

Assessing the Initial Impacts of the First Statewide Scheduling Law

Lola Loustaunau, Larissa Petrucci, Ellen Scott, and Lina Stepick, University of Oregon

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. To examine the initial impact of the new scheduling law in Oregon, in the summer of 2019, we conducted in-depth interviews with 76 workers and 19 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.

FINDINGS

Right to Rest Between Shifts requires employers to schedule workers with at least 10 hours between their shifts, to avoid ‘clopening’ shifts that would prevent workers from getting adequate rest. We found that right to rest was widely implemented and seldom controversial. 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.

Right to Input into Work Schedule (Right to Request) requires employers to allow workers to identify limitations or changes in work schedule availability and to request not to be scheduled for work shifts during certain times or at certain locations without retaliation. Employers are not obligated to grant the requests of workers.

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 will be required. We found the advance notice requirement to be comparatively uncontroversial and widely practiced. Many workers reported that they had gotten their schedules more than 7 days in advance prior to SB 828. Many also reported that subsequent to SB 828, they could count on advance notice and that it was helpful in planning their work and home lives.

However, we also found that some employers use the law, beyond what is legally required, to increase restrictions on workers’ scheduling requests. Workers reported 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 7 days in advance), and some managers communicate 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.”

In this case, the employer’s understanding of the two-week notice requirement is deployed in ways that cause workers to lose an important tool to accommodate short-notice scheduling needs.

In another case of restricted flexibility, a respondent working in retail reported that after the passage of SB 828, his manager required workers to make requests for time off at least three weeks in advance. However, the respondent stated:

“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

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.

Frequent and last minute schedule changes in retail, food service, and hospitality are due to sector requirements to reduce labor costs, which often results 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. 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. 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.

Though several workers we interviewed were not aware of a voluntary standby list in their workplaces, 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 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 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.”

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 managers also believe 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.”

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 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.”

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.**”*

*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 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 by asking workers not on the list.

Managers also shared that they are particularly careful to avoid asking 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.

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.

(In)adequacy of Hours

Workers we interviewed reported that the number of hours they work from week to week continues to vary and many workers in each industry--retail, food service, and hospitality--report 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). 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 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.”***

*A manager of a retail store said that most of the workers are willing to accept unexpected shifts, with or without predictability pay, **“because they’re hungry for the hours.”***

It was widely understood or assumed that without signing the standby list, workers would not get additional hours. 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.

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 work full-time.

*One worker explained that hiring employees at the part-time level **“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.”***

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. 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.

CONCLUDING THOUGHTS: OPPORTUNITIES AND LIMITATIONS

SB 828 has had 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 consistent practices of 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," to avoid predictability pay. Workers overwhelmingly reported a willingness to waive predictability pay in order to be favored for extra hours and shifts.

We found that respondents also had varying knowledge of the law, and that implementation still requires better education and outreach about the law's requirements. Overall, we suggest that impacts on 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.

