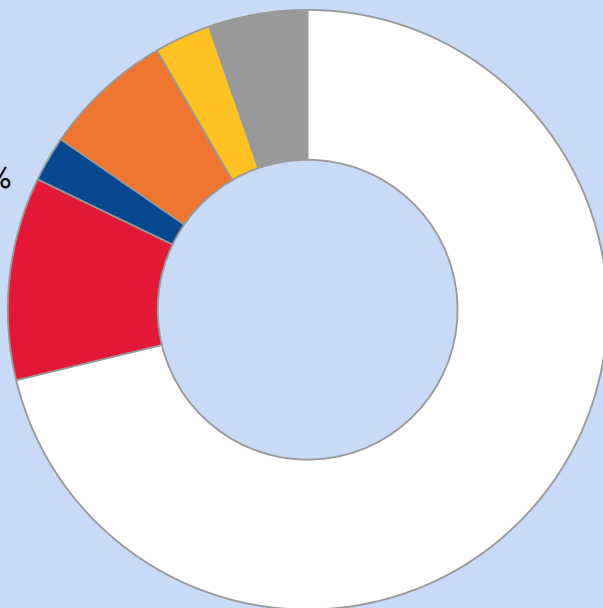


“we can have people that want more hours or want to be on call when there’s other hours that are there, they can be on that standby list. So that was a large part of kind of getting around the new system.”

² These statistics are weighted and were retrieved from: Steven Ruggles, Sarah Flood, Ronald Goeken, Josiah Grover, Erin Meyer, Jose Pacas and Matthew Sobek. IPUMS USA: Version 10.0 American Community Survey 2014-2018 5-Year Sample. Minneapolis, MN: IPUMS, 2020.

Race/Ethnicity of Frontline Workers in Retail, Food Services, and Hospitality in Oregon

- White 71.2%
- Latinx 10.9%
- Black 2.5%
- Asian/Pacific Islander 7%
- Native American 3.1%
- Other 5.3%



we interviewed frontline workers and department and store-level managers so we focus on these categories here.

The average age for Oregon workers in these industries is 31 years old for frontline workers and 39 years old for supervisors. About 42% of frontline workers have college degrees and about 50% of supervisors do. The majority of frontline workers in these industries in Oregon are women (51%), while the majority of supervisors are men (53%). 29% of frontline workers and 38% of supervisors have children in the household.

Advance Notice of Work Schedules requires employers to provide written work schedules 7 calendar days before the first day of work. Effective July 1, 2020, 14 days advance notice is required.

We found the advance notice requirement to be comparatively uncontroversial and widely practiced across union and nonunion workplaces. Many of the workers we interviewed reported that they had gotten their schedules more than 7 days in advance **prior** to SB 828. After SB 828, most could count on advance notice and they reported it was helpful in planning their lives.

However, we also found that some employers use the law to increase restrictions on workers' scheduling requests beyond what is legally required. Workers reported that their managers now expect them to provide requests for schedule changes farther in advance (sometimes four weeks out), are less inclined to consider requests that interfere with the company's advance notice requirements (even if the request is more than 7 days in advance), and some managers communicate that shift trades are no longer allowed under the new law, though trades are an important tool to accommodate short-notice scheduling needs.

A worker in the hospitality sector explained:

"We used to be able to get someone to cover our shift. But now they're saying that's not something we do anymore; we're not allowing it because of the law. Which is ... It's not in there anywhere. It's just something for control that they're trying to implement."

Employers have interpreted SB 828 differently, with some imposing strict scheduling restrictions on workers. A union grocery store department manager said the company he works for has made specific changes in scheduling procedures, beyond what is required by the law, making the process much more cumbersome:

“We used to be able to get someone to cover our shift. But now they’re saying that’s not something we do anymore; we’re not allowing it because of the law. Which is ... It’s not in there anywhere. It’s just something for control that they’re trying to implement.”

“There are changes in how we write the schedule. Now it’s two weeks out so Friday we have the next week out, but it’s really almost 3 weeks out because of the timing...We can’t switch shifts and if we change a shift or when I punch out I have to sign a paper saying I don’t want the predictability pay. Each time they have to go in and unlock the system, make the change, fill out the forms, and relock the system. So it’s extra time. If it’s a request way in advance like 2 or 3 weeks out we can work with it, but it’s an issue.”

Even though the law does not restrict worker flexibility in requesting schedule changes, a respondent working in retail reported that after the passage of SB 828, his manager required workers to make requests for time off three and even more weeks in advance:

“The three week window to request days off has increased to a seven week window for no apparent reason, no info has been given on that. So now, we are currently at a point where we have to request any time off seven weeks in advance.”

Persistence of Last Minute Schedule Changes Due to Understaffing

Advance notice requirements **did establish much more regular and consistent 7 day advance notice of schedules across affected industries**, as the law intended.

Despite more consistent advance notice of schedules, as legislators anticipated, workers still experience frequent schedule changes. Workers reported receiving changes within the 7 day window, ranging from a couple of times each month to every day. This was true for both union and nonunion workers, though union workers were more likely to report experiences of predictable schedules.

Frequent and last minute schedule changes in retail, food service, and hospitality are due to sector requirements to reduce labor costs, which often result in understaffing. Managers overwhelmingly reported that they are not allotted sufficient labor hours each week to appropriately staff their departments. One manager in retail explained:

“The biggest challenge with scheduling is not enough hours, like corporate doesn’t provide us with enough hours. It’s mathematically impossible.”

Managers also reported an incentive to reduce labor hours in a given quarter. A manager in retail explained that when creating the schedule, he is expected to meet a certain sales projection while also meeting targets for reduced labor costs. The system incentivizes him to ‘bank labor’ (meaning save money by reducing labor costs):

“If I bank all this labor, it will help me as far as being in bonus contention because it will go into my bottom line.”

Understaffing makes it challenging to handle last minute schedule changes due to what one manager called “the human factor.” Workers get sick, experience family emergencies, call out at the last minute, or quit.

“The biggest challenge with scheduling is not enough hours, like corporate doesn’t provide us with enough hours. It’s mathematically impossible.”



“A couple of days ago, I was scheduled from 8:30-1:30. Someone had to go home. I ended up staying till 4:30. I didn’t have much of a heads up about that. She just kind of asked me on the spot, ‘Can you stay?’”

Systematic understaffing constrains managers’ ability to deal with unanticipated changes, thus they continue to rely on last minute schedule changes.

Employers must still fill shifts the day before or the same day, and many managers request that workers come in early or leave later than expected.

A food service worker told us:

“If I had the day off, 90% of the time I would get called in at another store. When somebody quit, [workers] ended up working 10 hour shifts, two days in a row.”

A retail worker said:

“A couple of days ago, I was scheduled from 8:30-1:30. Someone had to go home. I ended up staying till 4:30. I didn’t have much of a heads up about that. She just kind of asked me on the spot, ‘Can you stay?’”

A retail worker, when asked how often he had to stay later than he had been scheduled to work said:

“Pretty much every day.... From like 10 minutes to like an hour. We’re short staffed and the closers don’t get there until 2:15, so I usually just wait for the closers to get there.”

Although these workers know that, in theory, they have the right to decline these requests, their need for more hours, and their loyalty to co-workers and sometimes to their managers, means that in practice they usually do not say no to last minute schedule changes.

Predictability pay and voluntary standby list

In anticipation of the need for last minute schedule changes, legislators established in SB 828 a provision for **predictability pay**, which requires employers to compensate workers when management changes a written work schedule without at least seven days advance notice. From our interviews, we have found that schedule changes without sufficient advance notice abound, but this compensation is rarely paid.

Almost half of the workers we interviewed did not know anything about predictability pay requirements. Slightly more than half were aware of predictability pay, but most reported **not** receiving predictability pay when management changes their schedules at the last minute.

There were a variety of mechanisms through which employers ensure adequate staffing levels through last minute schedule changes while *avoiding* paying predictability pay. These include the use of a voluntary standby list, asking workers to “volunteer” to stay or leave, or using predictability pay waivers for unexpected shifts.



1. Voluntary Standby List

SB 828 includes a provision that allows employers to ask workers to sign a **voluntary standby list** indicating their willingness to work additional hours. By signing this list, the law indicates that workers are not entitled to be compensated for last minute work schedule changes.

Slightly over half of all workers we interviewed said their employers used a standby list to fill schedule openings. In our sample, union workers were more likely to have voluntary standby lists in their workplaces. Most of the workers who were aware of predictability pay also knew that they relinquished their right to compensation by signing on to the voluntary standby list.

Managers also reported that they were instructed to encourage workers to sign on to the voluntary standby list to avoid predictability pay and other requirements of the law. A manager shared their experience of being instructed by their company's human resources to:

“combat the whole thing [the requirements of the law]....The standby list was the biggest thing they were offering. So we can have people that want more hours or want to be on call when there's other hours that are there, they can be on that standby list. So that was a large part of kind of getting around the new system.”

Some workers said that they felt they had no choice about whether or not to sign the voluntary standby list. In many cases workers felt that signing the list was the only way to be scheduled for enough hours. A retail worker told us,

“They call you to come in, they actually make you sign a form that they're supposed to pay you an hour extra, but they make you sign the form so they don't have to.... We had to do it.”

When asked if this worker considered not signing the form, she said she had not:

“They'd just say that they don't want you to be called in.”

Another worker at a different retail store told us,

“I felt like we were pressured to sign, to be on the standby list, so that they can call us without paying us.”

Some union workers discussed efforts to organize coworkers at their store to collectively refuse to sign on to the voluntary standby list. However, their employer countered that even if no one signed on to the list they would still have the right to call workers in at the last minute for compelling business needs, without paying them predictability pay. Union representatives counter that this undermines the intent of the law, and only under unexpected catastrophes of limited duration should employers be exempted from paying predictability pay for last minute schedule changes.

Some managers also interpreted the law to mean that if workers are not on the voluntary standby list, they are not allowed to call them in for last minute schedule changes, no matter what. A supervisor with scheduling responsibilities in a retail store told us,

“Throughout the store there were a couple of people who didn't sign and so then they couldn't stay late ever. We couldn't call them in.”

“They call you to come in, they actually make you sign a form that they're supposed to pay you an hour extra, but they make you sign the form so they don't have to....We had to do it.”

“On the phone they’ll ask, ‘Is that cool, if you come in a couple of hours later?’ As an employee, they’re like—yeah, sure; I’ll come in later, thinking that the back end of the time is the same. So, actually, they’re on the clock for less hours. Getting paid less. And because they said, ‘Sure’ on the phone, now they’re into the voluntary. They come in, and they’ll sign the voluntary shift change when, in reality, it’s the manager that asked them to come in.”

A manager at a food service establishment expressed a similar sentiment:

“Because [of the law] we cannot call someone unless they have signed a form saying that we are allowed to call them.”



2. Volunteer to stay or leave

In addition to the standby list, workers and managers also said that managers request that workers **‘volunteer’ to stay late, come in early, or leave earlier** than they had originally been scheduled to work. As long as the requests are framed as the worker’s choice, then employers believe that they are exempt from predictability pay.

A scheduler in a retail store explained that management explicitly told her to reframe her requests as “voluntary asks”:

“I was told kind of like we know it’s going to be very expensive. We should never ask people to come to work. Right? We should never send people home early. We have to ask them: ‘Does anybody want to go home early?’ But we can’t say ‘go home early’ (...) We can’t say, ‘can you stay because we need your help?’ (...) So therefore we’re forcing them to make the choice. We’re not actually asking.”

Employers manipulate the notion of “voluntary,” in order to document that schedule changes are worker-initiated and to avoid predictability pay. A worker in hospitality told us:

“On the phone they’ll ask, ‘Is that cool, if you come in a couple of hours later?’ As an employee, they’re like—yeah, sure; I’ll come in later, thinking that the back end of the time is the same. So, actually, they’re on the clock for less hours. Getting paid less. And because they said, ‘Sure’ on the phone, now they’re into the voluntary. They come in, and they’ll sign the voluntary shift change when, in reality, it’s the manager that asked them to come in.”

Many workers also expressed that being asked to volunteer to stay later than their scheduled hours presents a conflict between their desire to be good workers and help out their coworkers versus their desire to be compensated for the last minute change.

A retail worker explained:

“And it conflicts with your own work ethic, like you’re not going to just be a worse worker, just because they’re not, you know, doing what they should be doing, which is ask you so then you get compensated properly for staying (...) So that’s kind of like a bit of a loophole like, well, they didn’t ask, but you couldn’t leave, you know, if you’re closing the store, and you have all this work left to do. You kind of get in trouble if you don’t get the work done. But they’re also not asking you to stay so you’re not getting compensated for staying over.”

3. Waivers

Finally, employers have resorted to the use of **waivers**, forms that workers are required to sign affirming that a schedule change was voluntary and therefore is not eligible for compensation. Waivers are used to document that workers voluntarily pick up last minute call-in shifts, trade shifts, or extend shifts.

To document that it was voluntary, workers must sign a waiver of predictability pay, although workers tell us their managers do not clearly explain the implications of the waiver. A food service worker explained:

“Sometimes they will ask you to voluntarily pick up hours here and there. They kind of nonchalantly put out the paper to waive predictability pay. They do slightly mention it, but they don’t... really explain it to you.”

A union grocery retail worker shared that the company he works for:

“is really concerned with avoiding penalty pay, which is something like overtime that could actually benefit workers, but now we don’t really have that option because we have to fill out so many sheets. And if we want more hours we have to fill out sheets saying we are willing to work without penalty pay.”

One respondent who has scheduling responsibilities and processes the exceptions to predictability pay for a retail store told us that every week there are 250 waivers for predictability pay per week, while last week **“I paid one hour of [predictability pay] time.”**

Another respondent who is responsible for scheduling reported that, as a result of the law, workers need to fill out waivers called “sheets” when working extended shifts so that the firm **“does not get fined \$1,000, or whatever it is.”**

Across industries, we found that paying predictability pay is a practice that managers have been instructed to avoid. Some managers

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“We schedule 5 or 7.5 hour shifts so that if they are over 15 minutes it’s not overtime because if it is I have to get on a conference call to explain each minute of overtime. Also for penalty pay. I have to go on an hour long phone call to explain what happened. So it’s easier to avoid it.”

reported that they will personally work longer hours (as salaried employees ineligible for overtime) to cover shifts that they cannot fill with workers from the voluntary standby list, rather than pay predictability pay.

Managers also shared that they do not ask workers to stay later than 30 extra minutes in order to avoid triggering the additional compensation. A worker in food service explained that she had another job and needed to leave on time when her shift had ended, but was consistently asked to stay 5 minutes longer. When she refused, she was told by management she could be legally obligated to stay up to 15 minutes after her shift. Still, regardless of workers’ willingness to work extended shifts, the 30-minute grace period appears to be another instance in which managers strategically make schedule changes while avoiding predictability pay.

A union grocery department manager shared that the company he works for has interpreted the law particularly strictly, in an effort to avoid paying workers for schedule changes or additional time worked:

“We schedule 5 or 7.5 hour shifts so that if they are over 15 minutes it’s not overtime because if it is I have to get on a conference call to explain each minute of overtime. Also for penalty pay. I have to go on an hour long phone call to explain what happened. So it’s easier to avoid it.”

In sum, employers make it clear that if workers want more hours, they have to be on the voluntary standby list. With the exception of the few full-time employees in these industries, most workers sign the voluntary standby list because they need more hours. By relying on the standby list and other means of getting workers to volunteer to accommodate last minute schedule changes, managers are avoiding virtually all predictability pay, though this provision of the law was intended to compensate workers for the inconvenience of frequent schedule changes.





“ They were basically saying, if you want to get hours, you need to sign this list. We’re not telling you to sign it, but if anybody calls in and you don’t have the hours, you want to be the first one to be called...so you should really sign this. ”

“ ... they’re hungry for the hours. ”

(In)adequacy of Hours

Workers reported that the number of hours they work continues to vary week to week and many workers in each industry--retail, food service, and hospitality--said that they do not get enough hours. This is consistent with national averages; one-third of workers in these industries involuntarily work fewer than 35 hours (see Schneider & Harknett *Shift Project* report from October 2019). While workers in unionized workplaces and those with more seniority were more likely to be full-time and have more hours, union workers discussed how the issue of inadequate hours has become increasingly prevalent. A union grocery department manager stated:

“It’s different from how it used to be. Now we can’t promise full-time 40 hours so turnover is huge.”

Several workers said that inadequacy of hours is a primary reason why they sign the voluntary standby list and waive their rights to predictability pay--because they see that as the only way to be scheduled for more hours. A food service worker told us she signed on to the voluntary list to be able to know when shifts are available, because ***“otherwise you don’t get told when shifts are available.”***

A retail worker said:

“They were basically saying, if you want to get hours, you need to sign this list. We’re not telling you to sign it, but if anybody calls in and you don’t have the hours, you want to be the first one to be called...so you should really sign this.”

Their desire to get more hours and their assumption this wouldn’t happen if they were not on the list resulted in a sense of pressure to sign up for the standby list. Although this meant waiving predictability pay, under the circumstances of employment they faced, they said their priority was more hours rather than compensation for the inconvenience of schedule changes.

Inadequate hours was a powerful factor shaping workers’ experiences and interactions with management. In addition to feeling compelled to sign the voluntary standby list, a food services worker shared that they felt female workers were pressured to flirt with

some managers in order to be scheduled for more hours. Other food services workers echoed this sentiment, arguing that workers often feel they cannot speak up against racism and sexual harassment, for fear of retaliation and having their hours reduced.

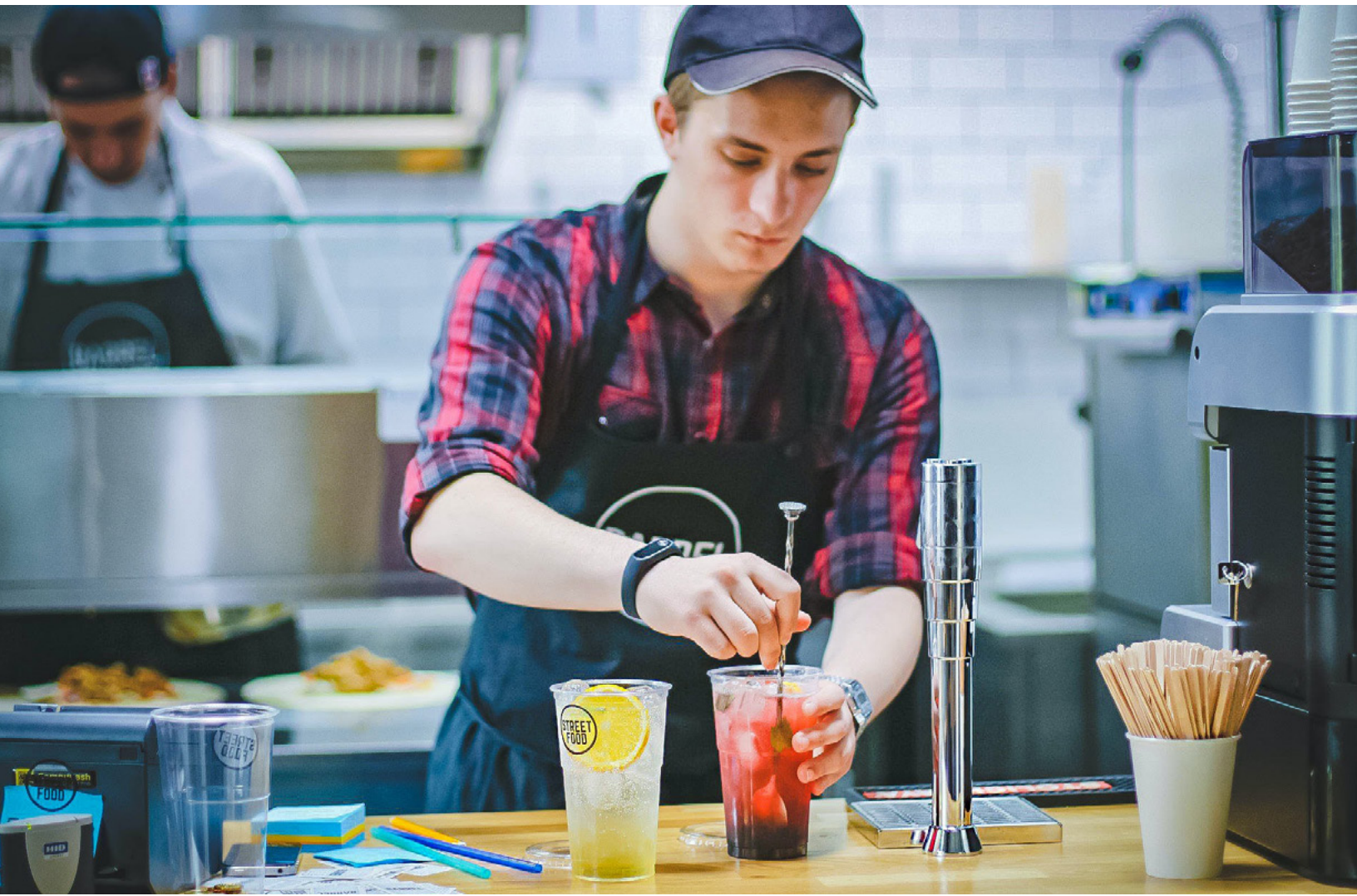
The shortage of hours for workers is due, in part, to employers hiring new workers rather than distributing additional hours to the existing part-time employees and potentially making them full-time employees. SB 828 does not include provisions establishing minimum guaranteed hours, and, unlike other fair work week policies, it does not require employers to give existing workers more hours before they hire additional part-time workers. A retail worker told us:

“When we first get hired, they pack you full of hours. So you get like, 25 for about three months. And then they knock me down when they hire someone new. So you have like, 14 a week.”

A manager of one retail store shared with us that the corporate office restricts cashiers’ schedules to 8-12 hours maximum per week, and only a couple of workers are given full-time work. One worker described the result of hiring employees at the part-time level:

“[It] creates people that are more desperate; people that need those extra hours. So, you’re more willing. You want somebody like me, that is like I need every hour that’s available this month—so anytime anything happens, you just would call or text me, and I’m like—yeah, I’m there; whatever it is. Whatever I’m doing today is done.”

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Across all industries, although signing on to the voluntary standby list or signing one-off waivers meant waiving predictability pay, with inadequate hours, many workers said their priority was getting more hours rather than receiving compensation for last minute schedule changes. Despite language in the law to protect workers from direct coercion to sign onto the standby list, the desperation for hours and financial need might operate as informal coercion in practice.

Knowledge and Enforcement of the Law

Across each industry, large portions of the workers interviewed had limited or no knowledge of different provisions of the law. Union workers were more likely to have heard of the law and know details about specific provisions. The right to rest and advance notice provisions were fairly widely known and understood, while the voluntary standby list and predictability pay were less widely known and understandings varied significantly for workers as well as managers and supervisors with scheduling responsibilities.

Some workers attempted to clarify aspects of the law with their employer, their union if they had one, or the state enforcement agency, the Oregon Bureau of Labor and Industries (BOLI), but interpretations varied and workers struggled to get a response from the state agency. BOLI has subsequently agreed to conduct proactive site visits to discuss SB 828 and has sent letters to some employers about SB 828. However, BOLI lacks sufficient resources for comprehensive, proactive enforcement that will address workers' concerns and SB 828 did not provide resources for enforcement.

Varying interpretations of the law and a lack of comprehensive enforcement have been particularly contentious issues for workers at a food service company, where management produced and circulated its own spreadsheet that describes how they avoid paying predictability pay by first calling workers on the voluntary standby list and then calling other workers to fill what they identify as “an unexpected increase in business,” language which the employer interprets as justifying avoiding predictability pay. Eliminating the loopholes to predictability pay, at best, or at least clarifying confusion about the law, at least, would strengthen the impact of this law on the challenges of unpredictable scheduling practices.

Conclusion and Recommendations:

SB 828 has had some notable positive impacts on Oregon workers' experiences with scheduling. In particular, respondents reported that SB 828 has effectively increased the number of rest hours between shifts and given workers increased predictability in their schedules as a result of 7 days advance notice of their weekly schedule. While advance notice of their schedules has improved workers' ability to make plans, schedulers still have to manage unexpected shift changes due to “the human factor” combined with the consistent mandate to limit



hours, which results in understaffing. Though workers have some level of choice regarding whether or not to accept unexpected shifts, respondents noted inadequacy of scheduled hours as a substantial motivator to take unexpected shifts.

Employers also routinely use the voluntary stand-by list, referred to by some respondents as the legislation's "loophole," and waivers to avoid predictability pay. Workers overwhelmingly reported a willingness to waive predictability pay in order to be favored for extra hours.

Notably, workers in unionized workplaces have organized around provisions of the law, including the voluntary standby list, predictability pay, schedule changes, and more. Overall, we suggest that impacts on union and nonunion workers' experiences with unpredictable scheduling could be greatly improved by comprehensive legislation that offers workers guaranteed minimum hours, guaranteed predictability pay, and investment in educating workers about their legal rights.

The Union Advantage: Collective Action Gets the Goods

Workers in unionized workplaces have access to support from union representatives to try to resolve issues before filing formal complaints with BOLI. We spoke with union representatives and stewards who reported regularly checking on posted schedules and following up with workers and with management on any discrepancies or potential issues.

Union hospitality workers at one location tracked all of their uncompensated last-minute schedule changes. They noted that store managers lacked a formal system, often writing





schedule changes on scraps of paper. Workers developed detailed spreadsheets to track schedule changes and calculate how much predictability pay they were owed. They filed with BOLI and, after waiting several months, received back pay on the predictability pay they were rightfully owed.

The Need to Adequately Fund Enforcement:

While BOLI has increased investment and engagement in proactive enforcement efforts, enforcement is still primarily complaint-driven, and the agency lacks sufficient funding for comprehensive enforcement and education in all affected workplaces. A labor advocate argues that the funding that BOLI receives for enforcement of SB 828 is ***“just totally inadequate.”***

A worker advocate noted that the dominant model of placing the onus on workers to file complaints, typical in enforcement agencies in most places across the country, is especially problematic where workers are unaware of their rights or uncomfortable advocating for them:

“We’re assuming that companies are compliant unless workers come forward and say that they are experiencing a violation, but we aren’t investing any collective resources in educating workers or empowering them to participate in the enforcement process.”

Several workers we interviewed, particularly in the hospitality sector, expressed having sent letters to BOLI about lack of compliance with the law in their workplace and receiving limited help. A hospitality worker shared:

“We had probably somewhere close to 20 union employees all fill out a complaint with BOLI and we had our union rep take all those into BOLI and submit them and we all called BOLI multiple times but never got a phone call back. I have heard nothing and we have no way of upholding the law.”

The Need for Investment in Comprehensive Worker and Manager Education on the Law:

While workers and managers in unionized workplaces were more likely to know about the law than their nonunion counterparts, their understandings still varied by employer. Respondents stressed that implementation requires investment in more comprehensive education and outreach about the law's requirements. Union representatives noted that they had observed companies introducing compliance measures as if they were company policy, which meant that workers did not realize that they could go to BOLI to redress violations. One asserted:

"I think all labor laws are inadequately communicated to employees. A notice in a breakroom is not a conscious level of education."

A union representative suggested having employers read and sign a document proving that they provided their employees information about the law. This respondent emphasized the importance of: **"breaking [the law's provisions] down in layman's terms and getting it into as many people's hands as possible."** A worker suggested a way to minimize misinformation and confusion between workers and managers:

"[BOLI] should be going to worksites to do trainings because you will reach more folks. And onsite training reaches workers and managers at the same time with the same message so they don't have the ability to tell different stories. Like a manager saying, 'Oh BOLI told us something different.'"

"I think all labor laws are inadequately communicated to employees. A notice in a breakroom is not a conscious level of education."



While the first statewide fair scheduling law has provided important tools to mitigate the impacts of unpredictable scheduling on workers, often it has been implemented through collective action. Lack of knowledge of the law for both managers and workers, and long wait times for workers who file complaints, reveal the need for robust investment in education and enforcement.

Finally, though an important step, SB828 has left some areas of unpredictable scheduling unaddressed. Comprehensive follow-up legislation could address how the voluntary standby list and waivers are used as loopholes, preventing workers from receiving predictability pay to compensate them for last-minute schedule changes. It could also address the widespread and growing issue of inadequate hours by mandating guaranteed minimum hours. Such legislation should be developed in close consultation with directly impacted workers who have a deep understanding of the current limitations of existing labor regulations.

