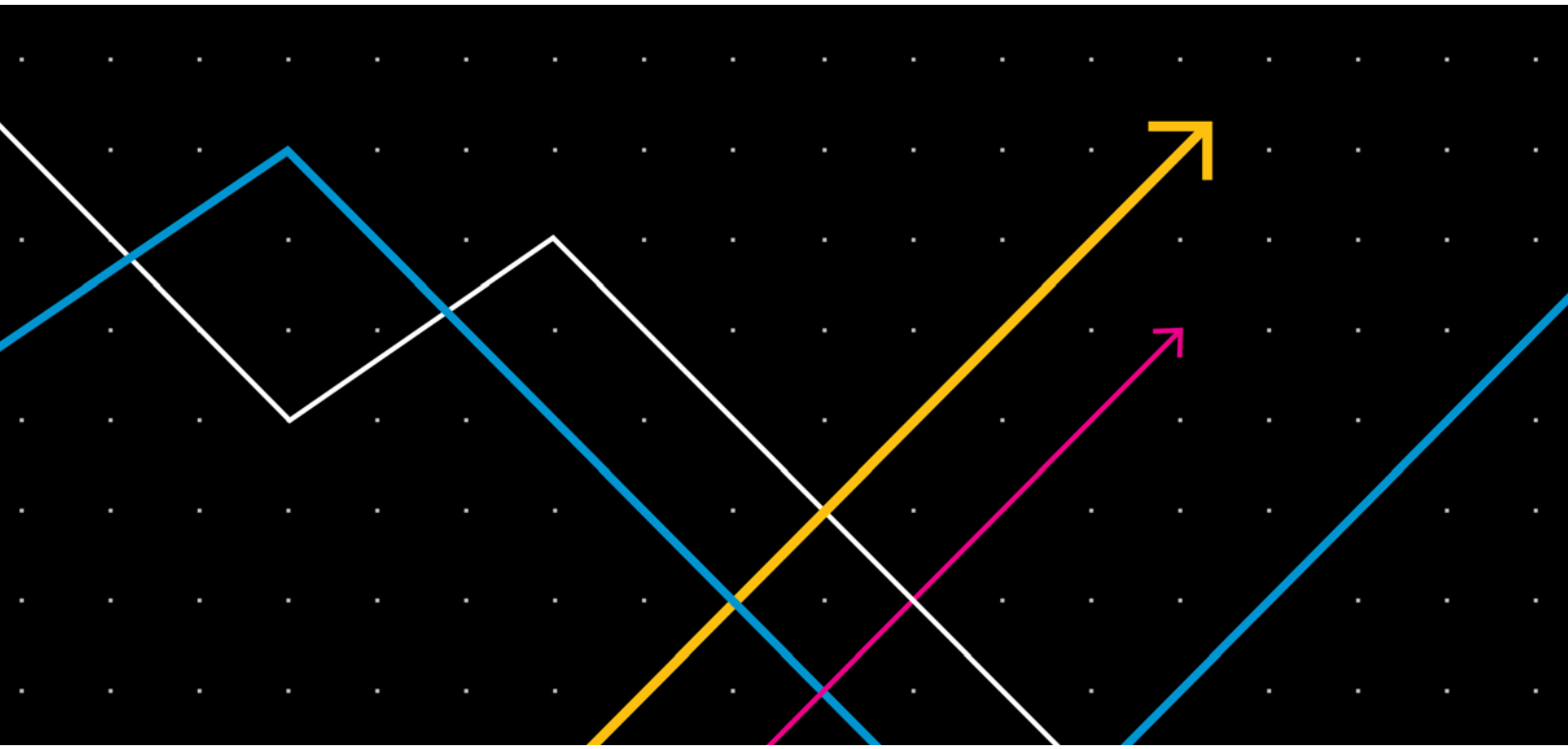

RESEARCH REPORT

Combating Unstable Schedules for Low-wage Workers in Oregon

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Executive Summary

Since the mid-1990s, the advent of just-in-time scheduling technology and practices have led to increased schedule instability, resulting in a growing movement to address the need for predictable, stable schedules for workers paid low wages. Unstable schedules have been associated with earnings instability, increased stress and fatigue, sleep irregularity, and worse mental health outcomes for workers.

In 2018, Oregon implemented the first statewide predictive scheduling law in the nation, S.B. 828,[1] to address the problem of unpredictable, unstable schedules for workers paid low wages by targeting large employers in the industries known for just-in-time scheduling practices. The law requires businesses with 500 or more employees worldwide in retail, hospitality, and food service to provide a minimum advance notice of work schedules and additional compensation to employees for last-minute schedule changes, as well as opportunities for employee input on work schedules. Although the law's provisions do not directly target some of the most difficult aspects of unpredictable scheduling, including a guarantee of minimum work hours or consistent days and shifts, its provisions are intended to reduce variation in schedules from week to week as well as last-minute changes.

This study investigates early implementation of S.B. 828 in Oregon. We collected qualitative data from interviews with workers and managers to better understand how the law was implemented and experienced by employers and workers. These views are supplemented by interviews with stakeholders such as union representatives and business groups. We then consider how managers, workers, and other stakeholders describe the process of rolling out the law, providing information and training about specific aspects of the law and how compliance is being enforced.

Our major findings are summarized below:

- Some employer representatives contended that S.B. 828 limited their ability to accommodate unpredictable staffing needs because of fluctuating customer demand. However, a few respondents also noted that the scheduling law itself and rulemaking around it included more employer input than other recent labor laws in Oregon, making it relatively easier to implement. In practice, those on the front lines—managers and supervisors with scheduling responsibilities—stated that the law had minimal impact on their scheduling process.
- Workers we interviewed reported that three components of S.B. 828 are being widely implemented and are relatively uncontroversial: the right to rest between shifts, advance notice of schedules, and right to provide input on work schedules. However, most workers and

managers reported that good faith estimates of work schedules are not always provided at the time of hire, as required by the law, and even when initially provided, hours often change quickly after hire.

- Despite more consistent advance notice of schedules, workers and managers indicated that last-minute schedule changes are still common and that workers are not receiving compensation for changes made without seven days' advance notice.
- One critical piece of the law included to ensure business buy-in was the voluntary standby list, which allowed workers to volunteer for additional hours and exempted employers from having to pay "predictability pay" to workers on that list. The standby list is unique to Oregon's regulations. Our interviews with workers, managers, and other stakeholders showed that this component of S.B. 828 is the primary way employers have been able to avoid an important protection for workers: predictability pay, intended to compensate workers for the challenges that last-minute schedule changes pose to their family life and health and well-being.
- Many workers we interviewed report they do not get enough hours. Several workers said inadequate hours is a primary reason they sign the voluntary standby list and waive their rights to predictability pay, because they see that as the only way to get more hours.
- Although knowledge about the law may increase over time, at the time of our interviews—a little more than a year after the law went into effect—workers' knowledge of the law was often limited and highly variable. Some managers also seem to have limited knowledge of the law, which has serious implications for its implementation. Overall, the efficacy of the law is compromised when managers and workers have unclear or conflicting understanding of the law.
- Respondents noted that enforcement of the scheduling law is primarily complaint driven, and the onus is on workers to submit complaints to the Bureau of Labor and Industries (BOLI), which limits the extent to which violations can be enforced. Several respondents noted that BOLI's resource limitations for assessing scheduling law violations also limited the effectiveness of enforcement.
- Overall, workers report that S.B. 828 has resulted in some improvements to working conditions. However, schedule instability continues to be widespread. Our evidence suggests several strategies that may help address this problem: (a) educating workers about their rights regarding signing the standby list and "volunteering" to change hours at the last minute; (b)

limiting the ability of employers to avoid predictability pay; and (c) addressing the problem of workers being offered fewer hours than they want or need.

Combating Unstable Schedules for Low-Wage Workers in Oregon

Introduction

Since the mid-1990s, with the advent of just-in-time scheduling technology and practices, jobs in retail and other similar sectors generally schedule workers' hours based on incremental responses to customer traffic (Brody 2018; Boushey and Ansel 2016; Cauthen 2011). These practices have led to increased schedule instability, resulting in a growing movement to address the need for predictable, stable schedules for workers paid low wages. Scheduling practices significantly impact workers' lives; schedule stability allows workers to balance work and life responsibilities, while instability can lead directly to work-life conflict and is associated with negative impacts on health and economic well-being (Cauthen 2011; Messing et al. 2014; McCrate 2018; Harknett, Schneider, and Luhr 2019). Unstable scheduling is also associated with negative business outcomes, including increased employee turnover, absenteeism, and lower workforce morale (Appelbaum et al. 2000; Lambert 2008; McCrate 2018).

To address these issues, a number of localities, including San Francisco, Seattle, and New York City, passed predictive scheduling legislation, also referred to as fair workweek or fair scheduling laws, which require advance notice of work schedules and additional pay for workers receiving last-minute schedule changes. In 2017, Oregon passed the first statewide predictive scheduling law in the nation, S.B. 828,[2] which covers nearly 200,000 workers in the state of Oregon (Wolfe, Jones, and Cooper 2018). S.B. 828 took effect in July 2018 and addresses the problem of unpredictable, unstable schedules for low-wage workers by targeting large employers in the industries known for just-in-time scheduling practices. The law requires businesses with 500 or more employees worldwide in retail, hospitality, and food service industries to provide a minimum advance notice of work schedules and additional compensation to employees for last-minute schedule changes, as well as opportunities for employee input on work schedules.

This study investigates early implementation of the law in Oregon. We collected qualitative data from interviews with workers, managers, and other stakeholders to better understand how the law was implemented, responses from employers, and experiences of workers. Below we describe previous literature on the consequences of unstable schedules and the impact of interventions designed to address this issue, and we outline the provisions of Oregon's scheduling law and the context in which it

was passed. We then document our data collection and analysis methods and describe the results and conclusions drawn from the interviews.

Literature Review

How Do Unstable Schedules Impact Workers?

Unstable schedules are characterized by significant variation in workdays and times, where workers have little or no control over their schedules. This instability is often a result of just-in-time scheduling (McCrate 2018; Boushey and Ansel 2016; Brody 2018), a practice where employers set a tentative schedule for employees but can change start and end times, days, and hours in response to the demand for workers. Just-in-time scheduling practices pass the risk of fluctuation in demand from businesses to workers and can cause significant disruptions in workers' lives (Lambert 2008).

Hourly workers and those paid low wages, especially, are subject to just-in-time scheduling practices that are unstable, unpredictable, and inconsistent (Boushey and Ansel 2016; Clawson and Gerstel 2014; Henly and Lambert 2014; McCrate 2018; Williams and Boushey 2010). Studies show that workers paid low wages and part-time workers are more likely to experience variability in the number of hours worked (Golden 2015; Lambert and Henly 2009). Among these workers, women and people of color are even more likely to have nonstandard or unpredictable work schedules (Schneider and Harknett 2019b; Morsy and Rothstein 2015; Lambert, Fugiel, and Henly 2014).

The costs of unstable schedules for workers are widespread. Unstable schedules have been positively associated with both time-based and strain-based work-life conflict (Henly and Lambert 2014), which can, in turn, impact financial stability, health and well-being, family and personal responsibilities, and eligibility for social safety net programs. Workers with unstable schedules experience difficulties planning and coordinating nonwork time—for example, managing appointments, school, child and elder care, and social activities (McCrate 2018). As Alvarez and colleagues (2019) found, workers are constrained by "impossible choices" that leave them with limited options for making ends meet and managing work-life balance.

Unstable schedules have been associated with increased stress and fatigue, sleep irregularity, and worse mental health outcomes for workers (Messing et al. 2014; Harknett, Schneider, and Luhr 2019). The Shift Project, a large-scale survey of hourly workers across the United States, also found that

workers experiencing schedule instability have higher levels of unhappiness and lower levels of overall well-being (Schneider and Harknett 2019a).

Variability in the number of hours worked a week causes instability in earnings and can jeopardize workers' eligibility for safety net programs (Cauthen 2011; NELP 2004). Eligibility for public benefits is generally based on income and/or hours worked, requiring families to redetermine their eligibility periodically. Instability in earnings by week or month can keep workers constantly in flux between eligibility and ineligibility for benefits (Cauthen 2011; Cauthen 2007), adding an additional layer of unpredictability to their access to resources. Unstable schedules are also often associated with chronic underemployment, meaning workers are not receiving adequate hours to meet their financial needs (McCrate 2018; Cauthen 2011).

These costs can be especially detrimental to workers with dependents and single-parent households. Strains on parental health and well-being from unstable schedules can interfere with their ability to manage their households and successfully fulfill caregiving responsibilities while at home. Additionally, when parents are called in last-minute to work, they may experience challenges finding appropriate care for their dependents. The supply of child care, while insufficient to meet demand in normal circumstances, is even less for parents with nontraditional or unstable work schedules (McCrate 2018; Henly and Adams 2014). Parents' exposure to schedule instability has been associated with "more numerous care arrangements, with a reliance on informal care arrangements, with the use of siblings to provide care, and with young children being left alone without adult supervision" (Harknett, Schneider, and Luhr 2019). These unstable child care contexts are commonly associated with lower quality of care for children, which can jeopardize their health, social and cognitive development, and overall well-being (Adams and Rohacek 2010; Shonkoff and Phillips 2000; Cryer et al. 2005; Tran and Weinraub 2006). Parental nonstandard and unstable work schedules are associated with worse cognitive and behavioral outcomes for children (Han 2005; Henly and Lambert 2014; Han, Miller, and Waldfogel 2010; Sandstrom and Huerta 2013).

Businesses and Schedule Instability

For industries in which just-in-time scheduling practices are common, a significant amount of the cost of business is paying for labor (Davis and Aguirre 2009; Williams et al. 2018; Boushey and Ansel 2016). Although just-in-time scheduling is often seen by employers as a way to cut labor costs, as a result of these practices, businesses may actually endure a host of hidden costs such as increased employee turnover, absenteeism, and lower workforce morale (McCrate 2018; Davis and Aguirre 2009; Boushey

and Ansel 2016). For businesses, the benefits of lower labor costs are seen immediately and are easily quantifiable, whereas the longer-run costs accumulate over time and are more difficult to quantify (Appelbaum et al. 2000; Lambert 2008; McCrate 2018; Ton 2014). The more indirect nature of these costs can prevent businesses from fully accounting for them in their decisionmaking.

Lean staffing caused by just-in-time scheduling practices increases the amount of labor performed per worker and can increase the risk of error because of rushing and worker fatigue (Davis and Aguirre 2009). Just-in-time scheduling can lead to lower worker morale and attachment to the firm, which contribute to increased risk of errors and poor customer service (Ton 2014).[3] Other costs to businesses include increased instances of absenteeism and employee turnover because of low worker morale and inability to accommodate last-minute schedule changes (McCrate 2018; Appelbaum et al. 2000; Lambert 2008). Recent studies have quantified the cost of turnover to businesses, estimating it costs about one-fifth of a worker's annual salary to replace them, regardless of income level (Boushey and Glynn 2012).

Commonly cited causes of schedule instability are changes in customer demand and unexpected employee absences, requiring employers to bring additional employees in or let employees go last-minute (Lambert, Haley-Lock, and Henly 2012). However, one study evaluating a scheduling intervention in Gap stores across the United States found that "Fluctuating customer demand is not the primary source of instability…Only 30 percent of the variability in weekly payroll hours was explained by changes in traffic from week to week." Store managers identified the following key sources of headquarter-driven instability: inaccuracies in shipment information, last-minute changes in promotions, and visits by corporate leaders" (Williams et al. 2018). This finding challenges the idea that just-in-time scheduling practices are solely a result of external factors outside of businesses' control and is supported by other research (Netessine, Fisher, and Krishnan 2010; Fisher, Krishnan, and Netessine 2012; Ton 2014). In fact, internal business practices can also be direct drivers of schedule instability.

Scheduling Interventions Positively Impact Workers and Businesses

Multiple studies have found stable scheduling interventions to have positive outcomes for workers and businesses. Increased employee input on to schedules has been associated with various benefits, including increased worker satisfaction and organizational commitment, fewer unscheduled absences, improved mental and physical health, lower turnover rates, and improved teamwork (McCrate 2018; Davis and Aguirre 2009; Lambert and Henly 2012; Henly and Lambert 2014). The Gap study found that

an intervention that included advance notice of schedules, eliminating on-call shifts, consistent shift days and times, and guaranteeing numbers of hours for certain staff members increased both median sales and labor productivity, along with enthusiasm from both managers and employees (Williams et al. 2018).

Passage and Rulemaking of S.B. 828

To combat the costs to workers described above and create more beneficial work-scheduling environments, the Oregon Legislative Assembly passed S.B. 828. This bill directly targets the predictability and flexibility of work scheduling by ensuring advance notice of work schedules and requiring worker input on schedules (box 1). The law's provisions do not directly target some of the most difficult aspects of unpredictable scheduling, including a guarantee of minimum work hours or consistent days and shifts, but some of its provisions are intended to reduce variation in schedules from week to week as well as last-minute changes. The specific provisions of the law are described in box 1. These provisions apply to retail, hospitality, and food service employers with more than 500 employees. Covered employers were initially required to give seven days' notice of work schedules and pay additional wages to employees when schedule changes were made with fewer than seven days' notice. The advance notice will be increased to 14 days beginning in July 2020.

The passage and rulemaking processes for S.B. 828 were guided by stakeholder input from both business and labor interests. Business groups mobilized to oppose the passage of S.B. 828 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, the scope of the businesses covered was narrowed from companies with 50 employees to those with 500 or more employees globally, and the voluntary standby list provision was added. Business stakeholders emphasized that these changes made S.B. 828 substantially more amenable to businesses, while workers and worker advocates stressed that these large concessions could potentially undermine the original intent of the law to stabilize workers' schedules.

S.B. 828 in the Broader Work-Family Policy Context

Predictive scheduling policies are often passed after other work-family supportive policies (Schneider, Harknett, and Luhr 2019). One possible reason for this lag is that many employers see scheduling as a key area of control in business operations and are generally opposed to public policies that regulate

their practices (Stanczyk et al. 2019). This trend is also seen in Oregon. Before passing S.B. 828, Oregon enacted paid protected sick leave in 2015, an increased minimum wage in 2016, and paid family leave in 2019.

BOX 1

Key Provisions of S.B. 828

S.B. 828[a] requires that employers provide:

1. **Good faith estimates of work schedules**: upon hiring, employers must provide employees with the median number of hours that they can expect to work in a month, on average.[b]
2. **Advance notice of work schedules:** employers must provide seven days' advance notice of work schedules, and schedules must be posted in a "conspicuous and accessible location."[b] On July 1, 2020, this requirement increases to 14 days' advance notice.
3. **Additional compensation upon changes in work schedules or "Predictability Pay":** if an employer changes the schedule without giving employees at least seven days' notice, they are required to pay the affected employees an additional hour of pay in addition to regular wages when they:
    a. add more than 30 minutes to a work shift;
    b. change the date or start or stop time of a shift with no loss of hours; or
    c. schedule an employee for an additional work shift or on-call shift.

    However, employees may request in writing to work additional shifts (on-call or regular work) at any time after advance notice of the schedule.[b] Employers are exempt from penalty pay in the following case:

    > An employee mutually agrees with another employee to employee-initiated work shift swaps or coverage… An employee requests changes to the employee's written work schedule, including adding or subtracting hours, and the employee documents the request in writing; An employer makes changes to an employee's written work schedule at the employee's request under section 5.[a]

4. **At least 10 hours between work shifts:** also called, "right to rest," employees are entitled to a rest period of at least 10 hours between shifts. If an employer schedules employees to work during this period, they must compensate the employee at 1.5 times their regular rate, unless the employee requested or consented to work such hours.[b]
5. **Employee input on work schedules:** employees have the right to make scheduling requests and identify changes in their availability without risk of retaliation from employers. However, employers are under no obligation to grant requests unless otherwise mandated by law.[b]

Employers may keep a **voluntary standby list,** which includes employees willing to work additional hours in the event of unanticipated customer demand or an unexpected employee absence. Employees asked to work additional shifts under these circumstances are not entitled to additional compensation. Employers are required to explain the voluntary standby list to new employees upon hiring.

Sources: [a] S.B. 828, 79th Leg., Reg. Sess. (Or. 2017), https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/SB828. [b] "Predictive Scheduling," Oregon Bureau of Labor and Industries, accessed March 23, 2020, https://www.oregon.gov/boli/employers/Documents/BOLI_Predictive%20Scheduling.pdf

Methods

We conducted in-depth interviews with 75 workers, 23 managers and other supervisors with scheduling responsibilities, and 12 stakeholder representatives.[4] These interviews focused on respondent experiences with work scheduling as employees or managers, knowledge of S.B. 828 and perceived impacts, and the implementation and enforcement of the law.

We spoke to a diverse pool of respondents in each category. Our worker and manager interviews included perspectives from all three industries covered by the law, as well as various companies in each industry. These companies included both union and nonunion shops. The employee interviews were conducted in both urban and rural parts of the state. Our stakeholder interviews included labor advocates, business organizations, legislators, and stakeholders involved with implementation and enforcement. Additional details on our methods and approach are included in the appendix.

Findings from Interviews of Workers, Managers, and other Stakeholders

We collected qualitative data from interviews with workers, managers, and other stakeholders to understand three issues: (1) how the law was implemented, (2) how employers responded to the law, and (3) how workers experienced the law. The section below describes our findings from these interviews. We begin by describing employers' and workers' overall perceptions and experiences of the law. We then turn to specific issues and concerns that managers and workers have regarding aspects of the law and how it is being implemented. These views are supplemented by interviews with different stakeholders such as union representatives and business groups. We then consider how managers, workers, and stakeholders describe the process of rolling out the law, providing information and training about specific aspects of the law and how compliance is being enforced.

Overall Perceptions of S.B. 828

Not surprisingly, some employer representatives interviewed were critical of the slate of labor laws passed in recent years in Oregon. They contended that S.B. 828 imposed burdensome requirements on businesses, especially in the context of these other labor laws. One described the law as "just another piece of what they have to deal with…things like the minimum wage increase, paid sick leave, paid family leave, the retirement law if you don't offer your own retirement program, the new gross receipts tax for businesses." Several representatives of business groups felt that S.B. 828 reduced staffing flexibility for businesses and made operations more challenging. According to them, the law limited their ability to accommodate unpredictable staffing needs because of fluctuating customer demand.

However, a few of these respondents also noted that the scheduling law itself and rulemaking around it included more employer input than other recent labor laws in Oregon, making it relatively easier to implement. One shared that they viewed S.B. 828 as comparatively employer friendly:

> New mandates on employers, especially on employment, in Oregon are frequent and often very complicated. This was one that at least had a pretty fair and open negotiation…In the scheduling law, I think that there was more of a focus on the realities of running a business and how to make the law work on the ground within those realities…They were at least taken into account. Particularly with the standby list, having some alternative way to deal with the realities of when you need extra scheduling.

In practice, those on the front lines—managers and supervisors with scheduling responsibilities—stated that the law had minimal impact on their scheduling process. The most common impact they perceived was a bureaucratic burden, or an extra formal step added to the scheduling process. For example, one assistant manager told us that "once this new labor law came in, now there's a whole bunch of extra paperwork we have to do. We're pretty used to it now." Similarly, a general manager at a retail store stated that the only impact the law had was "making sure communication gets through to payroll to make sure that all gets handled correctly. It's just an extra step."

Some managers also perceived the law as targeted toward "bad" managers, and therefore having little impact on them because they already practiced fair and appropriate scheduling. For example, a store manager at a pharmacy said the impact of the law on their scheduling process has been "minimal" but went on to state,

> I can only imagine that the people who are doing things that the law prohibits are probably just bad managers and not treating their employees well to begin with. I felt like it was a move to prevent employees from being abused by their managers —that's my perception of the law.

In contrast to the employer stakeholders and managers we interviewed, workers rarely discussed their overall reaction to the legislation. Many were not aware that Oregon had passed a new law to

regulate scheduling practices, though they were aware of some components that had been implemented in their workplace since 2018. Others, mostly workers in unionized places of employment, were aware of the legislation but did not share overall perspectives. As we discuss in detail below, our interviews with workers did reveal much about how specific components of the law are affecting their workplaces and experiences of scheduling.

Components of S.B. 828 Widely Implemented

Workers we interviewed reported that three components of S.B. 828 are being widely implemented and are relatively uncontroversial: **the right to rest between shifts, advance notice of schedules**, **and right to provide input on work schedules.**

Workers reported that their employers are mostly abiding by the requirement that workers get at least 10 hours off between their shifts and avoid "clopening" shifts (i.e., when workers are scheduled to work both closing and opening shifts with too little time between shifts) that would prevent workers from getting adequate rest. Overall, many workers and managers reported that "clopening" shifts are rare, and when workers have worked a closing and then the following opening shift, they had at least 10 hours between shifts. Some noted, however, that with commute time, especially on public transportation or in rural areas where workers can live further from their workplaces, they were still left with inadequate rest time.

We also found the advance notice requirement to be widely practiced. Many workers reported they had gotten their schedules more than seven days in advance *before* S.B. 828. Many also reported that after S.B. 828's passage, they could count on advance notice and that it was helpful in planning their work and home lives.

Some managers noted that the law's requirement to provide advance notice of schedules improves planning. For example, when asked how the law has impacted the scheduling process, a manager at a unionized retail store stated, "It's better. Because we're actually planning, we're actually sitting down and planning, we don't have a choice because we have to think about what's going on two weeks out."

Others disagreed. For example, one scheduler perceived the law to be a potential challenge to scheduling:

> I understand that people want to have some consistency and want to know their schedule two weeks ahead of time, I'm completely on board with that, that's fine. But I don't think they looked at it from someone that actually runs a store's perspective, and looked at all the pain points that

> they were going to cause if we didn't have the standby list, and if we didn't have the ability to send people home if they asked us it'd be a mess.

The advance notice requirement may also be posing some unexpected difficulties for workers. Employers have interpreted S.B. 828 differently, with some interpreting it more strictly and imposing scheduling restrictions on workers. Even though the law does not restrict worker flexibility in requesting schedule changes, some workers find that their employer's understanding of the seven-day notice requirement is deployed in ways that cause them to lose an important tool to accommodate short-notice scheduling needs.

Workers reported they do have the right to give input on their schedules but that their managers now expect them to provide requests for schedule changes farther in advance (sometimes four weeks out). Managers are less inclined to consider requests that interfere with the company's advance notice requirements (even if the request is more than seven days in advance), and some managers communicate incorrectly that shift trades are no longer allowed under the new law.

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."

This employer practice was hard on workers when unanticipated needs for time off came up. A few respondents suggested that the requirement to plan schedules in advance could negatively affect workers who want flexibility to pick up additional shifts as they become available. A union representative explained that some businesses are reacting to the law's advance scheduling requirement by scheduling only the hours they are confident they will need.

S.B. 828 requires that schedules must be posted in a "conspicuous and accessible location," and that has been widely implemented. Some employers also post schedules online. Workers highlighted the benefits of online schedule posting. One respondent explained that it was important to "make sure you can see the schedule online because some work sites only post their schedule physically, so you don't know sometimes if your schedule has changed and then it can just be your word against the manager's."

Components of S.B. 828 with Unclear Implementation and/or Limited Effects

FREQUENT SCHEDULE CHANGES PERSIST

Despite more consistent advance notice of schedules, workers still experience frequent schedule changes. Workers reported receiving changes within the seven-day window, ranging from a couple of

times each month to every day. Some of the last-minute changes resulted from systematic understaffing, corporate pressure to reduce labor costs, and callouts because of illness or family emergencies such as child care falling through. As a result, workers are often asked the day before or the same day to fill open shifts, or to come in early or leave later than expected.

A few union representatives mentioned that employers in industries affected by the law have historically had a practice of understaffing and relied on calling people in last minute, which they pinpointed as a central cause of scheduling instability. One respondent mentioned that managers often feel pressured by corporate supervisors to understaff to keep labor costs low. This leaves managers in a difficult position when employees call in sick, forcing them to ask people to come on their days off, for example.

Another union representative mentioned that underscheduling and the resulting instability for workers is particularly prevalent in the restaurant industry. She explained that restaurants have historically kept confirmed hours low and called people in on-call constantly:

> At any opportunity they have cut labor either day to day or week to week. Business slows down, let's send people home. And then also: business jumps up, so let's see who we can call in. It's just a day to day, up and down industry where people don't know often how busy they will be and are often unwilling to slightly overstaff to make sure they're prepared.

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

Workers reported that they are given an opportunity to inform employers of any limitations in their availability, though as we discuss below, their need for more work hours results in many workers maintaining open availability to the extent possible. Importantly, right to input on one's work schedule without guaranteed minimum hours has limited impacts on workers.

PREDICTABILITY PAY

In anticipation of the need for last-minute schedule changes, legislators established in S.B. 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 changed their schedules at the last minute.

Information from our interviews with business group representatives seems to corroborate workers' perspectives. Some reported that their members see predictability pay as a significant cost, and a few noted that many businesses are doing whatever they can to avoid making those payments. One respondent said, "I know I've heard from multiple members that predictive pay is increasing their bottom line, there's no doubt about it. Some of them are just refusing to do the predictive pay and then are understaffing as a result." Across industries, we found that paying predictability pay is a practice that managers have been instructed to avoid.

Employers engaged in various practices that allowed them to avoid paying workers 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.

VOLUNTARY STANDBY LIST

Of the workers we interviewed, only a few were *not* aware of a voluntary standby list in their workplace. Slightly over half said their employers used a standby list to fill schedule openings. Most of the workers who were aware of predictability pay also knew they relinquished their right to that additional compensation by signing on to the voluntary standby list.

Some workers said 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, "I felt like we were pressured to sign, to be on the standby list, so that they can call us without paying us." A union representative who observed this dynamic at workplaces said that "anytime you have essentially a waiver of rights in the workplace, employers will coerce people into waiving their rights. And that in a sense, is what I believe the voluntary standby list ends up being." A few respondents mentioned hearing about the voluntary list being incorporated in orientation paperwork when workers were hired, and workers did not feel they had a real choice about whether or not to sign it.

The attitudes of business group representatives we spoke with varied. Some said their member businesses viewed the voluntary standby list as essential for providing the flexibility that they needed to operate, though a few said businesses felt that even with the voluntary standby list they still lacked adequate scheduling flexibility under the new law. One representative said the list

> has been a big help, it's been one of the better parts of a not so great law for employers. But even then, depending on how many people are signed up on the voluntary standby list, you can put out the call, and if no one answers you don't have anybody to fill the shift.

Others argued that the standby list is a burden. For example, a business representative said it was difficult to call workers for an open shift through the formal voluntary standby list. They stated,

> I'm a manager and I'm standing 2 feet away from you, I should probably be able to come up to you and see if you can stay an extra hour, and not have to email 300 people [on the voluntary list] to see if someone can come in and work an extra hour.

This respondent thought that the law is unclear about how managers need to access workers from the voluntary list for extra shifts—whether businesses need to notify everyone on the list about the availability of an extra shift or only the people in an individual department. In this case, the manager was incorrect about the law: it *does* allow employers to call workers who have not signed up for the voluntary standby list, though many were unaware of that fact.

Some we spoke with saw the law as something to get around. One manager talked about an early meeting with HR in which they were instructed in ways 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, but making it flexible enough to where we can run our stores…

This statement confirmed the fear of many workers and worker advocates, that the standby list would be used to undermine the intent of the law to create increased schedule stability for workers.

Overall, worker advocates we spoke with generally viewed the voluntary standby list as a compromise that detracted from the law's benefits for workers but did not undermine it entirely. A fair scheduling advocate explained her view: "There's no question in my mind that the policy is improving people's work experiences. It's a question of how much, and what is the cost of some of the political compromises that were made essentially to appease the corporations that didn't want any bill to pass."

At the same time, a number of workers and union representatives believed that the standby list is being used by employers to avoid paying higher compensation when workers are asked to work different hours at the last minute. In fact, one food service worker went so far as to say: "we should get rid of the voluntary standby list. It doesn't have a benefit for workers like us."

VOLUNTEER TO STAY OR LEAVE AND WAIVERS

In addition to the voluntary standby list, workers 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. If the worker is said to have volunteered, then they would not receive predictability pay under the law. Similarly, employers have resorted to the use of **waivers**, or **forms** that workers are required to sign affirming that a schedule change is voluntary and therefore they are not eligible for the additional compensation. Some workers felt that employers manipulate the notion of "voluntary" to document that schedule changes are worker initiated and to avoid predictability pay.

A worker in hospitality explained this practice:

> On the phone they'll ask them, "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.

As long as the requests are framed as the employee's choice, then employers believe they are exempt from predictability pay. One manager in a retail store described their awareness that they could not force anyone to come in early, stay late, or leave early:

> If I have four checkers, and they're standing around talking, I'll give it a little more time because I know with the new law I can't ask them to go home anymore. So they know what to come ask me. So if as long as it's their idea and they want to do it, and they fill that form out saying that...I wanted to go home, then we're all good.

Waivers are used to document that workers voluntarily pick up last-minute call-in shifts, trade shifts, or extend shifts. Workers told us their managers do not always clearly explain the implications of the waiver. A union representative said she heard that one large grocery chain

> will make workers fill out a form every time they come in early, stay in late, whatever, and they keep it…And a lot of times the problem is that they'll tell workers to write that they initiated the change even when they didn't…They're definitely trying to manipulate it so it looks like they never have to pay the penalty pay.

Managers said they are particularly careful to **avoid asking workers to stay later than 30 extra minutes** to bypass compensating them. This led one manager to program systems in his store to alert payroll if there's a seven-minute inconsistency in the schedule. Workers are then tracked down and asked to sign a waiver. Workers are seldom told that this form waives their rights to predictability pay. One manager in a retail store illustrated how extensive this practice is, saying that every week they process 250 waivers for predictability pay, while last week "I paid one hour of [predictability pay] time."

Overall, workers expressed concerns about the notion of "voluntariness" regarding schedule changes. A worker in hospitality explained, "I definitely worry about that, about the lack of understanding of what voluntary means. They are asking you to sign a form or something that shows that you're doing it voluntarily."

The fact that employers were responsible for documenting schedule changes left one union representative concerned that violations of the fixed schedule requirement were hard to prevent. She explained, "the employer can easily fabricate documents to make it seem like any schedule changes are initiated by employees and voluntary," and this would be difficult for BOLI compliance staff to detect. This person was also concerned that it would be difficult for employees to prove they had experienced retaliation for complaining to their employer about violations of the law:

> I'm aware that retaliation is illegal, but the problem is that it's on the employee to prove it. How do you prove that your manager started giving you a crappy schedule because you complained that they weren't following the law? Or how do you prove that you were really fired because of that, when your employer watched you like a hawk and wrote you up three times for something legitimate that they let everyone else get away with.

INADEQUATE HOURS

Many workers we interviewed in each industry—retail, food service, and hospitality—report they do not get enough hours. Some, but not all, are provided good faith estimates of hours when hired, as required by S.B. 828, but workers and supervisors reported the hours are often reduced a few weeks after hiring. This experience of inadequate hours is consistent with national averages; one-third of workers in these industries involuntarily work fewer than 35 hours (Schneider and Harknett 2019b).

Several workers said that inadequate 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 get 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."

Across all industries, workers said their priority was getting more hours rather than receiving compensation for last-minute schedule changes, so they signed the standby list and waived their rights to predictability pay. 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. Even with the standby list, workers generally did not receive enough hours. Tolerating both

insufficient hours and unpredictable schedules, workers who were aware of predictability pay thought it an important provision in the new law. Some reported organizing to try to get the predictability pay they were owed for last-minute schedule changes.

Workers summarized their concerns as follows: "Scheduling consistency. Not just two weeks' advance notice, but your hours and your days and your shifts scheduled does not change. And you have guaranteed hours so you're guaranteed at least 20 hours a week."

Workers know that if they want more hours, they have to be on the voluntary standby list. With the exception of the full-time employees in these industries, workers sign the voluntary standby list because they need more hours. The standby list and other means of getting workers to volunteer to accommodate last-minute schedule changes allow managers to avoid virtually all predictability pay, though this provision of the law was intended to compensate workers for the inconvenience of frequent schedule changes.

Learning About and Understanding the Law

An essential part of implementing a new law is informing stakeholders about the purpose and provisions in the law, as well as training or technical assistance to assure implementation and compliance. Below we consider what respondents told us about how they were informed about, and prepared to implement, S.B. 828.

MANAGER TRAINING

We found that except for one person, all schedulers we interviewed received some form of training or information about the law from either their district manager, their employer, or a human resources representative. Training ranged from information packets, conference calls, online video training, and one-time in-person meetings with HR.

However, schedulers' responses indicate that the training they received was not particularly in-depth, and numerous participants could not remember the details of the training. For example, when asked about what training she received, a white general manager in hospitality stated, "I don't really remember because it was last year, but I do remember that…I think it was just a piece of paper that told you how the law works. And then, after that point, you just had to know."

One participant working at a hotel in a rural location had not heard of the law at all and reported that because of how few employees she has and the unpredictability of clientele at her hotel, she must

rely on on-call shifts, stating it would be impossible to follow S.B. 828 as we described it to her. Some managers who reported changes to scheduling practices were uncertain if the changes came from a law, the union, or a corporate policy shift. As a manager at a food services restaurant told us, "I know that's a [company] thing, but I don't even know if that's a law in Oregon." Many schedulers viewed having to be trained about the law as another bureaucratic burden associated with management.

Some managers we interviewed appeared to have some misunderstandings about various aspects of the law. For example, some managers thought the law does not allow them to call in workers at all if they are not on the list and conveyed that to their employees. A manager explained, "We cannot call someone unless they have signed a form saying that we are allowed to call them. So all of my employees have signed that form. So if they had not signed that form, I wouldn't be able to call them."

INFORMING EMPLOYEES ABOUT THE LAW

From the interviews we conducted with workers across affected industries, it appeared that their knowledge of the law was limited and highly variable, and the way they were informed about it was inconsistent. The majority of workers reported they knew and understood the right to rest and advance notice provisions of the law, while the voluntary standby list and predictability pay were less widely known, and understandings varied significantly across workers as well as managers and supervisors with scheduling responsibilities.

Workers reported learning about the law from their managers, through their union, and on their own. Those who learned from their managers reported very different levels of knowledge, depending on their managers' own knowledge and the method and time allocated to educating the workers. In some cases managers set up meetings to go through the different provisions, and in others they just had informal conversations with workers or only posted the required BOLI sign.

One food service worker explains the positive impact a managers' proactive take had on her knowledge of the law:

> He sat us down either in groups of two or individually. And let us know like, "Hey, this is what's going on. I really want you to know and understand. So if this does happen, you have the right to say no. And this is legally why." That's why he is my favorite manager. He really made sure everybody knew laws.

Union representatives disseminated most of the information among their workers by providing printed versions of the law, conducting workshops, and holding informal one-on-one conversations. Finally, some workers explained that while they might have heard about the law through informal conversations at work, they had to do their own research to learn about it since either their employer

did not provide any information or the information was very limited, as this worker in food services explained, "Mostly I looked it up and then read about it because not a lot of people knew what was going on. Or maybe they couldn't explain it very well. So I looked it up just so I could explain it if anybody asked me."

Typically, managers who informed their employees about the law highlighted that workers could sign a voluntary list to be called for extra shifts, they had more hours of rest between shifts, and the schedule must come out with a specific amount of advance notice. Other than those basics, there seemed to be little consistency in what managers told their employees about the law.

Some workers said they 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.

SUPPORT FOR EMPLOYERS

Several stakeholder respondents described how local business groups and BOLI support employers in their implementation of the law. However, it was not clear to what degree businesses have used all the support available to them or whether they were passing along a complete picture of the law's requirements to front-line managers responsible for day-to-day implementation.

A few respondents mentioned local business groups have worked with their members to ensure they are aware of the law's requirements and that they are available to members if questions arise. A fair scheduling advocate noted he had seen communications from business groups educating their members about the law, and that in his eyes, "they seemingly have been objective and robust."

One respondent who represented a local group of hospitality businesses explained what his group provided its members to aid with implementation of the law:

> What we do is mostly education of our members and the rest of the hospitality industry that is affected, so making sure everyone has the information about when the deadlines are, what exactly they need to know. And then we're also a resource in case anyone needs to call and ask questions about how they're implementing or need more information about the law itself.

BOLI also has a Technical Assistance (TA) for Employers division that provides support to employers around labor laws, including the scheduling law. There is a "firewall" between this division and the division responsible for enforcing compliance, which is intended to make employers feel comfortable reaching out for assistance. A regulatory staff member we spoke with noted that the **"vast**

majority" of contact the division has with employers comes when employers reach out for assistance, rather than BOLI staff reaching out to employers.

Although BOLI TA has put out free FAQs and fact sheets and takes calls and emails for free, most trainings and publications are provided on a fee-for-service model for interested employers, because employer fees are the division's primary funding source. During in-person seminars about the scheduling law, BOLI TA staff fielded questions about which businesses the law applies to and what businesses had to do to comply—in particular, when to set up a standby list and when businesses owe workers predictability pay.

It is unclear what proportion of businesses have accessed BOLI TA's support around the scheduling law. A regulatory staff member we spoke with reported that the first few seminars for businesses the division organized after the law was enacted were attended "fairly well," but after that attendance was sparse. This respondent also noted that the scale of support BOLI TA provided was small relative to support provided around earlier labor laws such as the paid sick leave law, which applied to a broader set of employers and came with funding for additional staff at BOLI to develop training materials. He explained, "The scheduling didn't come with any additional dollars, so we've tried the best we can to get that out but there was not extra support to do outreach activities or create something at the scale."

Representatives of business groups and regulatory staff who worked with employers reported that most of the large businesses to which the law applies have corporate human resources departments that can communicate the provisions of the law to managers who are responsible for implementing them to ensure compliance.

Despite this, there was evidence that not all businesses were getting the implementation support they needed. One scheduling advocate noted that some franchises may not be getting clarification about whether they are required to comply with the law. Overall, despite efforts on behalf of both governmental agencies and employers, knowledge of the law appears to be limited.

How Compliance with the Law is Playing Out

COMPLIANCE REQUIREMENTS FOR BUSINESSES

Businesses affected by the law must now keep records documenting schedule changes. In the event of a complaint, BOLI regulators must review records to determine whether the business complied. One business group representative explained that his group offers its members additional guidance:

> What we generally say is that you should always keep enough records available to defend yourself if someone filed a complaint with BOLI. Most personnel records, under BOLI's rule, should be kept for no less than 3 years…That would be work schedules, timecards, pay records, standby list, any disciplinary records, things like that.

Another business group representative noted that the amount of records businesses must keep to demonstrate compliance can be challenging:

> If you think about that, you have 500 employees on the floor and have to keep track of everyone's scheduling requests and how it was responded to. Also, if it was an employee-initiated shift trade, you need to be able to document that in case someone comes back to you two years later.

There was some uncertainty about the extent to which businesses are systematically keeping sufficient records to demonstrate compliance. A labor advocate contended that businesses "are required to keep records, but they aren't necessarily systematically collected."

ENFORCEMENT EFFORTS

Compliance is primarily complaint driven. BOLI's Wage and Hour division is responsible for enforcing the scheduling law, along with Oregon's other labor laws. In most cases, a team of 6 to 7 workers answer BOLI's complaint hotline and review worker complaints to ensure BOLI is able to make the best possible case on behalf of the worker. The complaint is then sent to an investigator who calls the worker and the employer, asking about a range of labor requirements to ensure the employer is following them.

BOLI also targets a small portion of employers about whom they receive multiple or particularly egregious complaints from employees for site visits from its Proactive Investigations and Enforcement unit. This team first approaches the employer to alert them that they have received complaints about their labor practices. They then interview workers, accommodating offsite interviews if the workers are uncomfortable doing them in the workplace, and audit documents. A regulatory employee noted that in most cases employers decide not to contest because BOLI typically has good evidence of violations.

The investigatory unit is a relatively new team, created legislatively in 2016 and currently has four members. A regulatory staff member said "there are very few states that have that sort of direct field activity."

Business representatives said that up to this point, BOLI has focused on educating businesses about the law, rather than on enforcement. A BOLI proactive enforcement representative confirmed this, noting that businesses were still in a grace period.

In general, BOLI tries to remediate and change employer behavior before imposing penalties. A regulatory staffer explained, "Well, we're not entirely focused on penalties, we do work with employers to bring them into compliance and have them sign agreements and follow up with next steps, we consult with them about what their practices should be, so that's also part of it."

Several respondents noted that BOLI Wage and Hour's resource limitations for assessing scheduling law violations limited the effectiveness of enforcement. When the law passed, the legislature allocated one FTE to BOLI for enforcement, which according to a labor advocate is "just totally inadequate." A union representative mentioned hearing about instances of workers filing complaints and had "not received a response, and it's been months."

Several respondents also noted that enforcement is complaint driven and the onus is on workers to submit complaints to BOLI, which limits the extent to which violations can be enforced. A worker advocate noted this 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."

One regulatory staff member said BOLI staff anticipated receiving more complaints about violations in the future, as workers learn more about their rights and become more comfortable demanding that they be enforced. This staff member mentioned,

> I think at this point honestly there are a lot of questions employers still have and I think there's a resistance to challenge the process that workers have always had, because it's a new benefit for them. So, I think it will take some time for workers to realize they have the right to demand a schedule.

While regulatory staff have heard of relatively few complaints about the law so far, a staff member involved in proactive enforcement said the unit has observed some violations during site visits. She said, "A case I'm working on right now is with housekeeping at a hotel, and so typically they have been having to stay hours beyond what they've been told their shift would normally be."

A few respondents also noted that enforcement may ramp up when the requirement for businesses to provide schedules 14 days in advance goes into effect. Since many businesses were already meeting the initial seven-day notice requirement before the law went into effect, these respondents anticipated that BOLI would begin getting more complaints about violations under a 14-day notice requirement.

Several workers we interviewed, particularly in the hospitality sector, expressed that they sent letters to BOLI about lack of compliance with the law in their workplace but received limited help. One

worker, who started to track all his uncompensated last-minute schedule changes and sent this information to BOLI said, "This new law comes out, and you're not enforcing it. You're not being proactive, and not following up when there are complaints coming to you. Especially multiple complaints." When we interviewed him, two months after his initial complaint, he was still waiting for BOLI's assistance. The experience of these workers shows that even when workers file complaints, the regulatory agency's response might not be sufficient to ensure compliance. Another respondent shared that they and their coworkers had experienced a similar lack of response:

> 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.

Moreover, it is important to highlight the role played by union representatives in ensuring compliance with the law. As a result, current policy violations may be hard to estimate as they may be informally mediated in the workplace. One union organizer mentioned that she has often observed violations and worked with managers to remediate them before employees file a formal complaint with BOLI:

> A lot of times what will end up happening is I will send an email to management saying, "Did this person get their penalty pay for this instance," or "saw the schedule wasn't posted, please make sure that it's posted." Because if I see that a schedule isn't posted or isn't in a conspicuous location, I'll say something because that impacts everybody, and then if it's a worker by worker incident, I work with the member to determine whether they want me to bring it up to management or not want me to get involved right away.

In this sense, a few union representatives noted that nonunionized workers may not be receiving the predictability pay they are owed or are experiencing other violations because they do not have an advocate such as a union representative explaining their rights to them or working with management to ensure compliance.

THE IMPORTANCE OF IMPROVED EDUCATION ABOUT S.B. 828

Stakeholder respondents representing both labor and business perspectives asserted that Oregon needs to make a significant investment in educating workers about the law. Several labor advocates noted they had observed companies introducing compliance measures as if they were company policy, which meant that workers did not realize they could approach the state to redress violations. Several labor advocates felt that violations were likely when many workers did not know their rights, because employers would not anticipate a great threat of enforcement, knowing that employees were unlikely

to submit complaints. One fair scheduling advocate asserted, "I think all labor laws are inadequately communicated to employees. A notice in a breakroom is not a conscious level of education."

One union representative suggested having documents that employers would have to read and sign to prove that they had 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," because workers do not necessarily have the time or expertise to look them up and parse them on their own. A business group representative and a regulatory staff member recommended providing more accessible and informative web pages and training modules for workers. A worker suggested a way to minimize misinformation and confusion between workers and managers:

> [BOLI] should be going to work sites to do trainings because you will reach more folks. And on-site 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."

Discussion and Conclusions

In July 2018, Oregon implemented the first statewide predictive scheduling law in the nation: S.B. 828, which covers nearly 200,000 workers (Wolfe, Jones, and Cooper 2018). S.B. 828 addresses the problem of unpredictable, unstable schedules for low-wage workers by targeting large employers in the industries known for just-in-time scheduling practices. The law requires businesses with 500 or more employees worldwide in retail, hospitality, and food service to provide a minimum advance notice of work schedules and additional compensation to employees for last-minute schedule changes, as well as opportunities for employee input on work schedules. Several other states, such as New Jersey, Connecticut, and Washington, are considering similar laws. We anticipate that they will look to the Oregon law as an example. This study's results may be helpful as these states consider details about new predictive scheduling legislation and implementation of those laws.

When we conducted interviews with stakeholders, managers, and workers one year after implementation, we found relatively little contention over several components of S.B. 828 that appear to have improved labor conditions for workers in retail, food services, and hospitality: the right to rest between shifts, right to provide input on work schedules, and seven days' advance notice of work schedules (in 2020, two weeks' advance notice will be required). Workers seemed aware of the right to rest and advance notice requirements particularly, noting they helped improve work conditions.

However, workers and managers indicated that last-minute schedule changes are still frequent and common occurrences, and that workers are not receiving compensation for changes made without seven days' advance notice. Further, most workers and managers reported that good faith estimates of work schedules are not always provided at the time of hire, as required by the law, and even when initially provided, hours often change quickly after hire.

The intent of S.B. 828 is to help workers have more predictable schedules, but laws are passed in a political context that attempts to address the needs of multiple stakeholders—in this case, the needs of employers for flexible scheduling to meeting shifting demand with workers' needs to have scheduling stability to plan their lives. S.B. 828 was an attempt to balance these two interests by allowing both worker and business organizations to give input on the legislative and rulemaking processes. One critical piece of the law included to ensure business buy-in was the voluntary standby list, which allowed workers to volunteer for additional hours and exempted employers from having to pay "predictability pay" to workers on that list.

The standby list is unique to Oregon's regulations. No other initiatives to regulate unpredictable scheduling practices have included such a provision. Our interviews with workers, managers, and other stakeholders showed that this component of S.B. 828 is the primary way employers have been able to avoid an important protection for workers: predictability pay, which is intended to compensate workers for the challenges that last-minute schedule changes pose to their family life and health and well-being. Related provisions such as classifying a schedule change as "voluntary," even when an employer requested the change, and the use of waivers affirming that a schedule change is "voluntary" have also allowed employers to avoid paying predictability pay.

S.B. 828 did not attempt to address the widespread practice of part-time scheduling, hence workers continue to work fewer hours than they desire and need. Hungry for additional work hours, they typically agree to be on the voluntary standby list that exempts employers from providing compensation for work schedule changes without seven days' notice. Further, without regulations for minimum hours, the need for more work and more income creates a situation where workers are financially compelled to waive their rights, which reduces the efficacy of predictability pay as an incentive for more stable schedules.

Our findings show that businesses dislike predictability pay and strategically try to avoid paying it. Interestingly, workers appeared to be more concerned about the continued schedule instability than the lack of predictability pay. This could open up a window to think about a different solution that could produce a "win" for both business and workers.

Although awareness of the law is likely to increase over time, stakeholder respondents representing both labor and business perspectives asserted that Oregon needs to make a significant investment in educating workers about the law, and about the standby list in particular. Several labor advocates noted they had observed companies introducing new measures as if they were company policy. This is problematic, because it means these workers would not realize that they could approach the state to redress violations. Managers also seem to have limited knowledge of the law, which has serious implications for its implementation. Overall, the law's efficacy is compromised when managers and workers have unclear or conflicting understandings of the law.

Many workers reported they had not been informed about the new scheduling legislation. Some who had heard of specific provisions were not necessarily aware that those provisions were part of a larger scheduling law. Others had heard something about the law and said they had been briefly informed in person or they thought there was a poster about the law in their break room. Limiting information about a law to posters in the workplace is not an effective communication strategy, as these are often difficult to understand and camouflaged by numerous other notifications similarly posted. Workers paid low wages who are already under stress because of work-life realities may face particular challenges in being up to date on all of the law's provisions. Thus, doing a better job communicating the essential aspects of the law and making sure employers are following the law are especially important for this population.

Our evidence suggests several strategies to modify the standby list's implementation that may help address the problems workers have identified: (a) educating workers about their rights regarding signing the standby list and "volunteering" to change hours at the last minute; (b) clarifying the rules about use of waivers; and (c) potentially limiting the circumstances under which standby lists can be used.

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 S.B. 828 and has sent letters to some employers about S.B. 828. However, BOLI lacks sufficient resources for comprehensive, proactive enforcement that will address workers' concerns, and S.B. 828 did not provide resources for enforcement. Lack of proper funding for agencies in charge of protecting workers and enforcing labor rights severely limits proper application of the law.

Protective laws are necessary because of the unequal power relations between employers and employees. Eliminating the loopholes to avoid predictability pay, at best, or at least clarifying confusion about the law, would strengthen the impact of this law on the challenges of unpredictable scheduling practices. Overall, workers' experiences with unpredictable scheduling could be greatly improved by comprehensive legislation offering workers guaranteed minimum hours, guaranteed predictability pay (i.e., no option of this right being waived), and investment in educating workers about their legal rights.

Appendix. Methods

Sampling Approach

Stakeholders: we targeted the organizations most involved in the passage and implementation of the scheduling law as well as those most impacted by the change in the law. These organizations included business representatives, labor advocates and unions, legislators, and regulators. We used a snowballing approach to recruit additional respondents outside our original outreach; we asked respondents to recommend others who they thought were most relevant to speak to.

Workers and Managers: we identified all affected businesses in Oregon. We recruited workers from the three sectors targeted by the law (retail, food services, and hospitality) and geographically distributed in both urban and rural locations.

Outreach

Stakeholders: we emailed and called target respondents. We conducted cold outreach to target organizations and also called upon connections to target organizations through team members from the University of Oregon.

Workers and Managers: we conducted cold in-person outreach to employees who were working at establishments covered by the law. If employees were interested in doing an interview, we got contact information and followed up by telephone. We also conducted one in-person focus group with unionized food service and retail workers. All respondents were paid $25 for participation.

Respondents

Stakeholders: we interviewed 12 respondents (all but one conducted by the Urban team):

- Two fair scheduling advocates
- Three union representatives
- Three local business groups
- One state legislator

- Three state regulatory staff members

Workers: 75 workers across the retail, food service, and hospitality industries, including both union and nonunion workers. All interviews were conducted by the University of Oregon team.

Managers: 23 general managers and supervisors in retail, food service, and hospitality company locations, including both union and nonunion shops. All but three interviews were conducted by the University of Oregon team.

Timeline and Process

Stakeholders: interviews were conducted via one-hour phone calls. Senior researchers led the interviews, and junior researchers took detailed notes. Interviews were semistructured. The project team followed an interview guide but asked additional questions as they arose. The guide included questions about stakeholders' perspectives on the passage of and rulemaking process for the law, costs and benefits of the law to workers and businesses, implementation and compliance, and expectations for the future.

Workers and Managers: semistructured interviews lasting about an hour were conducted over the telephone. Interviews were audio recorded and transcribed verbatim. The team followed interview guides for workers and managers and asked additional probing questions.

Analysis

Stakeholders: the qualitative database consisted of verbatim notes from all interviews. We analyzed these data with help from the data management and analysis software program NVivo. We coded the data using a scheme developed based on the interview guide and early themes that emerged.

Workers/managers: we transcribed the interviews verbatim and loaded them in a qualitative data software program, Dedoose. We coded the interviews using codes based on the interview guide and themes that emerged in the context of the interviews.

Confidentiality

Identities of respondents and their organizations or employers were kept confidential and were not shared outside the research team or with other respondents. Findings from their responses were compiled for this report, and any potentially identifiable direct quotes were approved before use.

Notes

[1] S.B. 828, 79th Leg., Reg. Sess. (Or. 2017), https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/SB828.

[2] S.B. 828, 79th Leg., Reg. Sess. (Or. 2017).

[3] Bridget Ansel, "The Pitfalls of Just-in-Time-Scheduling," *Value Added* (blog), Washington Center for Equitable Growth, January 27, 2015, http://equitablegrowth.org/news/pitfalls-just-time-scheduling/.

[4] All 75 interviews with workers and 20 interviews with managers, as well as one stakeholder interview, were conducted by the University of Oregon team. The Urban Institute team conducted 3 interviews with managers and 11 interviews with stakeholders.

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