COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON BUSINESS, CONSUMER, AND REGULATORY AFFAIRS
COMMITTEE REPORT

1350 Pennsylvania Avenue, NW, Suite 119 Washington, DC 20004

TO: All Members of the Council of the District of Columbia

FROM: Councilmember Vincent B. Orange, Sr., Chairperson
Committee on Business, Consumer, and Regulatory Affairs

DATE: June 23, 2016

SUBJECT: Report on Bill 21-512, the "Hours and Scheduling Stability Act of 2016".

The Committee on Business, Consumer, and Regulatory Affairs, the Committee to which Bill 21-512, the "Hours and Scheduling Stability Act of 2016" was referred, reports **favorably** thereon and recommends its approval by the Council of the District of Columbia.

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I. PURPOSE AND EFFECT

B21-512, the "Hours and Scheduling Stability Act of 2016" was introduced by Councilmembers Orange, Nadeau, Cheh, and Silverman on December 1, 2015.[1] The bill would require a food service establishment or retail establishment, with 40 or more establishments nationwide, to adopt a sensible scheduling system to provide more stability for their employees. In addition, the bill would afford the part-time employees at these establishments the opportunity to work more hours to grow their income to better provide for themselves and their families. The bill would achieve these goals by doing the following:

[1] The title of the bill was changed to reflect that the bill was introduced in 2015, but being considered by the Council in 2016.

- First, it would require an employer to provide an employee his or her individual work schedule in writing or by electronic means at least 14 days in advance;

- Second, it would require an employer to provide part-time employees with the same hourly wage as full-time employees who hold jobs that require the same skills, efforts, and responsibilities; and

- Finally, it would require an employer to offer part-time employees additional hours of work before hiring additional employees.

B21-512 was amended to clarify that an employee does not include participants in the Marion S. Barry Summer Youth Employment Program. It was also amended to exclude hotels, banks, conventions, credit unions, education institutions, savings institutions, trade shows, and heath care facilities from the requirements of the act. However, it should be noted that a business operating inside one of these establishments' on a permanent basis which meets the definition of a food service establishment, or retail establishment, would be subject to the requirements of this act.

Background

In June 2015, DC Jobs with Justice, Jobs with Justice Education Fund, DC Fiscal Policy Institute, and the Kalmanovitz Initiative for Labor and the Working Poor at Georgetown University issued a reported entitled the "Unpredictable, Unsustainable: The Impact of Employers' Scheduling Practices in D.C." ("Scheduling Report").[2] The scheduling report detailed the issues working families are facing under the current scheduling practices by many of the large restaurant chains and retail establishments operating in the District. Specifically, it highlighted the negative effects of just-in-time ("JIT") scheduling. JIT scheduling is a practice that links labor supply to consumer demand and often leads to schedules being posted at the last minute, requiring workers to be sent home after just arriving to work, or asking employees to stay beyond the end of their shift.[3]

In the District, working families are experiencing these harmful scheduling practices first hand. The scheduling report made the following findings from the service workers they surveyed: 33 percent of the surveyed employees said they receive their work schedules less than three days before the start of their work week; 50 percent of the surveyed employees said they receive their work schedules less than one week in advance; and nearly 30 percent of the respondents stated that they are given less than 24 hours notice of changes to their schedules.[4]

One of the aspects of JIT scheduling is the practice known as on-call or call-in shifts which means employees are called in to work at the last minute or they are told to call into work at the

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[2] Ari Schwartz, Michael Wasser, Merritt Gillard, and Michael Paarlberg, Unpredictable, Unsustainable: The Impact of Employers' Scheduling Practices in D.C., DC Jobs with Justice, Jobs with Justice Education Fund, DC Fiscal Policy Institute, Georgetown University Kalmanovitz Initiative for Labor and the Working Poor, June 2015.

[3] Nancy K. Cauthen, Scheduling Hourly Workers: How Last Minute, "Just-in-Time" Scheduling Practices Are Bad for Workers, Families, and Business, Demos, March, 2011.

[4] Supra note 2 at Page 7.

last minute to see if they must work.[5] Employees who are on-call but are not called in to work are prevented from making other plans and are not compensated for their time. According to the scheduling report, 49 percent of workers in the District surveyed reporting that they rarely end up actually working and 50 percent of these workers reported that this practice occurs at least several times per month.[6] These type of practices affect low-wage workers the most. Constant changes to an employee's schedule leads to uncertainty about his or her income, impacts the employee's ability to hold a second job, disrupts child planning, and affects an employee's ability to seek additional education or training.[7]

Ancillary effects of JIT scheduling include the negative effects it has on children of these workers and negative effects of employees facing debilitating diseases. At the hearing for B21-512, Dr. Haley-Lock from the University of Wisconsin noted that current scheduling practices contribute to parents having less time with their children and difficulty arranging child care.[8] JIT scheduling requires a parent to piece together child care arrangements that tend to be in less than optimal settings for their children.[9] It has been found that one factor that has contributed to chronic absenteeism among elementary school children is having a parent with an erratic work schedule.[10] Dr. Swanberg from the University of Maryland testified at the hearing for B21-512 about the ill-effects these scheduling practices have on the well-being of low-wage workers. She noted that this legislation could help individuals who work in the service industry who are facing a life-threating disease by allowing them: 1) to better coordinate their medical appointments with a more consistent and predicable work schedule; and 2) to allow them the opportunity to gain full-time hours so they can be eligible for employer-provided health benefits.[11]

Understanding the negative effects JIT scheduling has on employees, San Francisco adopted regulations that require employers to provide their employees their schedules 14 days in advance.[12] Bills to address this issue have been introduced in Indiana, Maryland, Massachusetts, Minnesota, Illinois, Connecticut, California, New York, Michigan, and Oregon.[13] Furthermore, the industry has taken notice and has started to curb these practices. Notably, retailers with stores in the District such as GAP, Inc., Marshalls, Target, Walmart, and Whole Foods have moved to provide their employees with advance notice of their schedules ranging from 10 days to two and a half weeks.[14] Even though these retailers have taken steps to protect their employees there are many businesses that have not followed suit.

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[5] *Id.* at Page 4.

[6] *Id.* at Page 8.

[7] *Id.* at Page 11.

[8] Dr. Anna Haley-Lock, Professor, University of Wisconsin-Madison, Testimony before the DC Council Committee on Business, Consumer, and Regulatory Affairs, Page 1, January 13, 2016.

[9] Supra note 3 at Page 8.

[10] *Id.*

[11] Dr. Jennifer Swanberg, Professor, University of Maryland, Testimony before the DC Council Committee on Business, Consumer, and Regulatory Affairs, Page 1, January 13, 2016.

[12] Lydia DePillis, The next labor fight is over when you work, not how much you make, Washington Post, May 8, 2015, https://www.washingtonpost.com/news/wonk/wp/2015/05/08/the-next-labor-fight-is-over-when-you-work-not-how-much-you-make/.

[13] *Id.*

[14] Ari Schwartz, DC Just Hours: Small Business Leads the Way on Stable Schedules in D.C., DC Jobs with Justice, June 2016.

Advanced Notice

In order to discourage the use of JIT scheduling, the Committee is recommending that employers covered under the proposed act provide their employees their schedules 14 days in advance. Further, to provide more protections for these employees, if an employer does change an employee's schedule within 14 days, but more than 24 hours before the start of the work week they would be required to pay their employee one hour of predictability pay.[15] With a change in an employee's regular schedule that provides less than 24 hours' notice an employee will be entitled to two hours of predictability pay for each shift of four hours or less or four hours of predictability pay for each shift of more than four hours. The Committee believes that predictability pay is an important provision as it would disincentivize last minute scheduling changes and it would compensate employees who are impacted by any last minute changes.

The predictability pay requirements will not apply if an employee reports to work. It should be noted that District regulations already requires employers to provide employees four hours of pay when an employee reports for work but is sent home early because there is no work to be done.[16] The regulations provide an employee will be paid the regular rate of pay for any hours worked, but will be only paid the minimum wage for hours not worked.[17] The Committee advises the Department of Employment Services ("DOES") to revise this regulation when implementing the rules for this act. DOES should change the regulation in order to clarify that employees that work for retail and food service establishments as defined under this act should be paid at the regular rate of pay whether or not they worked those hours. Clarifying this regulation will mean that small businesses still would only be required to pay the minimum wage, while large businesses will be required to pay the regular rate of pay.

Additionally, the bill does not ban the practice of on-call shifts. However, it does compensate an employee who is required to be on-call but is never called in to work. An employee will receive two hours of pay at the employee's regular rate of pay for each on-call shift of four hours or less or four hours of pay at the employee's regular rate of pay for each shift of more than four hours. The Committee does not want to ban on-call shifts because it wants employees to have every opportunity to work. Banning on-call shifts diminishes the employee's ability to increase the individual's income. In addition, it puts an unnecessary restriction on an employer.

The Committee, after hearing the concerns from numerous witnesses about how the schedules were to be posted, amended the bill so the employer may distribute to their employees his or her schedules in writing or by electronic means. In addition, the employee will be able to consent to additional work hours not included in his or her original schedule in writing or by electronic means. The bill was also amended to require the employer to provide a revised schedule to the employee either in writing or by electronic means.

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[15] Predictability pay means a payment made to an employee, calculated on an hourly basis at the employee's regular rate of pay and is in addition to any wages earned for work performed by that employee pursuant to the work schedule before the change.

[16] Section 907.1 of Title 7 of the District of Columbia Municipal Regulations (7 DCMR 907.1).

[17] *Id.*

Another issue that arose during the hearing of B21-512 was the number of exceptions that should be considered in cases where a business's operations cannot begin or continue at no fault of their own. As introduced, the bill only provided an exception to the predictability pay requirements when shift changes were made at the requests of an employee or when there was a schedule change that was mutually agreed upon with the employees. After hearing these concerns the Committee believes that the number of exceptions should be expanded, but must not be done in way that would nullify the requirements of the act. Including the exceptions provided above, the Committee recommends the following additional exceptions: business operations cannot continue or begin due to threats to employees or property; business operations cannot continue or begin due to the failure of utilities; business operations cannot continue or begin due to an Act of God or other cause not within an employer's control; an employer requires an employee to work overtime; a cancelled event that directly impact's proposed staffing levels; and when business operations cannot continue or begin due to a failure, delay, or closure of the local transit system.

Equal Treatment

The legislation requires part-time employees to be paid the same hourly wage as provided to a full-time employee if the job entails the same skills and responsibilities. The Committee believes this is a reasonable provision that will help protect part-time employees from being discriminated against. The section allows for a pay differential if it is based on seniority, merit, or a performance-based system. This provision is also necessary because on numerous occasions the Committee has heard from low-wage workers who raised legitimate concerns that large retailers and restaurant chains hire part-time workers in order to offer them less pay and benefits. Nearly half of the workers that work in the fast food industry are scheduled less than 35 hours per week.[18] In order to try to assist these workers, the Committee believes that part-time workers should be paid the same wage as full-time workers especially if they are doing the same work.

Offer of Additional Hours

One of the most important aspects of the proposed bill is requiring employers to offer additional hours of work to a part-time employee before hiring additional employees. An employer would be required to post the notice for additional hours for five days. The notice for additional hours must include: a total hours of work being offered; schedule of available shifts; length of time the employer anticipates needing the additional hours; and a description of the position.

Businesses tend to hire a part-time workforce to save money on labor costs in the short term by avoiding responsibility for healthcare and other employee benefits.[19] Part-time employees in many cases do not choose to work part-time and would rather work on a full-time basis. Ms. Emily Martin, General Counsel for the National Women's Law Center, testified at the January 13th hearing that one in five part-time employees work part-time involuntarily and that low-wage workers are far more likely to work part-time involuntarily.[20] Additionally, Ms. Martin added

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[18] Lauren Bonds, Assistant General Counsel, Service Employees International Union, Testimony before the DC Council Committee on Business, Consumer, and Regulatory Affairs, Page 3, January 13, 2016.

[19] *Id.*

[20] Emily Martin, Vice President and General Counsel, National Women's Law Center, Testimony before the DC Council Committee on Business, Consumer, and Regulatory Affairs, Page 3, January 13, 2016.

that in the District, part-time employees whom are women and especially for women with children under the age of 18, getting more hours of work was very important to them.[21] Two-fifths of District residents without a high school degree who work part-time want full-time work.[22] These figures show that workers in low-wage jobs have a significant desire to obtain full-time employment.

The District cannot require businesses to hire full-time employees, however, the Committee does recommend creating a path that makes it easier for part-time employees to be able to gain full-time employment. It is important to note that many of these service workers rely on these jobs as their main source of income to support themselves and their families.[23] Furthermore, a majority of the D.C. service sector employees that would benefit from transitioning from part-time employment to full-time are not teenagers who are working part-time jobs to supplement their income. The median age of D.C. residents employed in the service sector is 36 and a majority of these workers are women and are minorities.[24]

Recently, the District gave final approval to increase the minimum wage to $15 an hour.[25] By providing service workers with higher wages and full-time hours it can help close the income inequality gap and also help families afford to live in the District. Also, providing full-time employment to these employees will help them gain access to other benefits such as the health-care benefits under the Affordable Care Act.

Amendment

Councilmember Allen made a motion to strike section 9(b)(2), which stated that there shall be rebuttable presumption of retaliatory personnel action against an employee when an employee informs a person about the employer's alleged violation. He stated that the language was too vague and unclear. Chairperson Orange agreed and accepted the motion to strike as a friendly amendment.

II. LEGISLATIVE HISTORY

December 1, 2015	B21-512 is introduced by Councilmembers Orange, Nadeau, Cheh, and Silverman.
December 1, 2015	B21-512 is referred to the Committee on Business, Consumer, and Regulatory Affairs.
December 4, 2015	Notice of Intent to Act is published in the *District of Columbia Register*.

[21] *Id.*

[22] Ed Lazere, Executive Director, DC Fiscal Policy Institute, Testimony before the DC Council Committee on Business, Consumer, and Regulatory Affairs, Page 3, January 13, 2016.

[23] *Id.* at Page 2.

[24] Supra note 2 at Page 13.

[25] "Fair Shot Minimum Wage Amendment Act of 2016", passed on 2nd reading on June 21, 2016 (Enrolled Bill 21-712).

December 11, 2015	Notice of Public Hearing is published in the *District of Columbia Register.*
January 13, 2016	The Committee on Business, Consumer, and Regulatory Affairs holds a public hearing on B21-512.
June 23, 2016	The Committee on Business, Consumer, and Regulatory Affairs considers and reports favorably on B21-512.

III. POSITION OF THE EXECUTIVE

Deborah Carroll, Director, Department of Employment Services, testified on behalf of the Executive. The Executive took no position on the bill, but raised concerns about its implementation and the impact it will have on businesses.

IV. COMMENTS OF ADVISORY NEIGHBORHOOD COMMISSIONS

The Committee has received no testimony or comments from the Advisory Neighborhood Commissions.

V. SUMMARY OF TESTIMONY

Public Witnesses

Jamie Contreras, Vice President, SEIU 32BJ, testified in support of B21-512, stating that in order to improve the lives of low-wage workers, attention must be paid to both hourly wages and to precarious scheduling practices. Further, he provided that on-demand and on-call shifts and the fragmentation of work into part-time jobs undermine the ability of workers to plan their lives, care for their families, and achieve financial security.

Rasimani Diggs, Public Witness, testified in support of B21-512. She stated that she typically receives her work schedule one or two days before the week starts and this makes it tough to plan her week because she has two part-time jobs. In addition, she said with a second job and trying to help her family, if her schedule changes all of her plans have to change as well. When she complained about these scheduling issues they reduced her hours.

Nikki Lewis, Executive Director, DC Jobs With Justice, testified in support of the bill as she believes it will prioritize turning service jobs into good jobs. She stated that it is clear that an individual's work schedule is more than a workplace issue and it is important to allow people to work jobs with predicable schedules with full-time hours.

Ed Lazere, Executive Director, DC Fiscal Policy Institute, testified in support of the bill. Mr. Lazere stated, under current employer scheduling practices, many service workers find their schedules changed by their employer from week to week, often with little notice, leaving their

incomes to go up and down while their rent, food and other bills stay the same. He testified that mandating stable schedules and more predictable income for low-wage service workers can help address DC's wide income inequality and keep families from falling into poverty.

Andrew Kline, Legislative Counsel, Restaurant Association of Metropolitan Washington, testified in opposition to the bill. He stated that the culture of the hospitality worker is quite different from other industries, therefore, they need more flexibility in their schedule. Further, he testified that the legislation is overbroad and ignores unpredictable occurrences that affect scheduling and staffing.

Michael J. Shoenfelt, Associate, Vorys, Sater, Seymor, and Pease LLP, raised six concerns in his testimony. He testified that: 1) 21-days advance notice would be the most restrictive in the nation; 2) there should be an exception allowing employers to schedule, without penalty, replacement shits in instances where employees provide less than 21-days' notice that they cannot work a scheduled shift; 3) the bill presupposes an environment in which employees are assigned specific shifts, which is not always the case; 4) the notion of "available shifts" is difficult to apply in many retail settings; 5) the bill should allow for notice by electronic means; and 6) the bill is unclear as to the level of detail required for retailers to post the criteria they will use for distribution of available work.

Margaret Singleton, Interim President/CEO, DC Chamber of Commerce, testified in opposition of the bill because it proposes to mandate a one size fits all approach and micromanages operations that are typically between the employer and employee. She mentioned that San Francisco, which adopted a similar law, has had problems with its implementation. She raised concerns regarding the length of notice, the format of the notice, the penalties being proposed, and the timeline of the implementation of the law.

Mike Whatley, Director of State and Local Affairs, National Restaurant Association, testified in opposition to the legislation. He cautioned that before the District moves forward it must look at the issue that San Francisco is having in implementing its scheduling ordinances. Further, he testified that the bill does not provide the flexibility that restaurant operators need to deal with unpredictable events. He also provided that this bill would arbitrarily impact chain restaurants and disincentivize local homegrown chain restaurants from expanding their operations.

Dr. Anna Haley-Lock, Associate Professor, University of Madison, Wisconsin, testified in support of the bill. Professor Haley-Lock testified that the research shows that unpredictable schedules make it harder for one to increase their skills, to get a second job, and to budget and save for the future. They also contribute to parents having less time with their children and difficulty arranging child care. She closed by saying that this bill will make the hours of DC workers more sufficient and stable.

Joslyn N. Williams, President, Metropolitan Washington Council, AFL-CIO, testified in support of the bill, because it will provide some form of workplace stability that everyone needs and deserves to have a healthy and productive life. He said currently workers do not get the stability they need for their personal and family lives. This leads to morale and efficiency at the

workplace to suffer which can put the safety at workers at risk. He stated this legislation is needed to protect those worker who don't have the power or authority to change their work circumstance on their own.

Dr. Jennifer Swanberg, Professor, University of Maryland, testified in support of the legislation as it will provide economic security for many workers. She testified that workers who are fighting debilitating diseases would be helped by this legislation in three ways: 1) workers would be able to coordinate their medical appointments around a consistent and predictable work schedule; 2) service workers would have equal access to professional advancement opportunities; and 3) employees with less than full-time hours would be able to accrue employer-provided benefits such as health insurance.

Gina Schaefer, Owner, A Few Cool Hardware Stores, testified in support of the legislation. Ms. Schaefer testified that this is part of her company's commitment to providing a great work. To that end, they provide their employees with their schedules at least two weeks in advance and inform staff if the schedule is going to change so that the staff can plan their lives around work. Ms. Schaefer hopes that other businesses will strive to give their employees the stability they need and deserve, and supports the efforts this legislation makes in making that a reality.

Emily J. Martin, Vice President and General Counsel, National Women's Law Center, testified in support of the legislation. Ms. Martin stated that unstable, unpredictable, work schedules over which workers have little to no control, often undermine the ability of working women in D.C. to provide for themselves and their families. These schedules pose particular challenges for workers with significant responsibilities outside of their job such as caring for children or elderly relatives or even a second job because their primary job does not give them enough hours to make ends meet. Ms. Martin also stated that jobs with unpredictable schedules have higher turnover rates and lower rates of employee engagement.

Mark Lee, Executive Director, D.C. Nightlife Hospitality Association, testified in opposition of the legislation. Mr. Lee stated that as drafted, the legislation would only effect a small number of hospitality establishments, mainly franchise food and beverage service operations. However, after the implementation in larger establishments the Council will attempt to expand it to all establishments. Mr. Lee urged that the Council reject this legislation for that reason.

Tim Ehlert, Buffalo Wild Wings, testified opposition to the legislation. Mr. Ehlert stated that the restaurant business can be unpredictable. As such flexibility is necessary to success and by requiring a schedule 21 days in advance makes that success that much more difficult. He also pointed out that new employees would have to wait 21 days to start work in order for restaurants to be in compliance with this legislation. Mr. Ehlert testified that there are many operational challenges and questions the legislation poses, which will have a significant impact on businesses. He urged the Council to reject this legislation.

Joe Rinzel, Senior Vice President of Government Affairs, Retail Industry Leaders of America, testified in opposition of the legislation. Mr. Rinzel testified that the retail industry is completely against the legislation and sees it as ill-conceived. He also stated that the legislation

is not jobs-friendly, business friendly, or employee friendly and urged the Council to reject the legislation.

Christine Tschiderer, Equal Justice Works Fellow, Washington Lawyers' Committee for Civil Rights and Urban Affairs, testified in support of the legislation. Ms. Tschiderer stated that drastically fluctuating hours, last minute schedule changes and no guarantee that you'll get paid if you show up to work wreak havoc on any worker who depends on their paycheck for necessities. This creates a burden on thousands of families in the District, and Ms. Tschiderer feels that the legislation will lessen this burden significantly.

Carla Hashley, Operations and Events Manager, Jews United for Justice, testified in support of the legislation. Ms. Hashley stated that as a former retail worker she is aware of the burden unreliable scheduling can have on a person. She detailed her time at major retailers where she was not given the resources she needed to do the work properly in order to keep costs low. She also pointed out that there were many retailers like that and many people are affected by this on a daily basis.

Jacob Feinspan, Executive Director, Jews United for Justice, testified in support of the legislation. Mr. Feinspan testified that this legislation will strengthen families in DC and make it a city where hard working people can succeed. He discussed how important routine is to his children's success and how important it is that parents have a consistent work schedule that allows them to be there for their kids so that the District can close the school achievement gap.

Kenneth Yates, Public Witness, testified in support of the legislation. Mr. Yates stated that his employer, Trader Joes, already provides their employees with schedules two weeks in advance. Some of his co-workers have second jobs that do not provide them with advanced scheduling. Mr. Yates is concerned that some of his co-workers have to hold second jobs to get by, but that being the reality, he believes that passing this legislation would send a powerful message about the District's commitment to ending poverty.

Kim Mitchell, Public Witness, testified in support of the legislation. Ms. Mitchell cited her experience working at Macy's during the past holiday season where the store was open for 48 hours. Ms. Mitchell stated that this was the first time that the store had been open for that long in as long as she can remember. Ms. Mitchell stated that Macy's can change an employee's schedule at a moment's notice, especially during the holiday season, making it difficult for employees to spend time with their families. Ms. Mitchell asked for the Committee's support of this legislation so that employees can have the stability they deserve.

Lauren Bonds, Assistant General Counsel, SEIU, testified in support of the legislation. Ms. Bonds stated that during her work with the SEIU, the employees of fast food franchises she encounters all over the country share a universal experience of part-time work and inconsistent scheduling, even though they are often directly employed by thousands of different local small business owners. Ms. Bonds attributes this to the fact that fast food corporations retain significant control over the staffing practices of their franchise stores and require these small business owner to implement the same exploitative staffing practices that they use in corporate stores.

Patricia Griffin, Public Witness, testified in support of the legislation. Ms. Griffin stated that as the District becomes more expensive, service sector jobs need to stable enough for residents to maintain an income and work their way up, whether through workforce training or adult education classes. Ms. Griffin also testified that even with an increase in the minimum wage, shifting schedules and insufficient hours remain barriers for people who are trying to provide for themselves and their families. Ms. Griffin stated that implementing this bill would improve employee performance, incur less call outs and improve day to day operations.

Maura Flores, Public Witness, testified in support of the legislation. Ms. Flores stated that she has worked at the Union Station Sbarro for five years making minimum wage with very few benefits. Ms. Flores testified that she often does not get her full 40 hours of work and never knows how many hours she will be working as it varies from shift to shift and that the manager assigns more hours to favorite employees and relatives.

Raymunda C. Alfaro, Public Witness, testified in support of the legislation. Ms. Alfaro stated that she has worked at the Union Station Taco Bell for more than three years. Her schedule makes work even harder as the owner posts the weekly schedule every Sunday and she never has the same days off which makes it hard for her to plan ahead for child care as well as knowing whether she will work the same hours every week. Ms. Alfaro stated that the owner has control of every aspect of the administration and stays in his office away from the workers and the site manager cannot make any changes, making things that much more difficult.

Testimony Submitted for the Record

David Farquhar, CEO, Workplace Systems, wrote in support of the legislation. Mr. Farquhar stated that his company's software would make it easier for companies to provide employees with their schedules in accordance with the legislation and even provide them with an even greater notice period than the legislation requires. Mr. Farquhar thanked the Committee for their attention to this issue.

Catherine Meloy, President and CEO, Goodwill, wrote in opposition to the legislation. Ms. Meloy stated that the legislation would have a significant negative impact on the operation of Goodwill's business and its employees. She stated the 21 day advanced notice of scheduling is too long, that requiring businesses to offer hours to existing employees would impose a significant burden on employers and that the legislation has the unintended consequence of impacting Goodwill employees that do not work in the retail or food service sectors.

Elizabeth Ben-Ishai, Senior Policy Analyst, Center for Law and Social Policy, wrote in support of the legislation. Ms. Ben-Ishai stated that the legislation includes important provisions that address the lack of predictability, stability and flexibility many hourly workers experience. She also stated that these conditions have an adverse effect on individuals, communities and businesses in the District. Ms. Ben-Ishai also testified that if passed, this legislation would increase family economic stability, enable workers to meet their obligations both at work and at home and boost the local economy by reducing turnover and increasing productivity.

Tony Dundas-Lucca, Owner, 1905 and El Camino, wrote in support of the legislation. Mr. Dundas-Lucca stated that the provisions in the legislation are common sense standards with which his businesses would have no problem complying. He stated that he gives his employees their schedule one month in advance and the practices are not costly for him to implement. He also stated that doing this has enabled him to have low turnover in a high turnover industry and it is just the right thing to do.

David French, Senior Vice President, Government Relations, National Retail Federation, wrote in opposition to the legislation. Mr. French stated that the legislation would present serious challenges and have unintended consequences for employers and employees. Mr. French also testified that each retailer has a unique business process and customer base, and each employee has unique needs. The legislation is a one size fits all approach that is impossible for all of the different retailers to abide by without losing employees and customers alike.

Cailey Tolle, President, Maryland Retailers Association, wrote in opposition to the legislation. Ms. Tolle stated that the ability to set employee schedules in response to sales, peak seasons, economic conditions, weather or public events is essential to running a retail business. She also stated that many employees value the flexibility afforded by the retail industry and are satisfied with the balance their employer's strikes between accommodating their needs and addressing key business needs.

RJ Hrapsky, Regional Manager, Auto Zone, wrote in opposition to the legislation. Mr. Hrapsky stated that often times, there will only be two employees scheduled in a store and in order to meet customer needs and Auto Zone needs continued flexibility in scheduling. Moreover, Auto Zone employees want flexibility and the opportunity to adjust schedules based upon their needs and the needs of their families.

Joe Portera, Executive Vice President and Chief Operating Officer, Eastern Division, Costco, wrote in opposition to the legislation. Mr. Portera stated that the legislation is flawed because it does not recognize and allow for the flexible nature of the retail business. Demand for employees and hours vary throughout the seasons, and in order to be successful retailers need to be able to schedule employees to meet these changing circumstances. Mr. Portera outlined four specific issues with the legislation which included the publishing of the schedule 21 days in advance, compensation for changed shifts or predictability pay, a lack of equal treatment for employees based on this legislation and offering hours to existing employees.

Dagnachew Dagne, Public Witness, wrote in support of the legislation. Ms. Dagne stated that she works at the Union Station Au Bon Pain where she does not receive steady hours and the schedule goes up each Thursday which makes it hard for her to plan any of her personal affairs in advance. Ms. Dane asked for the Council's help in solving this problem.

Shawniece Green, Public Witness, wrote in support of the legislation. Ms. Green wrote that she currently works at Starbucks. Ms. Green stated that her schedule is posted one week in advance and is subject to change without prior notice. This is frustrating for Ms. Green and other employees who have set availability but whose schedules don't match.

Neil Washington, Public Witness, wrote in support of the legislation. Mr. Washington stated that inconsistent scheduling makes it difficult to work 40 hours a week at his current job. Mr. Washington also stated that his schedule is posted a week in advance but is subject to change and that management has told him that he has to be flexible with his schedule to accommodate new employees.

Bruce Banks, Public Witness, wrote in support of the legislation. Mr. Banks worked as a cook at Popeyes for 25 years. Mr. Banks testified that the retail and food industries see their employees as expendable and during his time at Popeyes he was never given 40 hours a week intentionally so that he could not collect benefits. Mr. Banks also testified that good employees should have the opportunity to receive more hours or get promoted before the company brings on a new employee part-time.

George Worsley, Public Witness, wrote in support of the legislation. Mr. Worsley stated that he has a daughter and family that he has to provide for and physically be there for, but the hours he is required to work and the lack of advance notice about his schedule make doing both very difficult. Mr. Worsley stated that if this legislation is passed, he would be better able to pursue his goals and go back to school and he would not have to choose between taking his daughter to the doctor and putting food on the table.

Assanatou Boureima, Public Witness, wrote in support of the legislation. Ms. Boureima stated that she does not receive her schedule for the next week until Thursday or Friday and that management changes her schedule whenever they want. She and her daughter both have health issues and need to go to the doctor's office regularly. Although she usually has Wednesdays off and management knows that is when she takes her daughter to the doctor, they still schedule her for Wednesdays occasionally. If she can't reschedule her daughter's appointment and takes her paid leave she will still receive discipline points. Ms. Boureima testified that if this legislation is passed, she will no longer have to worry about her or her daughter's health and she will be able to take her daughter to the doctor without having to worry about her job.

Keyona Dandridge, Public Witness, testified in support of the legislation. She stated that working in the food industry is taxing work and she often has to schedule her son's needs around her work schedule and only receiving her schedule one week in advance makes it difficult to schedule doctor's appointments and other personal needs. She also does not receive overtime when she stays past the end of her shift because she is forced to clock out at her scheduled time.

Government Witness

Deborah Carroll, Director, Department of Employment Services, testified that DOES faces a challenge in how it will monitor compliance and maintain records to enforce the requirements of the bill. She testified that the legislation circumvents the existing internal complaint system and essentially outsources hour disputes to the administration. In addition, she stated that the legislation eliminates and undermines a businesses' ability to be responsive to the need of its customer base. Further, Director Carroll believed the lengthy claims process in the legislation could prove contentiously unpleasant for employers and employees. The Director recommended that the legislation be revised so it is less arduous to businesses and strengthens the relationship

between employers and employees. She stated as introduced the bill would increase costs to the government and would place enforcement costs and the administrative burden on the government.

VI. IMPACT ON EXISTING LAW

B21-512 is a freestanding bill and has no impact on existing law.

VII. FISCAL IMPACT

The Committee accepts the fiscal impact statement from the District's Chief Financial Officer. See attachment F.

VIII. SECTION BY SECTION ANALYSIS

SECTION 1 — States the long and short titles of the legislation.

SECTION 2 — Provides the definitions for the act. The definitions provide that a food service establishment or retail establishment with more than 40 establishments nationwide would be subjected to the requirements of this act.

SECTION 3 — Provides the advance notice of work schedule requirements.

Subsection (a) — Requires an employer to provide an employee with a good faith estimate of the number of hours, days, and times that the employee will be expected to work each week. An employer must provide an employee his or her work schedule 14 days before the first day of work. In addition, if the employer initiates a schedule change the employer must provide the employee with a revised work schedule within 24 hours.

Subsection (b) — Allows an employee to decline to work any hours not included in a work schedule.

Subsection (c) — Requires consent from an employee to work additional hours either in writing or by electronic means.

Subsection (d) — Provides that an employee shall not be required to search for or find a replacement to cover any hours during which the employee is unable to work a shift.

SECTION 4 — Provides the predictability pay for changed shifts.

Subsection (a) — Requires an employee to pay one hour of predictability pay for any schedule change with notice of fewer than 14 days before the shift is

to start but 24 hours or more before the schedule is scheduled to start. In addition, a schedule change with notice of less than 24 hours an employee will receive two hours of predictability pay for each shift of four hours or less and four hours of predictability pay for each shift of more than 4 hours.

Subsection (b) States that if an employee reports to duty the individual shall be compensated pursuant to the Minimum Daily Wage requirements.

SECTION 5 Provides the requirements for on-call pay.

Subsection (a) Requires an employee to be compensated for each on-call shift which the employee is required to be available but is not called in to work. An employee will be provided two hours of pay for each shift of four hours or less and will be provided four hours of pay for each shift of four hours or more.

Subsection (b) Clarifies that this section shall not apply if the employee is called in for the on-call shift.

SECTION 6 Provides the exceptions of the predictability and on-call pay requirements.

Subsection (a) Provides exceptions due to a business not being able to begin operations or continue its operations because of threats to its employees or property, a failure of public utilities, or due to an Act of God. In addition, it provides an exception for a food service establishment that cannot operate at proposed staffing levels due to a cancelled event that is within one-half mile of the food service establishment. Further, there is an exception if the business cannot begin or continue operations due to a failure, delay, or closure of a local transit system. Also, there is an exception if an employee is required to work overtime. Finally, there is an exception if an employee trades a shift with another employee or initiates a schedule change.

SECTION 7 Provides for equal treatment of part-time employees.

Subsection (a) States that a part-time employee shall be provided the same wage as a full-time employee if they are doing substantially similar work.

Subsection (b) Provides when a part-time employee may be compensated more than a full-time employee.

Subsection (c) States the section will not affect the minimum hourly wage requirements for receipt of benefits.

SECTION 8	Provides for offer of additional hours to part-time employees.
Subsection (a)	Requires an employer to offer additional hours to a part-time employee before hiring an additional employee.
Subsection (b)	Provides the requirements of what must be included in the notice for additional hours.
Subsection (c)	Outlines the process of how the employer shall assign the additional hours of work.
Subsection (d)	Requires the employer to make reasonable efforts to offer employees training opportunities.
Subsection (e)	Provides that this section does not require or prohibit an employer from offering a part-time employee overtime.
SECTION 9	Provides the rights of employees to prohibit from retaliation.
Subsection (a)	prohibits an employee from retaliating against an employee for exercising his or her right under the act.
Subsection (b)	Provides for rebuttable presumption of violation of the act for actions taken against an employee within 90 days of the employee exercising his rights under the act.
Subsection (c)	Prohibits an employee from making a false statement or misrepresentation of an alleged violation.
Subsection (d)	Protects an employee from retaliation who mistakenly alleges a violation of the act.
SECTION 10	Provides the record keeping requirements.
Subsection (a)	Requires an employer to maintain records for at least 3 years.
Subsection (b)	Requires an employer to post the requirements of the act in a conspicuous and accessible place. DOES is required to provide a copy of the summary of the act to employers within 60 days of the effective of the act.
SECTION 11	Provides the administrative fine.
Subsection (a)	States an employer will be fined not more than $500 for violating the provisions of this act.

Subsection (b)	Outlines the employer's right to appeal the administrative fine.
SECTION 12	Provides the administrative and civil actions provisions.
Subsection (a)	Provides that an employee injured by a violation of this act may bring a civil action or administrative action.
Subsection (b)	Outlines the remedies an administrative law judge may order for violations of this act.
Subsection (c)	Outlines the remedies for a civil action brought against an employer.
Subsection (d)	States that DOES can take appropriate enforcement actions against an employer who is not complying with the act or regulations issued pursuant to the act.
Subsection (e)	Requires the court or administrative law judge to award interest at the rate of interest specified in D.C. Code § 28-3302(c).
Subsection (f)	Provides a monetary judgement awarded shall be enforceable by the employee whom the debt is owed or by the District on behalf of the employee.
SECTION 13	Provides for the interpretation of the act.
Subsection (a)	States that this act should not preempt, limit, or affect any other law or regulation that provides an employee with additional rights, remedies, or other protections.
Subsection (b)	Provides that nothing in this act should prohibit an employer from adopting policies that are more beneficial to employees.
Subsection (c)	States that nothing in this act shall diminish the obligations of an employer to comply with any contract, CBA, employment benefit plan, or other agreement that adopts policies that are more beneficial to an employee.
SECTION 14	Requires DOES to issues rules to implement this act within 180 days of the effective date of this act.
SECTION 15	Provides that the act is being passed subject to appropriation.
SECTION 16	Provides the fiscal impact statement.
SECTION 17	Establishes the effective date.

IX. COMMITTEE ACTION

On Thursday, June 23, 2016, the Committee on Business, Consumer, and Regulatory Affairs convened an additional meeting to consider B21-512, the "Hours and Scheduling Stability Act of 2016". Committee Chairperson Vincent B. Orange, Sr. called the meeting to order at 10:05 a.m. A quorum was noted consisting of Councilmember Charles Allen (Ward 6), Councilmember Brandon Todd (Ward 4), Brianne Nadeau (Ward 1), and At-Large Councilmember Elissa Silverman.

After Chairperson Orange made his opening statement, he made a motion to adopt the committee print and asked if there was any discussion.

Councilmember Allen stated that this legislation is important and the intent is something he supports. The operations and mechanics of how this legislation would work are cause for concern. Councilmember Allen asked why hotels are exempt from the legislation. Councilmember Orange stated that many hotels are subject to collective bargaining agreements and have worked all of these things out. Councilmember Allen stated that while many hotels are represented by unions there are some that are not and their schedules may be unpredictable as well, those who are not may be subject to the same issues as retail workers.

Councilmember Allen appreciated the language in the legislation that allows for exceptions for weather related changes. He asked why previously unscheduled events are not covered as an exception, Chairperson Orange stated he would be open to language dealing with that. His third question was who determines what constitutes a weather delay and what is considered a transportation delay. His concern is about enforcement because, while the intent is good, the language is too vague.

Councilmember Allen made a motion to strike section 9(b)(2), which stated that there shall be rebuttable presumption of retaliatory personnel action against an employee when an employee informs a person about the employer's alleged violation. He stated that the language was too vague and unclear. Chairperson Orange agreed and accepted the motion to strike as a friendly amendment.

Finally, Councilmember Allen had a question about the penalties. He asked if the Chairperson would be willing to create a stepped system for increasing penalties and moved an amendment. Councilmember Silverman thanked Councilmember Allen for his points, and asked if Councilmember Allen would be willing to work with the Committee to looking at these issues before going to first reading to give everyone the time to really look at this amendment. Councilmember Orange stated that he is willing to work with Councilmember Allen on fixing and addressing his questions but would like to get more input from the stakeholders. Councilmember Allen moved the amendment and it failed by a vote of 3-2.

Councilmember Allen then moved a second amendment dealing with previously unscheduled event. Councilmember Orange stated that he could not support the amendment as this is the first time he is seeing this and would like to take more time to look at the issue. Councilmember Silverman asked if the amendment would apply to food service establishments within a certain

zone. Councilmember Allen stated that the half mile radius around certain entertainment hubs should be struck, and that his amendment would apply to all establishments. Councilmember Silverman stated that her concern is that without the radius language, establishments can attempt to skirt the requirements of the act.

Councilmember Nadeau stated that any sporting event that is being shown will have some fan who will want to watch it and the lack of mileage would make it difficult to discern between local sporting events and every sporting event so she could not support his amendment. Councilmember Allen moved the amendment and it failed a vote of 3-2.

Councilmember Todd believes that this is important legislation and he supports the intent however, he believes the legislation is not balanced enough for the District and while the San Francisco law is the model that is being followed, it is important to remember that the District is not San Francisco. The legislation could burden both employees and employers and make it difficult for people who want to work to find positions. This legislation could adversely affect the hiring of future employees, seasonal employees and college students and the legislation will keep businesses from expanding. Councilmember Todd cannot support this legislation but hopes to allow the taskforce to do their job and come back to the Council with a better balanced piece of legislation.

Councilmember Silverman believes that this legislation is fair and represents sensible compromises that protect workers without undue burden on employers. The stability this legislation will provide can be the difference between being able to take your child to the doctor and the ability to care for their families. This legislation also makes it easier for workers to care for their families by having first crack at available hours.

Councilmember Nadeau stated that she has had many meetings with all stakeholders and the legislation is revised to reflect concerns on both sides. While the compromise may not make everyone happy, it does move everything forward and she looks forward to working with the Committee going into first reading.

Councilmember Orange stated again for the record that this legislation only applies to those establishments that have 40 or more locations nationwide, and that it requires part time workers to get extra hours before the employer hires another part time employee. He also stated that the Committee is still willing to work with Committee members, and would like to thank his colleagues for their work on issues surrounding protecting the District's workers. He hopes that the Committee will work together in the future to move this legislation forward

There being no further discussion, Chairperson Orange moved the committee print of B21-512, with leave for staff to make necessary technical and conforming revisions. The motion was approved by a vote of 3 to 2.

Committee Members voted as follows:

Committee Members Voting in Favor:

Councilmember Vincent B. Orange, Sr., Chair
Councilmember Elissa Silverman (At-Large)
Councilmember Brianne Nadeau (Ward 1)

Committee Members Voting Against:

Councilmember Brandon Todd (Ward 4)
Councilmember Charles Allen (Ward 6)

Committee Members Voting Present:

None

Chairperson Orange then moved the adoption of the committee report and asked if there was any discussion.

There being no discussion, Chairperson Orange moved the question to approve the committee report to B21-512, with leave for staff to make technical and conforming revisions consistent with the actions taken at the meeting. The motion was approved by a vote of 5 to 0.

Committee Members voted as follows:

Committee Members Voting in Favor:

Councilmember Vincent B. Orange, Sr., Chair
Councilmember Charles Allen (Ward 6)
Councilmember Elissa Silverman (At-Large)
Councilmember Brianne Nadeau (Ward 1)
Councilmember Brandon Todd (Ward 4)

Committee Members Voting Against:

None

Committee Members Voting Present:

None

Following its consideration of B21-512, the Committee adjourned at 11:13 a.m.

X. ATTACHMENTS

A. Measure as Introduced
B. Notice of Intent to Act as Published in the *District of Columbia Register*
C. Public Hearing Notice as Published in the *District of Columbia Register*
D. Agenda and Witness List

E. Witness Testimony
F. Fiscal Impact Statement
G. Attestation of Legal Sufficiency
H. Committee Print

ATTACHMENT

A

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington D.C. 20004

Memorandum

To : Members of the Council

From : Nyasha Smith, Secretary to the Council

Date : December 01, 2015

Subject : Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Legislative Meeting on Tuesday, December 1, 2015. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Hours and Scheduling Stability Act of 2015", B21-0512

INTRODUCED BY: Councilmembers Orange, Nadeau, Cheh, and Silverman

CO-SPONSORED BY: Councilmembers Grosso, Todd, Allen, and May

The Chairman is referring this legislation to the Committee on Business, Consumer, and Regulatory Affairs.

Attachment

cc: General Counsel
Budget Director
Legislative Services

Councilmember Mary Cheh

Councilmember Vincent B. Orange, Sr.

Councilmember Elissa Silverman

Councilmember Brianne Nadeau

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To establish standards for responsible business practices by retail and food service employers by ensuring that they provide employees with advance notice of work schedules, equal treatment regardless of number of hours worked, and available additional hours of work.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Hours and Scheduling Stability Act of 2015."

Sec 2. Definitions.

For the purposes of this chapter, the term:

(1) "Chain" means a set of establishments, which share a common brand, or are characterized by standardized options of décor, marketing, packaging, products and services.

(2) "Covered employer" shall mean a retail employer or food services employer.

(3) "Department" means the Department of Employment Services.

(4) "Employ" shall have the same meaning as under D.C. Official Code § 32-1002(1).

(5) "Employee" means any individual who:

(A) Is an employee as defined under D.C. Official Code §§ 32-1001(2) and 32-1003(b);

(B) Is eligible to receive compensation at one-and-one-half times the employee's regular rate under either D.C. Official Code § 32-1003(c) or 29 U.S.C. § 207; and

(C) Is employed by a retail employer or food services employer.

(6) "Food services employer" means any entity that:

(A) Is an employer under DC Code § 32-1002(3); and

(B) Employs employees in the District of Columbia in a food services establishment.

(7) "Food services establishment" means entities that employ employees in a full service or limited service restaurant as defined under the North American Industry Classification System ("NAICS") 7221 and NAICS 7222 where that restaurant:

(A) Is part of a chain of at least 20 restaurant establishments nationwide; or

(B) Is a franchisor or franchisee where the franchisor or franchisee is one of 20 or more establishments nationally, including:

(i) An integrated enterprise which owns or operates 20 or more such establishments in the aggregate nationally; or

(ii) An establishment operated pursuant to a franchise where the franchisor and franchisee(s) of such franchisor owns or operate 20 or more such establishments in the aggregate nationally.

(8) "Franchisee" means a person to whom a franchise is offered or granted.

(9) "Franchisor" means a person who grants a franchise to another person.

(10) "Franchise" means a written agreement by which:

(A) A person is granted the right to engage in the business of offering, selling or distributing goods or services under a marketing plan prescribed or suggested in substantial part by the grantor or its affiliate;

(B) The operation of the business is substantially associated with a trademark, service mark, tradename, advertising or other commercial symbol; designating, owned by, or licensed by the grantor or its affiliate; and

(C) The person pays, agrees to pay, or is required to pay, directly or indirectly, a franchise fee.

(11) "On-call hours" or "On-call shifts" means the time that an employer requires an employee to be available to work, to contact the employer or its designee, or wait to be contacted by the employer or its designee, to determine whether the employee must report to work at that time.

(12) "Predictability pay" means payments to an employee, calculated on an hourly basis at the employee's regular rate of pay, as compensation for changes made by an employer to an employee's schedule pursuant to Section 3 of this act, in addition to any wages earned for work performed by that employee.

(13) "Regular rate of pay" has the meaning given under D.C. Official Code § 32-1002(7).

(14) "Retail employer" means any entity that:

(A) Is an employer under D.C. Official Code § 32-1002(3);

(B) Employs employees in a retail establishment that is part of a chain of at least 5 retail establishments nationwide; and

(C) Has at least one retail establishment located in the District of Columbia.

(15) "Retail establishment" means any retail business where goods are sold on the premises.

(16) "Retaliatory personnel action" means:

(A) Any form of intimidation, threat, reprisal, harassment, discrimination, or adverse employment action; or

(B) Interference with an investigation, proceeding, or hearing mandated by this act.

(17) "Shift" means the consecutive hours an employer requires an employee to work or to be on call to work, provided that breaks totaling one hour or less shall not be considered an interruption of consecutive hours.

(18) "Work Schedule" means all of an employee's regular and on-call shifts, including specific start and end times for each shift, during a consecutive 7 day period.

(19) "Year" means a regular and consecutive 12 month period, as determined by an employer and communicated to the employer's employees.

Sec. 3. Advance notice of work schedules for employees of covered employers.

(a) Upon hiring, a covered employer shall provide each employee with a good faith estimate of the number of hours and the days and times the employee is expected to work each week.

(b) On or before the commencement of employment, a covered employer shall provide the employee with a written work schedule for the employee's first 3 weeks of employment.

(c)(1) A covered employer shall give each employee his or her individual work schedule in writing at least 21 days prior to the first day of that work schedule.

(2) An employee may decline to work any hours not included in the written work schedule required by this section.

(d) If an employee consents to work such hours not included in the written work schedule, consent must be recorded in writing, which can be transmitted via electronic means on or before the start of the shift for which consent is required.

(e) A covered employer shall contact the employee to notify him or her of any change to the employee's work schedule prior to the change taking effect. A covered employer shall also provide the employee with a revised written work schedule reflecting any changes within 24 hours of making the change.

(f) The covered employer shall post a written schedule 21 days in advance of the start of each week that includes the shifts of all employees at that worksite, whether or not they are scheduled to work or be on call that week. The covered employer must update that posted schedule within 24 hours of any change. The schedule must be posted in a place that is readily accessible and visible to all employees of the employer at that worksite.

Sec. 4. Compensation for changed shifts for employees of covered employers.

(a) Less than 21 days before the first scheduled hour of a shift, a covered employer may add hours of work pursuant to Section 3 of this act, subtract hours from a shift, cancel a shift, or change the start or end time or date of a shift, provided that the covered employer pays each affected employee one hour of predictability pay, in addition to wages earned, for each shift that is added, cancelled, or changed.

(b) A covered employer shall pay an employee a minimum of 4 hours or the number of hours in the employee's scheduled shift, whichever is less, at the employee's regular rate of pay, regardless of the actual hours worked by the employee, on any day that the employee reports for duty or is notified less than 24 hours before a regular or on-call shift that the employee does not need to report to work or when the hours in the shift have been reduced. Payment under this section shall be required instead of, rather than in addition to, predictability pay owed under subsection (a) of this section.

(c) Written consent required by Section 3 of this act and the predictability pay and minimum pay required by subsections (a) and (b) of this section shall not apply to shift changes made at the request of the employee, including:

(1) Employee-initiated requests to work specific hours other than those scheduled by the employer, requests to use sick leave, vacation time, personal days, or other leave policies offered by the covered employer; or

(2) A schedule change is the result of a mutually agreed upon shift change among employees.

Sec. 5. Equal treatment for employees regardless of hours worked.

(a) Employees who hold jobs that require substantially equal skill, effort, responsibility, and duties and that are performed under similar working conditions, regardless of the number of hours that an employee is scheduled to work or expected duration of employment shall be provided the same:

(1) Hourly wage;

(2) Eligibility to accrue employer-provided benefits, provided that this section shall not affect the minimum hourly requirements for receipt of benefits; and

(3) Promotion opportunities.

(b) This section shall not be construed to prohibit differences in hourly wages based on reasons other than the number of hours the employee is scheduled to work or expected duration of employment, including on the basis of seniority, a merit system, or a system which measures earnings by quantity per hour or quality of production.

Sec. 6. Offer of work hours to existing employees.

(a) A covered employer shall offer additional hours of work to existing employees before hiring additional employees or subcontractors, including hiring through the use of temporary services or staffing agencies.

(b)(1)The covered employer shall post a notice of available work, including the total hours of work being offered, the schedule of available shifts, whether those shifts will occur at the same time each week, the length of time the employer anticipates requiring coverage of the additional hours, the process by which employees may notify the employer of their desire to work the offered hours, and the criteria the employer will use for distribution of hours.

(2) The notice shall be posted for at least 7 days, in a place that is ready accessible and visible to all employees, before a covered employer may hire additional employees or subcontractors.

(c) The covered employer shall assign additional hours of work to an employee who has responded to the offer of work, and who, in the employer's good faith and reasonable judgment, has the skills and experience to perform the work. If more than one such employee has responded to the offer of work, the employer shall distribute the work among interested employees according to the employer's posted process. An employee's written response to the offer of work shall serve as consent to the addition of those hours, as is required by this act. If

no such employee responds to the offer of work, the employer may hire such new employees as are necessary to perform the work described pursuant to subsection (b) of this section.

(d) Covered employers shall make reasonable efforts to offer employees training opportunities to gain the skills and experience to perform work for which the employer typically has additional needs.

(e) This section shall not be construed to require any covered employer to offer employees work hours paid at a premium rate under 29 U.S.C. 207(c), D.C. Official Code § 32-1003(c), or this act, nor to prohibit any covered employer from offering such work hours.

(f) When hiring additional employees or subcontractors, including hiring through the use of temporary services or staffing agencies, the covered employer shall document the time and method of offering the additional hours of work to existing staff. Failure to preserve documentation pursuant to this subsection for 3 years after the date of hiring employees or subcontractors shall give rise to a rebuttable presumption of a violation of this section.

Sec. 7. Exercise of rights protected.

(a) It shall be unlawful for a covered employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this act.

(b) A covered employer shall not take retaliatory personnel action against an employee because the employee has exercised rights protected under this act.

(c) An employee shall not be required to search for or find a replacement employee to cover any hours during which an employee is unable to work a scheduled shift.

(d) Protections of this section shall apply to any person who mistakenly, but in good faith alleges violations of this act.

(e) There shall be a rebuttable presumption of unlawful retaliation under this section whenever a covered employer takes adverse action against an employee within 90 days of when that employee:

(1) Files a complaint with the Department or a court alleging a violation of any provision of this act;

(2) Informs any person about a covered employer's alleged violation of this act;

(3) Cooperates with the Department or other persons in the investigation or prosecution of any alleged violation of this act;

(4) Opposes any policy, practice, or act that is unlawful under this act; or

(5) Informs any person of his or her rights under this act.

Sec. 8. Notice and recordkeeping requirements.

(a) (1) Every covered employer subject to any provision of this act or of any regulation issued under this act shall preserve for a period of not less than 3 years records showing the hours worked daily by all employees, the wages and predictability and minimum pay paid to all employees, and the initial work schedule and all subsequent revisions to the work schedule of all employees. Failure to maintain records required under this act shall give rise to a rebuttable presumption that the employer has violated this act.

(2) All records shall be made available for inspection or transcription by the Department. Every covered employer shall furnish the Department on demand a sworn statement of records and information upon forms prescribed or approved by the Department.

(b) Every covered employer who is subject to any provision of this act or any regulation issued under this act shall keep a copy or summary of this act and any applicable regulation issued under this act, in a form prescribed or approved by the Department, posted in a

conspicuous and accessible place in or about the premises at which any employee covered by the regulation is employed.

(c) Covered employers shall be furnished copies or summaries of this act by the Department without charge, within 60 days of the effective date of this act. A covered employer shall not be liable for failure to post notice if the Department has failed to provide the covered employer a copy of the notice required by this section.

Sec. 9. No effect on more generous policies.

(a) Nothing in this act shall be construed to discourage or prohibit a covered employer from the adoption or retention of policies that are more beneficial to employees.

(b) Nothing in this act shall be construed as diminishing the obligation of a covered employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing policies that are more beneficial to an employee.

Sec. 10. Other legal requirements.

This act shall provide for minimum requirements and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard which provides employees with additional rights or remedies, or that extends other protections to employees.

Sec. 11. Enforcement and penalties.

(a)(1) An employee or similarly situated employees injured by a violation of this act shall be entitled to maintain a civil action or an administrative action.

(2) When an administrative complaint is filed against any covered employer or other person alleged to have violated this act, a hearing by an administrative law judge shall be scheduled following the same procedure available in D.C. Official Code § 32-1308.01.

(b) If the Department determines that a covered employer has violated any provision of this act, the Department shall order the covered employer to provide affirmative remedies including:

(1) The full amount of pay that would have been earned if the covered employer had not violated the act including interest thereon and liquidated damages of 2 times that amount of pay;

(2) Any actual damages suffered as the result of the covered employer's violation of this act;

(3) Reinstatement or other injunctive relief; and

(4) Reasonable attorney's fees and costs of enforcement.

(c) An action may be maintained against any covered employer in a court of competent jurisdiction by any one or more employees for and on behalf of himself, herself or themselves. A covered employer who violates the provisions of this act shall be liable to the employee or employees affected for:

(1) The full amount of pay that would have been earned if the covered employer had not violated the act including interest thereon and liquidated damages of 2 times that amount of pay;

(2) Any actual damages suffered as the result of the employer's violation of this act;

(3) Reinstatement or other injunctive relief; and

(4) Reasonable attorney's fees and costs.

(d)Where compliance with this act or regulations enacted to implement this act is not forthcoming, the Department shall take any appropriate enforcement action to secure

compliance, including initiating a civil action and, except where prohibited by another law, revoking or suspending any registration certificates, or permits or licenses held or requested by the employer or person until the violation is remedied.

(e) In any administrative or civil action brought under this act, the Department or court shall award interest on all amounts due and unpaid at the rate of interest specified in D.C. Official Code §§ 28-3302(b) or 28-3302(c).

(f) Any money awarded to an employee under this act shall be enforceable by the employee to whom the debt is owed or may be collected by the District on behalf of the employee.

(g) The limitations period found in D.C. Official Code § 32-1308(c)(1) shall apply to all civil or administrative actions filed under this section.

Sec. 12. Severability.

If any provision of this act or application thereof to any person or circumstance is judged invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Sec. 13. Rulemaking.

The Department shall promulgate rules to implement this act.

Sec. 14. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1 206.02(c)(3)).

Sec. 15. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

ATTACHMENT

B

VOL. 62 – NO. 50 DECEMBER 4, 2015

District of Columbia REGISTER

HIGHLIGHTS

- D.C. Council enacts Act 21-215, Uniform Interstate Family Support Emergency Act of 2015
- D.C. Council enacts Act 21-217, Interim Eligibility and Minimum Shelter Standards Emergency Amendment Act of 2015
- D.C. Council schedules a public roundtable on the Board of Elections' Preparations for the June 14, 2016, Primary Election
- Office of the State Superintendent of Education schedules public hearings on the Proposed Child Care and Development Fund Block Grant Plan
- Department of Energy and Environment solicits public comments on the District of Columbia Sustainable Energy Utility Benchmarks
- Department of Health announces funding availability for the Fiscal Year 2016 Poison Control and Prevention Services
- Office of the Secretary releases a memorandum on the filing of the Official Signature Form
- D.C. Taxicab Commission proposes regulations that would require installation of safety devices in all taxicabs

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

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DISTRICT OF COLUMBIA
OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

RM 520 – 441 4th ST, ONE JUDICIARY SQ. - WASHINGTON, D.C. 20001 - (202) 727-5090

MURIEL E. BOWSER
MAYOR

VICTOR L. REID, ESQ.
ADMINISTRATOR

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ACTIONS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA

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D.C. ACTS CONT'D

BILLS INTRODUCED AND PROPOSED RESOLUTIONS

COUNCIL HEARINGS

OTHER COUNCIL ACTIONS

COUNCIL OF THE DISTRICT OF COLUMBIA
NOTICE OF INTENT TO ACT ON NEW LEGISLATION

The Council of the District of Columbia hereby gives notice of its intention to consider the following legislative matters for final Council action in not less than **15 days.** Referrals of legislation to various committees of the Council are listed below and are subject to change at the legislative meeting immediately following or coinciding with the date of introduction. It is also noted that legislation may be co-sponsored by other Councilmembers after its introduction.

Interested persons wishing to comment may do so in writing addressed to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, NW, Room 5, Washington, D.C. 20004. Copies of bills and proposed resolutions are available in the Legislative Services Division, 1350 Pennsylvania Avenue, NW, Room 10, Washington, D.C. 20004 Telephone: 724-8050 or online at www.dccouncil.us.

COUNCIL OF THE DISTRICT OF COLUMBIA **PROPOSED LEGISLATION**

BILLS

B21-496	Encouraging Foster Children to have Connections with Siblings Amendment Act of 2015 Intro. 11-20-15 by Chairman Mendelson at the request of the Mayor and Retained by the Council with comments from the Committee on Health and Human Services
B21-502	Employees' Compensation Fund Clarification Act of 2015 Intro. 11-25-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs
B21-506	Establishment of the Community Health Emergency Link Paramedicine Pilot Program Act of 2015 Intro. 12-1-15 by Councilmember McDuffie and referred to the Committee on Judiciary

B21-507	Criminal Code Reform Commission Amendment Act of 2015 Intro. 12-1-15 by Councilmember McDuffie and Chairman Mendelson and referred to the Committee on Judiciary
B21-508	School Attendance Clarification Amendment Act of 2015 Intro. 12-1-15 by Councilmember Grosso and Chairman Mendelson and referred sequentially to the Committee on Education and Committee of the Whole
B21-509	Citizens Fair Election Program Amendment Act of 2015 Intro. 12-1-15 by Councilmembers Grosso, Nadeau, Cheh, Allen, Silverman, and Chairman Mendelson and referred to the Committee on Judiciary
B21-510	Inmate Segregation Reduction Act of 2015 Intro. 12-1-15 by Councilmember Cheh and referred to the Committee on Judiciary
B21-511	Clean Elections Amendment Act of 2015 Intro. 12-1-15 by Councilmembers Silverman, Nadeau, Allen, and Cheh and referred to the Committee on Judiciary
B21-512	Hours and Scheduling Stability Act of 2015 Intro. 12-1-15 by Councilmembers Orange, Nadeau, Cheh, and Silverman and referred to the Committee on Business, Consumer, and Regulatory Affairs
B21-513	District of Columbia Statehood Advocacy Act of 2015 Intro. 12-1-15 by Councilmember Orange and referred to the Committee of the Whole
B21-514	Made in DC Program Establishment Act of 2015 Intro. 12-1-15 by Councilmembers Allen, Orange, and Chairman Mendelson and referred to the Committee on Business, Consumer, and Regulatory Affairs

ATTACHMENT

C

VOL. 62 – NO. 51 DECEMBER 11, 2015

District of Columbia REGISTER

HIGHLIGHTS

- D.C. Council schedules a public hearing on Bill 21-415, Universal Paid Leave Act of 2015
- D.C. Council schedules a public hearing on Bill 21-463, District of Columbia Incarceration to Incorporation Entrepreneurship Program Act of 2015
- Department of Consumer and Regulatory Affairs publishes two Construction Codes Administrative Bulletins
- Department of Energy and Environment solicits public comments on the District of Columbia's Regional Haze Five-Year Progress Report
- Department of Health establishes a Prescription Drug Monitoring Program Advisory Committee to ensure legitimate use of controlled substances
- Office of the State Superintendent of Education announces funding availability for the DC Environmental Literacy Advancement Grant
- Department of Small and Local Business Development announces funding availability for the Emerging Business District Demonstration Grants

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Council of the District of Columbia
Committee on Business, Consumer, and Regulatory Affairs
Notice of a Public Hearing

John A. Wilson Building 1350 Pennsylvania Avenue, NW, Suite 119 Washington, DC 20004

Councilmember Vincent B. Orange, Sr., Chair
Committee on Business, Consumer, and Regulatory Affairs

Announces a Public Hearing

on

- **B21-331, the "Building Service Employees Minimum Work Week Act of 2015"**
- **B21-512, the "Hours and Scheduling Stability Act of 2015"**

Wednesday, January 13, 2016, 10:00 A.M.
John A. Wilson Building, Room 500
1350 Pennsylvania Avenue, N.W.
Washington, DC 20004

Councilmember Vincent B. Orange, Sr., announces the scheduling of a public hearing by the Committee on Business, Consumer, and Regulatory Affairs on B21-331, the "Building Services Employees Minimum Work Week Act of 2015" and B21-512, the "Hours and Scheduling Stability Act of 2015". The public hearing is scheduled for Wednesday, January 13, 2016 at 10:00 a.m. in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Ave., NW, Washington, DC 20004.

B21-331, the "Building Services Employees Minimum Work Week Act of 2015", would require janitorial or building maintenance service workers that work in an office building, office park, or group of office buildings with over 350,000 net rentable commercial office square feet to be provided with no less than 30 hours of work per week.

B21-512, the "Hours and Scheduling Stability Act of 2015", would require a retail or food services employer to provide their employees a written work schedule 21 days before the first scheduled hour of a shift. The bill requires employees who hold similar jobs be provided the same hourly wage, eligibility to accrue employer-provided benefits, and promotion opportunities regardless of hours worked by the employee. In addition, the bill requires employers to offer additional hours of work to existing employees before hiring additional employees or subcontractors.

Individuals and representatives of organizations who wish to testify at the public hearing are asked to contact Faye Caldwell of the Committee on Business, Consumer, and Regulatory

ATTACHMENT

D

Council of the District of Columbia
Committee on Business, Consumer, and Regulatory Affairs
Agenda & Witness List

John A. Wilson Building 1350 Pennsylvania Avenue, NW, Suite 119 Washington, DC 20004

Councilmember Vincent B. Orange, Sr., Chairperson

Committee on Business, Consumer, and Regulatory Affairs

Public Hearing

- **B21-331, the "Building Service Employees Minimum Work Week Act of 2015"**
- **B21-512, the "Hours and Scheduling Stability Act of 2015"**

Wednesday, January 13, 2016, 10:00 A.M.
John A. Wilson Building, Room 500
1350 Pennsylvania Avenue, N.W.
Washington, DC 20004

AGENDA

A. CALL TO ORDER

B. OPENING STATEMENT

C. WITNESSES

Public Witnesses

Panel 1

1. Delvone Michael, Executive Director, DC Working Families
2. Jaime Contreras, Vice President, SEIU 32BJ
3. Dyana Forester, Lead Political & Community Representative, United Food & Commercial Workers Union, Local 400
4. Nikki Lewis, Executive Director, DC Jobs with Justice

Panel 2

5. Andrew Kline, Legislative Counsel, Restaurant Association Metropolitan Washington (RAMW)
6. Michael J. Shoenfelt, Associate, Vorys, Slater, Seymour and Pease LLP
7. Margaret Singleton, Interim President & CEO, DC Chamber of Commerce
8. Mike Whatley, Director, State and Local Affairs, National Restaurant Association

Panel 3

9. Dr. Lonnie Golden, Penn State University
10. Anna Haley-Lock, University of Wisconsin-Madison
11. Susan Lambert, University of Chicago
12. Dr. Jennifer Swanberg, Ph.D., MMHS, OTR, University of Maryland

Panel 4

13. Gina Schaefer, Owner, A Few Cool Hardware Stores
14. Emily Martin, Vice President & General Counsel, National Women's Law Center
15. Kirk McCauley, Director of Members & Government Relations,
16. Mark Lee, Executive Director, D.C. Nightlife Hospitality Association (DCNHA)

Panel 5

17. Ed Lazere, Executive Director, DC Fiscal Policy Institute
18. Peggy Jeffers, Executive Vice President/Secretary, AOBA
19. Nicola Whiteman, Senior Vice President of Government Affairs, AOBA
20. Kirsten Bowden, Vice President of Government Affairs, DC

Panel 6

21. Christine E. Tschiderer, Esq., Equal Justice Works Fellow
22. Joslyn Williams, President, Metropolitan Washing Council, AFL-CIO
23. Carla Hashley, Operations & Events Manager, Jews United for Justice
24. Jacob Feinspan, Executive Director, Jews United for Justice

Panel 7

25. Kenneth Yates, Public Witness
26. Ismael Avelar, Public Witness
27. Dagnachew Dagne, Public Witness
28. Maura Flores, Public Witness

Panel 8

29. Raymunda Alfaro, Public Witness
30. Maria Velasco, Public Witness
31. Shawniece Green, Public Witness
32. Neil Washington, Public Witness

Panel 9

33. Keyona Dandridge, Public Witness
34. Kimberly Mitchell. Ward 7 Resident
35. Leticia Reyes, Public Witness
36. Carmen Torress Vera, Public Witness

Panel 10

37. Rasimani Diggs, Public Witness
38. George Worsley, Public Witness
39. Assanantou Boureima, Public Witness
40. Hugh F. Kelly, PhD., CRE

Panel 11

41. Tim Ehlert, Director, Government Relations
42. Ellen Valentino, Mid-Atlantic Petroleum Distributors Assn.
43. Bobby Martz, 7-Eleven
44. Solomon Beyene, 7-Eleven

Panel 12

45. Mark Chiochankitmum, 7-Eleven
46. Daniel Mezmur, 7-Eleven
47. Nayola Allen, 7-Eleven
48. Ericka Larry-Louis, Public Witness

Panel 13

49. Carrie Gleason, Director, The Fair Workweek Initiative, Center for Popular Democracy
50. Elianne Farhat, Deputy Campaign Director, Fair Workweek Initiative Center for Popular Democracy
51. Lauren Bonds, Assistant General Counsel, Service Employees' International Union
52. Samantha Davis, MPP, Senior Advocacy & Community Engagement Specialist, SOME (So Others Might Eat)

Panel 14

53. Maria Velasquez, Public Witness
54. Justino Gomez, Public Witness
55. Norma Pineda, Public Witness
56. James Hamilton, Public Witness

Panel 15

57. Bruce Banks, Public Witness
58. Patricia Griffin, Public Witness

Government Witness

Panel 1

1. Deborah A. Carroll, Director, Department of Employment Services

D. ADJOURNMENT

ATTACHMENT

E

32BJ SEIU
Stronger Together

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INTERNATIONAL UNION
CTW, CLC

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www.seiu32bj.org

Testimony of Jaime Contreras, Vice President 32BJ SEIU

Committee on Business, Consumer, and Regulatory Affairs

Public Round Table - B21-331, the "Building Service Employees Minimum Work Week Act of 2015" and Bill 21-512, the "Hours and Scheduling Stability Act of 2015"

January 13 2016

Good Morning Chairman Orange and Committee members. My name is Jaime Contreras and I am a Vice President of 32BJ SEIU and Director of the Capital Area District covering DC, Maryland and Northern Virginia.

32BJ represents over 145,000 men and women in the property services industry across 11 states and Washington, DC. We have over 18,000 members here in the Capital Area.

On behalf of our members I am pleased to be here today to speak in support of this Bill and the family sustaining jobs it promotes.

Law makers in a number of jurisdictions have recognized that to improve the lives of low-wage workers, attention must be paid to both hourly wages *and* to precarious scheduling practices. On-demand and on-call shifts and the fragmentation of work into part-time jobs undermine the ability of workers to plan their lives, care for their families and achieve financial security. For this reason, I support for Bill 21-512, the "Hours and Scheduling Stability Act of 2015" being considered here today.

The Minimum Work Week Act will ensure the high-road is taken in the industry by matching the demand for services in larger buildings and facilities with the supply of workers who need full-time jobs.

Based on our industry experience, it is our view that markets for building services can function effectively when work is performed full-time. The drive for part-time work is not driven by underlying tenant needs or workforce preferences, but by staffing choices made by building service companies.

According to research done by the Economic Policy Institute and our surveys, the markets of a number of major American cities including New York, Chicago, Pittsburgh, Philadelphia, Los Angeles and San Francisco feature full-time employment at rates ranging from 80 to 95%.[i] In 2015 the commercial office markets in these cities saw reduced vacancy rates and buoyant tenant demand.[ii] The full times rates in these cities contrast sharply with DC where only slightly more than 60% of employees work more than 30 hours.[iii]

The choice to part time work comes with personal and public costs. The US poverty threshold for a family of four in 2015 was $24,250.[iv] To earn this level of income a full

time cleaner in DC needs to work for over 44 hours a week at the current DC minimum wage of $10.50, or 32 hours a week at the current 32BJ contract rate of $14.60.[v] In Washington DC, where almost one in five people already live in poverty and poverty rates amongst part time workers are 14 times higher than for full time workers (23.3% and 1.7% respectively)[vi], the decision by contractors to part time jobs pushes more workers and their families to the brink.

The effects of wage losses are exacerbated for workers if they are excluded from employer provided health care. Contractors seeking to take the low-road of labor standards can avoid the 30 hour per week employer mandate set by the Affordable Care Act by abusing part-time work arrangements. This choice also often represents a shifting of cost onto the public purse. By allowing workers to obtain full time jobs, thereby qualifying for employer-paid health insurance, this Bill could save the DC Alliance program as much as $2,400 annually for each every worker who switches from DC Alliance to private health insurance.

There is strong evidence that part timing jobs creates hidden costs for businesses in the long-run. Insecure work increases employee turnover and pushes up recruitment and training costs. 32BJ's data reveals that turnover rates among building service workers in the Capital Area are twice as high for part time workers (24%) as they are for full time workers (12%). Research performed by the Center for American Progress, estimates that replacing a worker costs employers on average 20% of the annual salary.[vii]

The District of Columbia has a proud record of implementing intelligent policies to ensure all residents have a decent standard of living. This Bill builds on this platform and will be an effective complement to the broader movement to raise America up by increasing the well-being of the District's residents.

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[i] Mishel, Lawrence (Economic Policy Institute) - Research Note for SEIU 32BJ
[ii] 32BJ Research Note, Performance of Major US Office Markets (2015)
[iii] Mishel, Lawrence (Economic Policy Institute) - Research Note for SEIU 32BJ
[iv] www.aspe.hhs.gov/2015-poverty-guidelines
[v] http://www.seiu32bj.org/wp-content/uploads/2012/08/2015-CAD-Contractors-Agreement-English.pdf
[vi] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_1YR_S1701&prodType=table
[vii] www.americanprogress.org/issues/labor/report/2012/11/16/44464/there-are-significant-business-costs-to-replacing-employees/

Testimony of Rasimani Diggs

In support of DC Council B21-0512, the Hours and Scheduling Stability Act of 2015
Before the Committee on Business, Consumer, and Regulatory Affairs

January 13, 2016

My name is Rasimani Diggs and I'm here to support the Hours and Scheduling Stability Act. First I want to thank Council Member Orange and the other Council members who introduced and co-sponsored this important bill. I also want to thank all of the Council Members for talking about this very important problem with hours and scheduling. I've worked at Marshall's in Columbia Heights for over 2 years and live in Kenilworth. It was not easy to request time off and lose hours for being here today.

It was an easy decision to come and testify. It's not easy for other workers in my position to take time off and I know a lot of them are scared to speak up about what's happening to them. It's important for me to be here because I'm speaking not only for other people who need these opportunities, but on my own behalf as well. I've worked hard enough that I want what I deserve.

Right now, life is hard. I was told I would get 20 hours a week when I started, but I almost never do. When they make the schedule, they don't care about our availability. Even when I open my availability up or volunteer for overnight shifts, I still don't get scheduled for the hours I expected. I got a second job working with an aftercare program at J.O. Wilson, where I went to school. It hasn't helped. They just cut me back to one or two days a week at Marshalls. Since I've started speaking out, my hours are very slim.

We don't have a schedule really. They post a schedule a day or two before the week starts, but it can change at any time. I wish they even just had a digital schedule. They only post the schedule on paper in the store. I have to try to call in or take metro from Kenilworth on a day I don't even work just to check my schedule and see if it's changed. I can't plan anything in my life. With a second job and trying to help my family, if my schedule changes all of my plans have to change too.

It makes it difficult for me to take care of helping like I'd like to. Even though my sister is able to take care of herself and her daughter. I want to be able to pitch in. I also have my own career plans and dreams. I'm working at Marshalls because I want to work for a future, but my job holds me back from being able to pursue anything else.

If you pass this bill I could afford a sewing machine to pursue my business dreams. I would be able to have my own place and mobility. I could help out my mom and help my sister to look out for my niece. This would help with a lot of important things that I need in my life right now that I don't have. It would make life a lot better for me and all of my co-workers.

I strongly support the Hours and Scheduling Stability Act and I'm asking for your support too. I and my co-workers talk about this every day and we'll be watching closely. I just want to thank Council Member Orange again for introducing this bill and all of you who have sponsored and supported the bill again. Finally I want to thank all of the Council Members for having this hearing. This is a very important issue and we need this change.

Getting jobs with predictable schedules with full-time hours would mean our returning citizens could satisfy parole requirements and actually have the foundation to reenter our society. That's why the Reentry Network and the NAACP of DC support this bill.

We'll hear today and have heard in the past from the Chamber of Commerce how big chain companies simply cannot fulfill the basic standards of this legislation. To us, that's just hard to believe given how many local businesses and national chains already lead the way or have pledged to reform their scheduling practices.

We've heard that big chain companies won't be able to create work schedules weeks in advance. Yet numerous companies have announced or long practiced posting schedules far in advance. Costco posts schedules 2 weeks out, GAP pledged to post them with 10-14 days' notice, Walmart with 2 and a half weeks' notice.

We've heard that big chain companies cannot afford to assign more hours to current employees. But I find that hard to believe when I see CEOs from Chipotle, Target, Marshalls, Victoria's Secret, Starbucks, and Walmart making more than $20 million per year.[4]

We've heard that this is just too much for big chain companies to handle after the minimum wage increase and paid sick leave were passed. I find it hard to stomach how they can tell someone making below the poverty line, scrambling for more hours, and only asking for some more stability that they're asking for too much.

Chairman Orange and members of the Committee, just like you gave thousands of DC residents a raise and paid sick days, promoting access to full-time hours and a stable schedule is the next leap forward you can make for our residents. We're talking about passing commonsense standards for people working hard and trying to make it in a wealthy city. I urge you to stand with them.

Thank you for your time today.

Nikki M.G. Lewis
Executive Director, DC Jobs With Justice
202-674-2872
www.dcjwj.org

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[1] http://www.epi.org/publication/recovery-of-hispanic-unemployment-rate-expands-to-four-more-states-in-third-quarter-of-2015/
[2] http://www.scribd.com/doc/253985892/State-of-Working-DC-final-1
[3] http://www.dcjwj.org/wp-content/uploads/2015/06/DCJWJ_Scheduling_Report_2015.pdf
[4] http://www.nytimes.com/interactive/2015/05/14/business/executive-compensation.html

Testimony of Nikki Lewis
Executive Director, DC Jobs With Justice

In support of DC Council B21-0512, the Hours and Scheduling Stability Act of 2015
and B21-331, the Building Service Employees Minimum Work Week Act of 2015
Before the Committee on Business, Consumer, and Regulatory Affairs

January 13, 2016

Dear Chairman Orange and members of the Committee,

I'm thrilled to be here today testifying in support of these two crucial pieces of legislation – the Hours and Scheduling Stability Act and the Building Service Employees Minimum Work Week Act of 2015. We are at crisis moment in the District. The cost of living and the cost of housing are skyrocketed. Unemployment among our Black communities is the highest in the country[1] and the wage gap between our lowest paying jobs and highest paying jobs is at a 35 year high.[2]

I know the Council and especially the members of this committee recognize this crisis and want to find solutions. That's why you passed a minimum wage increase and strong protections against wage theft to get more money in working families pockets. Today we're here to urge you to continue that effort of solving this crisis by setting some commonsense standards for stable work schedules and promoting opportunities for folks to work full-time.

One out of every five DC workers is employed in a service job. Ten percent of all working DC residents have a job in retail or food service.[3] If these folks – thousands and thousands of our neighbors – are going to have a chance at building careers and getting by here in the District, we need to make these jobs stable jobs with pathways to full-time hours.

We hear a lot about expanding job creation and job training, which we wholeheartedly support. But alone it's not enough. We need to prioritize turning service jobs into good jobs. The Just Hours bill and the Better Jobs Act are the chance to do just that.

At DC Jobs with Justice, we've surveyed hundreds of residents and talked to dozens of community organizations about this issue. It's become very clear that an individual's work schedule is much more than a workplace issue.

Having predictability and stability at work means you can take classes or pursue training for new skills. That's why workforce development groups like Carlos Rosario and Academy of Hope support the Just Hours bill.

Knowing in advance when you're going to work and getting enough hours means you can plan for your rent payment or get a bed in a shelter at night. That's why housing groups like Friendship Place and the Legal Clinic for the Homeless support this bill.

A stable work schedule means you can be active in your child's education and plan for childcare. That's why the Washington Teachers' Union and Teaching for Change support this bill.

DC Fiscal Policy Institute

TESTIMONY OF ED LAZERE, EXECUTIVE DIRECTOR
At the Public Roundtable on
Bill 21-512, The Hours and Scheduling Stability Act of 2015 and
Bill 21-331, The Building Service Employees Minimum Work Week of 2015
District of Columbia Committee on Business, Consumer and Regulatory Affairs
January 13, 2016

Chairman Orange and members of the Committee, thank you for the opportunity to speak today. My name is Ed Lazere, and I am the Executive Director of the DC Fiscal Policy Institute. DCFPI promotes budget and policy choices to expand economic opportunity for DC residents and reduce income inequality in the District of Columbia.

I am here to express support for both the Hours and Scheduling Stability Act and the Building Services Employees Minimum Work Week Act of 2015. These bills would play an important role in ensuring that workers in the District have adequate incomes and stable work schedules that they can arrange their life around. The employer practices addressed by these bills – unpredictable employee schedules, less than full-time work hours, and weekly hours that fluctuate greatly from week to week – are major contributors to DC's income inequality, stubbornly high poverty rate, and its affordable housing crisis. This economic insecurity prevents families from creating stable home environments and thus has long-lasting negative impacts on children.

The Hours and Scheduling Stability Act would, among other things, require chain retail stores and restaurants to give workers their schedules well in advance, and it would require employers to offer part-time workers more hours when there is an opening, rather than simply hiring more part-time workers. The Building Services Employees Minimum Work Week Act would ensure that janitors and building maintenance staff are able to work at least 30 hours per week. By helping workers balance work and family life and by supporting more stable and adequate incomes, these bills would be good for DC's working families and for the DC economy. They also would help businesses by improving worker morale and reducing turnover.[1]

The Lives of Service-Sector Workers: Low Wages, Too Few Hours and Fluctuating Schedules

Service sector workers are part of the backbone of the DC economy, representing one-fifth of the local labor force and a group of workers many of us depend upon daily. Yet many of these workers are not served well by their jobs. A 2015 report by DC Jobs with Justice, the DC Fiscal Policy Institute, and the Georgetown University Kalmanovitz Initiative for Labor and the Working poor surveyed 436 non-supervisory hourly employees in service-sector retail and food service companies in the District.[2] The survey found that these companies use "just in time" scheduling, where

employee schedules are changed frequently in an attempt to match customer foot traffic, reservations, or sales volumes. This creates many problems for workers.

The typical service-sector worker earns $10 an hour and works 32 hours per week, according to the survey, meaning an annual income of under $17,000. These workers typically are adults, and their service sector job is usually the main source of income to support themselves and their families. Not surprisingly, most service sector workers say they want more hours.

Beyond low-wages and hours, many service sector workers find their schedules changed by their employer from week to week, often with little notice, leaving their incomes to go up and down while their rent, food and other bills stay the same. The survey of DC workers found:

- **Work hours vary greatly from week to week**: In a given month, the typical service sector worker receives as few as 25 hours in some weeks and a high of 38 in others.
- **Little advance notice of work schedules**: Nearly half of respondents reported first learning of their work schedules less than one week in advance. And 40 percent of workers find their schedules get changed after they have been set.
- **Work shifts that often are cut short**: Half of respondents in the restaurant/food service industry reported being sent home early during a recent shift.
- **Requirements to be on-call but not necessarily getting hours**. A number of workers face "on-call" shifts where they *might* be asked to come in, but in reality that turns into paid work just half the time. That is a lot like uncompensated work.

One-fifth of workers surveyed by DC Jobs with Justice reported that their work schedule negatively impacted their ability to budget. Ironically, uneven work schedules also make it hard to find a second job to make up for low pay and hours.

Almost one-third of DC service sector employees with children under 13 or younger report that their work schedules negatively impacted childcare arrangements, forcing them to rely on multiple sources and sometimes leaving their children in less than desirable situations. Unstable or sub-par childcare can have serious consequences for childhood development.

And unpredictable schedules impact low-wage employees' ability to seek education or training. One of eight surveyed service sector workers said their work schedules made it impossible to attend classes or job training. Scheduling practices contribute to a vicious cycle where employees are trapped in the low-wage jobs they want to leave by the demands of those very same low-wage jobs.

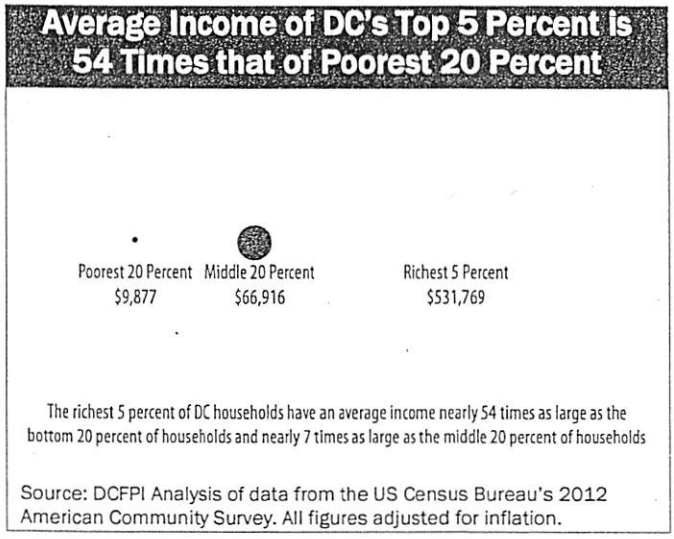
While janitors do not see the same variability in scheduling as other service sector workers, many work part-time hours at low wages. For example, the median wage of janitors in DC is $13.51 an hour. At 20 hours per week, this is less than $14,000 per year – far below the federal poverty level for a family of two or more.[3]

Part-Time and Uneven Schedules Contribute to Income Inequality and Other Problems

The low wages, part-time hours and uneven schedules contribute to DC's very high income inequality, to a level of poverty that has not recovered from a spike during the Great Recession, and to the high housing cost burdens faced by many residents.

- **Involuntary Part-Time Work:** More than two-fifths of residents without a high school degree who work part-time want full-time work but cannot find it.

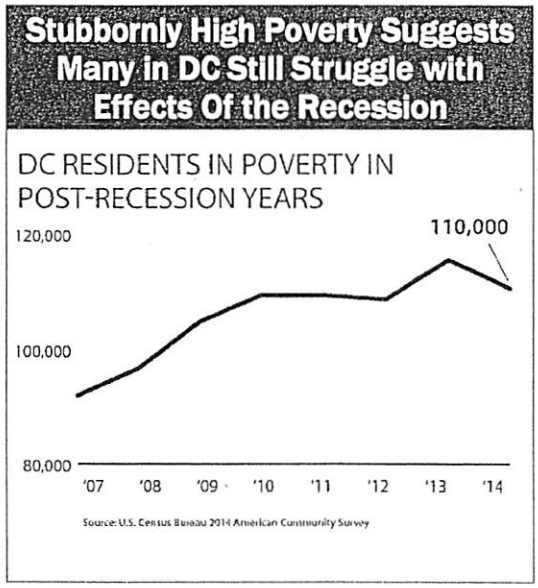
- **Wide Income Gaps:** The average income of the poorest fifth of DC households is under $10,000. Meanwhile the top 5 percent of DC households have incomes over half a million, the highest among major U.S. cities. As a result, income inequality in the District is fourth widest among major U.S. cities.[4]



- **Significant Poverty Years into an Economic Recovery:** Some 110,000 DC residents live in poverty, or less than $20,000 for a family of three. The number of poor residents is 18,000 higher than in 2007, just before the Great Recession.[5]

- **Very High Child Poverty:** Poverty is especially high among children, particularly east of the Anacostia River. Half of children east of the river lived in poverty in 2014.

- **Unaffordable Housing:** Sharply rising rents in the District have led to the virtual disappearance of low-cost private housing across the city. Combined with stagnant incomes for many DC residents, a growing number of households spend the majority of their income on rent and utilities, struggling each month to maintain stable housing and afford other necessities.[6]



Better Hours and Predictable Schedules Would Promote Financial Stability for Low-Wage Workers and Their Families

These findings highlight the importance of helping DC workers with more stable schedules and hours that are full-time or close to it.

The Building Services Employees Minimum Work Week Act would help janitors make ends meet. The median wage for janitors and cleaners in DC was $13.51 an hour in 2014. Working full time, a janitor earning the median wage of $13.51 an hour would make about $28,000 per year – close to the living wage of $31,000 for a single person in the District.[7]

A large and growing body of research finds that family economic stability – or the lack thereof – can have lasting impacts on a child's ability to succeed in school and in later life. The challenges poor parents face in creating a nurturing environment for their children – poor nutrition, unstable and unhealthy housing, and exposure to violence – have adverse impacts on the physical and cognitive development of children, including impacts on brain development of very young children. Children who live in poverty have worse outcomes in a range of areas including: physical and mental health, cognitive development, school achievement and emotional well-being. They score lower on academic tests, complete fewer years of education, work less, and earn less than others.[8] This means that economic instability harmful to families and children, and in turn to the future of DC's economy.

Rents Are Rising, But Incomes Are Not, For Low- Income DC Renters

Quintile		Average (Annual) 2002	Average (Annual) 2013	Percent Change
1	Income	$6,388	$6,056	0*
	Rent	$4,175	$4,740	14%
2	Income	$22,682	$22,341	0*
	Rent	$8,468	$11,466	35%
3	Income	$41,990	$45,970	9%
	Rent	$10,785	$15,531	44%
4	Income	$67,193	$81,810	22%
	Rent	$14,041	$20,839	48%
5	Income	$157,333	$171,721	9%
	Rent	$24,536	$32,432	32%

Source: DCFPI Analysis of American Community Survey Data, all figures are adjusted to equal 2013 dollars. * Indicates a statistically insignificant difference.

By contrast, better jobs and more stable incomes lead to long-term benefits for children, such as improved health, higher educational attainment, and improved earnings, and economic self-sufficiency as adults.[9] For example, research on the Earned Income Tax Credit, which can boost the income of working poor families by several thousand dollars each year, shows that high school students are more likely to go to college when their parents get the EITC. Raising earnings through better hours would likely have the same effect.

By mandating stable schedules and more predictable income for low-wage workers, these bills can help address DC's wide income inequality and keep families from falling into poverty.

Thank you for the opportunity to submit this testimony.

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[1] Liz Ben-Ishai, "Job Schedules That Work for Businesses," Center for Law and Social Policy, Nov. 2014 http://www.clasp.org/resources-and-publications/publication-1/Job-Schedules-that-Work-for-Businesses.pdf.

[2] DC Jobs With Justice, DC Fiscal Policy Institute, and Georgetown University Kalmanovitz Initiative for Labor and the Working Poor, *Unpredictable, Unsustainable: The Impact of Employers' Scheduling Practices in D.C.*, June 2015 (http://www.dcjwj.org/scheduling-report/)

[3] iii Bureau of Labor Statistics, May 2014 Occupational Employment Statistics. http://www.bls.gov/oes/home.htm

[4] DC Fiscal Policy Institute, *High and Wide: Income Inequality Gap in the District One of the Biggest in the U.S.*, March 20, 2014.

[5] DC Fiscal Policy Institute, *While DC Continues to Recover from the Recession, Communities of Color Continue to Face Challenges*, September 18, 2015.

[6] The figures in this section are from DC Fiscal Policy Institute, *Going Going Gone: DC's Vanishing Affordable Housing*, March 2015.

[7] MIT estimates that an individual must earn $14.84 per hour, working 2,080 hours per year, to support a family in the District of Columbia. http://livingwage.mit.edu/counties/11001

[8] "The Long Reach of Early Childhood Poverty" Greg Duncan & Katherine Magnuson, *Pathways*, Winter 2011.

[9] Center on Budget and Policy Priorities, *Brain Studies Highlight Importance of Anti-Poverty Policies for Children*, August 6, 2015.

Committee on Business, Consumer, and Regulatory Affairs

Hearing on "Bill21-0512 – Hours and Scheduling Stability Act of 2015

January 13, 2016

Testimony of Andrew J. Kline, Legislative Counsel
Restaurant Association Metropolitan Washington

Good morning Members of the Council and Council staff. I am Andrew Kline, Legislative Counsel for the Restaurant Association Metropolitan Washington (RAMW).

The Restaurant Association Metropolitan Washington actively promotes the Washington, D.C. area food service industry on behalf of our 900 plus members, which include locally grown sit down restaurants, locally grown fast casual restaurants, national sit down restaurants and national fast casual restaurant chains. As the restaurant scene in DC continues to expand, so does our membership, which grows daily, and soundly represents the diversification of the industry in the District. Established in 1920, RAMW is an advocate, resource, and community for our members.

We are here today to testify in opposition to the "Hours and Scheduling Stability Act of 2015." While this piece of legislation may not directly effect a majority of our membership, we must oppose this unnecessary and detrimental intrusion on one of the fundamental aspects of the employer-employee relationship of who works when.

We believe the culture of the hospitality worker is quite different from other industries. Most restaurant workers do not work 9-5 nor have the traditional weekend. They therefore value flexibility in their schedule. If they have friends coming to town, or want to attend a concert, or a playoff game, under current law they simply ask their employer for the time off. It is our experience that those requests, which are frequently made well beyond 21 days before the requested time off, are accommodated because the employer knows that it can easily find another employee to work those hours. Under the bill, however, the employer will have to pay the replacement employee predictability pay. Thus the employer will likely tell the employee to find their own replacement, or, worse yet, simply be unwilling to accommodate late requests for time off thereby destroying the flexibility which employees currently enjoy. Or, alternatively, the employer may simply make do with less staff rather than paying the penalty. That hardly seems desirable for employers or employees.

The concept in the bill that additional shifts or hours be made available to all employees is administratively unworkable and particularly destructive of the employer-employee relationship. If you run a business, who would you first call to work additional hours? Your best employee, of course. One of the perks resulting from working hard at your job is to get this type of preference from your employer. Further, the expectation that hospitality workers can be so easily contacted to be offered additional shifts while not working is simply laughable.

The one predictable thing about restaurants is that they are unpredictable and are affected by many uncontrollable circumstances. That is particularly true in the District of Columbia, where staffing needs are not only affected, as they are in other cities, by playoff games scheduled well after the 21 day prior scheduling date, but also by demonstrations, street closures necessitated by visiting dignitaries, and our legendary inability to manage the slightest bit of extreme weather. The proposed legislation completely ignores these unpredictable occurrences that affect scheduling and staffing.

We have heard from restaurants and their employees that flexibility is paramount, and they appreciate the ability to pick up last minute shifts. We agree, however, with the concern expressed by some of you that employees should not be fearful of retribution if they are not able to step in for an employee last minute. That issue is easily addressed without the complicated scheme contained in this legislation. If there are bad players, then let's address their conduct directly, not overhaul an entire industry's operations, to the detriment of most operators and employees.

The restaurant industry is the largest private employer in the District and between 2010 and 2014 added jobs at an average annual rate of 5.6 percent. That number stalled to 0.1 percent in 2015—a staggering decrease when you consider how many restaurants were in the District in 2010 versus today. Our members pride themselves on providing jobs that allow for great upward mobility while also employing people of all skill levels and backgrounds, and providing valuable on-the-job training that translates to professional and life skills. The typical employee who starts at an entry-level wage receives a raise after six months. The restaurant industry shatters the glass ceiling with more women in management and ownership positions than virtually any other industry. We should not move forward with legislation that stalls employment, and discourages or slows the hiring of new employees, while also delaying their start time.

Restaurants and other businesses may be able to weather the sometimes dramatic changes in business and economics brought about by a single piece of legislation. Unfortunately, however, we do not have the luxury of viewing the impact of this legislation in a vacuum and instead must take into account the collective effect legislative layering has on business operations, employers and employees. The Affordable Care Act, increased minimum wage, Sick and Safe Leave Amendment Act, transit subsidies, Styrofoam ban, ban the box, ballpark tax, Wage Theft Amendment Act, and the new health code requirements are all examples of recent legislation that impact business operations. While the industry has continued to grow, the potential negative cumulative effect should not be discounted nor ignored. The costs of all of these programs is not insignificant in an industry with razor thin profit margins and we are left to wonder whether the recent slowing of growth in DC is evidence that the impact is already being felt. If all of these policies, together, damage the industry, it will take years to undo the damage.

We are an industry that thrives on flexibility, which allows for unmatched opportunities. Restaurants generate $260 million for the city through taxes, and the last thing we want is to discourage larger restaurant chains from opening in the District, and to discourage growth among locally grown groups that aspire to have 20 or more locations, such as locally grown operations like Sweetgreen, &Pizza, Matchbox, Cava, Taylor Gourmet and Amsterdam Falafel or even worse force them to close their flagship locations because the environment is no longer business friendly in the District.

Although we do not believe that this legislation helps employees, there is one group who will be a beneficiary and that is trial lawyers. This complex legislation, with its myriad administrative burdens, subjects employers to lawsuits and attorney's fees for non-compliance, even innocent non-compliance. If this legislation is to move forward, we recommend that the private right of action be eliminated and replaced with administrative enforcement. In addition, liability should be mitigated for employers who make innocent mistakes in implementing this labyrinth system of scheduling and staffing.

We do not support "Hours and Scheduling Stability Act of 2015" as it is overbroad and attempts to overhaul industry operations with administratively burdensome regulations that will likely have a negative impact on the people it is trying to help.

I welcome any questions. Thank you.

VORYS

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January 13, 2016

VIA ORAL PRESENTATION

Committee on Business, Consumer, and Regulatory Affairs
Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Ave., NW, Ste. 119
Washington, DC 20004

Re: Comments on B21-512, the "Hours and Scheduling Stability Act of 2015"

Committee Members:

My name is Michael Shoenfelt. I am an associate at the law firm of Vorys, Sater, Seymour and Pease LLP. Our firm represents a variety of clients that will be affected by the "Hours and Scheduling Stability Act of 2015". On behalf of the firm and those clients, we provide the following six comments for the Committee's consideration.

First, the bill's 21-day advance notice provision would be the most restrictive in the nation. In San Francisco, which has similar ordinances, our clients have seen the advance notice requirements adversely impacting many employees. Simply, many employees currently enjoy the ability to change their availability from week to week, and actually prefer the flexibility this gives them to the increased notice provided by the ordinances. The advance notice provision reduces employees' ability to plan their work schedules around other obligations.

Second, Section 4(c) of the bill would exempt from predictability and minimum pay any employee-requested shift changes. However, any such changes requested by one employee would likely require the employer to change the schedule of another employee to accommodate the change and still meet the employer's labor needs. This would then implicate the predictability pay provisions for the replacement employee, whose schedule has been changed on short notice. The bill currently has no exception allowing employers to schedule—without penalty—replacement shifts in instances where employees provide less than 21-days' notice that they cannot work a scheduled shift. The committee should note that the San Francisco ordinances provide such an exception. One possible alternative exception would be to

require an employee requesting the change with less than 21-days' notice to find a replacement. This appropriately shifts the burden to the employee requesting the change on short notice. Section 7(c), however, expressly prohibits any such employer requirement. Thus, when employees request schedule changes on short notice, employers are forced to choose between inadequate staffing or predictability pay penalties.

Third, on a more general note, the bill presupposes an environment in which employees are assigned specific shifts (for example, Employee A always works the 1pm-5pm shift on Monday, Employee B works that same shift on Tuesday, etc.). In reality, employees of major retailers regularly change their availability. Thus, an employee might be available for, and work, certain shifts one week, but be available for and work completely different shifts the following week.

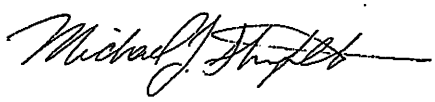
Fourth, and relatedly, the very notion of "available shifts" is difficult to apply in many retail settings. While all employees might work a predictable number of hours each week, employee changes to their own availability make it impossible to schedule the same employee for the same shift on a regular basis. Thus, the retailers' ability to even determine when a shift has become "available" is limited. The bill does not clarify how a retailer is to know when it should consider a shift "available." Further complicating this problem, the bill provides little clarity on situations where, for example, a given Thursday 1pm-5pm shift cannot be filled with available labor, and a new employee is hired. In that situation, would Section 6(c), which allows for hiring of "such new employees as are necessary to perform the work described [in the notice of available hours]," limit the newly-hired employee to working the Thursday 1pm-5pm shift? Or, once hired, can they be scheduled for different shifts?

Fifth, the bill does not make clear if its posting, notice, and offer requirements may be complied with via electronic means (such as posting available hours on a website that may be accessed by all hourly employees). As this is likely the most convenient way of effectuating such postings (for employers and employees alike), express clarity on this question would be helpful.

Finally, Section 6(b)(1) would require retailers to post the criteria they will use for distribution of available work. That Section is not clear, however, regarding the level of detail required in such postings. Presumably, retailers would benefit from a flexible approach to assigning hours, doing so based on the relative abilities of the employees seeking additional work and their expertise regarding the business needs for the particular shift being assigned. The bill is unclear as to the level of detail required for compliance with Section 6(b)(1), and what criteria an employer might permissibly consider.

We appreciate your consideration of these comments, questions, and concerns, and thank you for your time.

Very truly yours,



Michael J. Shoenfelt

MJS/mjs

DC Chamber of Commerce
DELIVERING THE CAPITAL

Testimony of Margaret Singleton
Interim President & CEO, DC Chamber of Commerce
Before the Committee on Business, Consumer, and Regulatory Affairs, on January 13, 2016
on
Bill 21-512, the Hours and Scheduling Stability Act of 2015

Good morning Chairman Orange, and other members of the Committee. I am Margaret Singleton, Interim President and CEO of the DC Chamber of Commerce. I am pleased to be here today to represent the member companies of the Chamber, the hundreds of thousands of workers they employ, and the millions of dollars in District tax revenue they provide yearly to the District coffers. The DC Chamber of Commerce believes in job growth and creation, and working collaboratively with all of our stakeholders (government, employees, and community) to make the District of Columbia a great place to live, work, and do business. The "Hours and Scheduling Stability Act of 2015," will undoubtedly have challenges, and will penalize the very job creators the District seeks to recruit into its neighborhoods to provide greater opportunities to DC residents. As such, we cannot provide our support for Bill 21-512.

We cannot support Bill 21-512 because it proposes to mandate a one size fits all approach and micromanages operations that are typically decided between the employer and employee. Retailers and food service establishments create work schedules to meet the needs of store operations and to accommodate workers unique needs where possible. Proposals like this bill fail to credit that uniqueness, as well as, the negative impact that the bill will impose on employee opportunities. We understand from the Committee, that Bill 21-512 is based on policies considered elsewhere, but unlike other measures in those jurisdictions, the bill before the Committee covers more than formula retailers. Bill 21-512 does not recognize that many DC employers already have policies or labor agreements in place addressing this issue, and the bill does not include any exemptions or provisions for instances that are outside of an employer's control. There are many businesses in both the retail and food service sectors that schedule their employees in advance, and the District already has rules governing this matter. Bill 21-512 is an example of sweeping policies seeking to provide a solution through public policy that would penalize DC employers and ignore the existing practices.

We cannot support B21-512 because it would affect far more employers who sell goods or operate food service establishments than many supporters think. The bill applies to a far broader range of establishments from the nonprofit retailers like Goodwill; the small owner-operator with fewer than 50 employees; the local pharmacist; the student-run bookstore; and the unionized grocer are all captured by the bill. Additionally, coupled with Sec. 6 of the bill, this would confine the on-boarding process, impact our members' ability to hire seasonal workers, and impede their ability to meet many of the city's hiring goals for the underemployed and unemployed. Having been a partner with the District encouraging our members to participate in many of these initiatives, the Chamber is concerned that policies such as this would limit those opportunities. Now is the time to expand meaningful employment and career opportunities for young adults and unemployed residents a not to restrict their access.

Only one jurisdiction in the country has implemented a scheduling ordinance targeted at a specific industry, and that jurisdiction has faced several challenges with implementation. The complexity of determining appropriate staffing levels involves a myriad of factors and expert judgment that cannot be adequately articulated in an expansive policy. In other states that have considered this issue, their respective bills never passed the legislature. Even in San Francisco, authorities had to amend their policy shortly after it was voted on, and as of December 30, 2015, they have yet to issue final regulations. The challenges for both employees and employers covered under the San Francisco Ordinance have been examined, and the findings are illustrated in the attached study that we are submitting for the record. The independent analysis of San Francisco's ordinance shows: (1) that the narrow definition of "Employer-initiated," severely limits the posting of additional hours as they become available; (2) even covered employees have also questioned the need for the change in scheduling requirements, and the ultimate benefit they derive from the implementation of the Predictive Scheduling Ordinance; and (3) one of the most important impacts upon employers has been the change in store culture, away from open communications to a more scripted dialogue due to the limitations on communications caused by the Ordinance's ambiguous and unclear language, especially as it relates to "Employer-initiated" actions. If the predictive scheduling version of this policy is struggling in the one place it has been implemented, then the more restrictive scheduling version before the DC Council must be examined for unintended consequences.

Unlike most jurisdictions, the District has to compete for business with our surrounding jurisdictions, and unlike any other jurisdiction we are also the Nation's Capital, which poses its own challenges. DC employers need the flexibility to respond to an external factor like visiting world leaders, emergency or political situations that will close streets, public transportation, and restrict business operations. Occasions such as these should not trigger a penalty to a business owner, should not limit an employer's ability to respond to consumers or its own employee's demands, and should not restrict their flexibility to operate in the District.

In the bill we are concerned that:

- The 21 day requirement notice does not provided much flexibility;
- The bill does not allow employers to give notice in a variety of formats beyond written communication, when in reality employees and employers communicate in-person, over the phone, and electronically;
- The creation of a rebuttable presumption of retaliation and private cause of action just invites litigation, plus unintended acts should not result in an adverse inference being drawn against the company;
- The excessive penalties including predictability pay for scenarios outside an employer's control and liquidated damages at twice the amount of wages; and
- The implementation timeline which is effective almost immediately and does not offer an establishment time to adjust to the new law.

During my tenure at the DC Chamber, I have witnessed many business and regulatory policies come before decision makers for consideration, but in the past few years, the business community has seen more legislation that is employer focused and more legislation that has a cumulative effect of adversely impacting our local businesses and our competitiveness. Public policy cannot be predetermined nor should it be partial, it should consider and examine the concerns and impact of all affected stakeholders.

We urge the Committee to consider the total impact these measures are having on local businesses, and the District's economy. Pursuant to Council 21 rules, we urge the Committee to conduct an economic impact analysis on B21-512. Like you, we want our business community to be vibrant and strong, but we are concerned about the imbalances, that policies like B21-512 have on DC-based businesses. On top of new wage and hour compliance standards and mandates for transit benefits, some businesses may have to comply with a prohibition of the use of certain products; mandates to pay a new tax to cover additional leave options; and scheduling/staffing regulations. Collectively, this is a large burden on a business in such a short time period; leads to the perception that we are not a business-friendly city; and the observation that this bill is another example of government trying to tell job creators how to run their business. In closing, the DC Chamber recommends that the Committee not proceed with the bill as drafted. We welcome any questions you may have and look forward to further discussing these concerns with the Committee.

Thank you.

NATIONAL RESTAURANT ASSOCIATION

Statement on Proposed Mandatory Scheduling Legislation (B21-515)

Before the District of Columbia Council

Committee on Business, Consumer, and Regulatory Affairs

By Mike Whatley

On Behalf of the National Restaurant Association

January 13, 2016

Chairman Orange and members of the Committee, thank you for the opportunity to testify today. My name is Mike Whatley, and I'm Director of State and Local Affairs at the National Restaurant Association. The restaurant industry, which is the second largest private sector employer in the United States, provides careers to 60,000 people in the District of Columbia.

Thank you for this opportunity to speak on B21-515, The Hours and Scheduling Stability Act of 2015. Our members have serious concerns about this legislation and appreciate the opportunity to present them in front of the Committee.

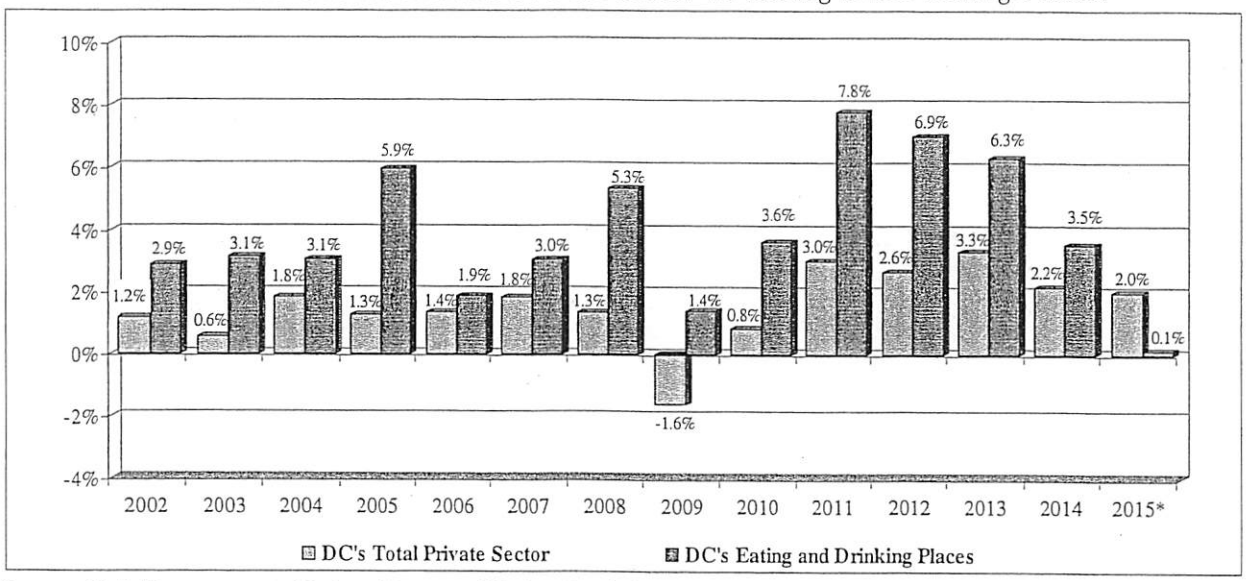
Uncertain Business and Regulatory Climate for Restaurants in the District

Today the restaurant scene in the District is vibrant as the industry has grown tremendously over the past ten years, achieving critical recognition all across the country. The District's restaurant industry has been an engine of growth for the economy as job growth in the restaurant industry outpaced D.C.'s overall private sector growth each year between 2001 and 2014. Employment at eating and drinking places jumped 70% during this 13 year period, more than triple the 21% increase in total private sector jobs.

However, there are warning signs on the horizon as job growth within the restaurant industry stalled in the District in 2015. On a year to date basis through November 2015, eating and drinking place employment was up just 0.1%. During the same period, the number of private sector jobs increased at a healthy 2.0%. At the same time, restaurant sector job growth continued unabated in surrounding regions, with Maryland's restaurant sector adding jobs at a 2.0% rate in 2015 and Virginia's restaurant sector adding jobs at a 1.8% rate.

D.C.'s Restaurant Industry Job Growth Stalled in 2015

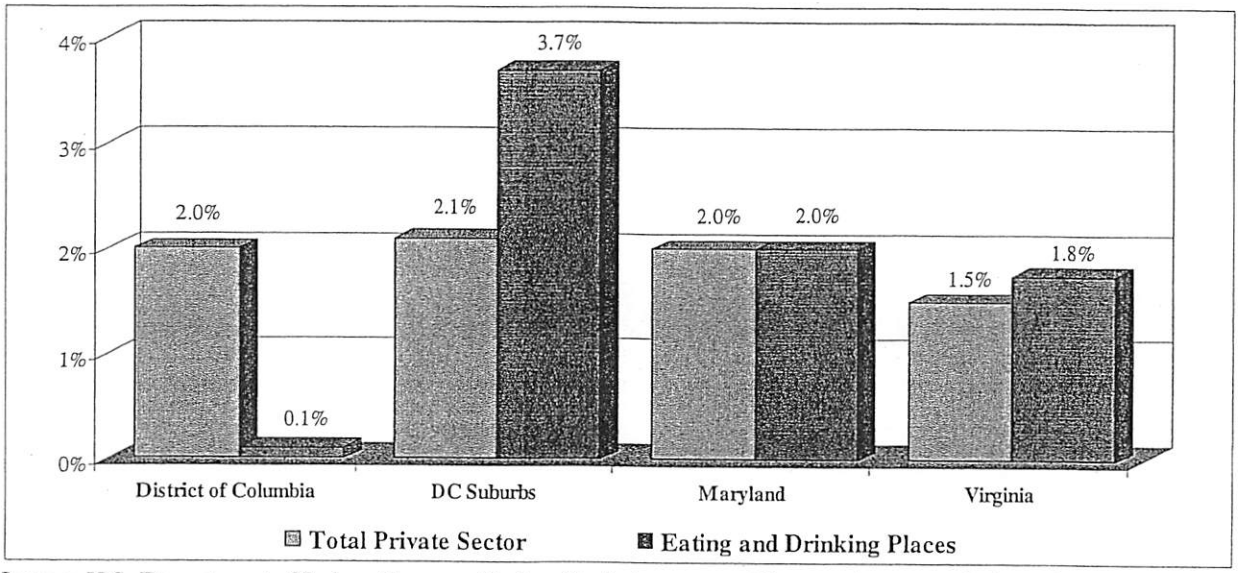
Annual Job Growth in D.C.: Private Sector vs. Eating and Drinking Places



Source: U.S. Department of Labor, Bureau of Labor Statistics **Year-to-date growth through November 2015*

Restaurant Industry Job Growth Remains Strong in Surrounding Jurisdictions

2015 Job Growth in D.C. Metro, Maryland & Virginia: Private Sector vs. Eating and Drinking Places*



Source: U.S. Department of Labor, Bureau of Labor Statistics **Year-to-date growth through November 2015*

What might be happening? Over the past two years, several laws and regulations have been passed in the District that have impacted the restaurant industry. Any one of these regulations in

isolation would impact restaurant operators and have consequences, yet the cumulative effect of regulations piling on top of each other is even more costly. The minimum wage increased on July 1, 2014 and July 1, 2015 and will go up again this July. Since 2014, the minimum wage has gone up over 27%, increasing labor costs for restauranteurs across the city. In the fall of 2014, legislation went into effect extending the District's paid leave mandate to tipped employees. Most recently, on January 1, 2016, the Council's ban on polystyrene foam takeout containers went into effect. Over the past several months, restaurants across the District have switched from polystyrene materials to alternative materials that can be significantly more expensive (in some cases, 2 cents for a polystyrene cup versus 6-7 cents for non-polystyrene cups).

In addition to these regulations that have already passed, uncertainty exists over additional proposals that would impact the industry. The $15 per hour minimum wage ballot proposal, the 16 week family paid leave legislation that the Council will continue to consider tomorrow, and the scheduling proposal that the Committee is considering today all add to this uncertainty and create an unfavorable business climate for restaurants looking to open or expand in the District.

Impact of Similar Scheduling Legislation in San Francisco

B21-512 is similar to legislation that was recently enacted in San Francisco. As of this date, no other scheduling legislation of this kind has been enacted outside of San Francisco. While it is still very early, it is important to consider the implications of the San Francisco legislation before proceeding with similar legislation in the District.

San Francisco's Ordinance Has Yet to Be Enforced

San Francisco has continued to push back enforcement of its scheduling requirements due to the complexity of the legislation and the rule making process. Scheduling legislation (two ordinances) in San Francisco was passed by the San Francisco Board of Supervisors in 2014 and was initially deemed effective July 3, 2015. Based upon pushback from the business community, an amendment was passed in July 2015 to push back the effective date to August 14, 2015. On August 13, 2015, the San Francisco Office of Labor Standards Enforcement posted proposed rules for the scheduling regulations. As of January 4, 2016, the Office of Labor Standards Enforcement has stated that the rulemaking process is not complete and will not be for several weeks. In other words, despite being technically effective as of six months ago, the agency in charge of enforcement in San Francisco has yet to issue final rules.

In speaking with local operators in San Francisco, there is extreme confusion over the scheduling regulations. Many operators are unsure if the regulations apply to them or not, and others are unsure of how to comply because final rules have yet to be posted.

Initial Impact: Reduced Flexibility and Increased Administrative Costs

Despite the lack of clarity or enforcement in San Francisco, many businesses have begun complying with the regulations. While it is still very early, the results are troubling.

A survey research report was prepared for the California Retailers Association in December 2015 looking at the impact of the scheduling requirements on retailers during the month of December, generally the busiest retail month of the year. As part of the report, the researchers surveyed both employers and employees who were impacted by the legislation. I am submitting the report with my testimony, but the report summarizes some of its conclusions as such:

"...FRE (Formula Retail Employees) Employees in need of extra income are having more difficulty adding extra work hours. Moreover, FRE Employers have experienced added unnecessary administrative burdens, removal of their ability to be flexible in running their businesses with changing economic and inventory demands, increased administrative and penalty costs for Predictive Pay and scheduling mandates, and unreasonable interference in their communication and relationships with their employees—many of whom went into retail for the scheduling flexibility due to school, family, and lifestyle choices."[1]

Restaurant operators that are impacted by the scheduling regulations in San Francisco report that the new requirements are burdensome and require extensive and often repetitive paperwork. Prior to the legislation going into effect, informal shift swapping between employees was common and encouraged by operators. While the regulations did not ban voluntary shift swaps, operators report that the requirements for proving that changes in shifts are voluntary and not mandated by the employer are so extensive that they have reduced or eliminated voluntary flexibility in scheduling changes. Operators that have not eliminated shift swapping also report that employees have complained about how they must put all shift swaps in writing in the computer system to prove that the shift swaps are voluntary.

Based upon all the extensive record keeping requirements of the San Francisco ordinance—that are similar to the ones in B21-512—operators have reported that restaurant managers now spend significant amounts of time in a human resources role attempting to comply with the scheduling regulations as opposed to actually managing their restaurants. One of the most time consuming administrative tasks has been ensuring that employee time records match posted schedules exactly. If the records do not match, the manager then needs to figure out why and work to solve any problems that may exist.

The Regulations in B21-512 Are More Expansive Than the Ones in the San Francisco Scheduling Regulations

B21-512 contains provisions that are more expansive than the ones enacted in San Francisco. Our members have serious concerns about these provisions, considering the difficulties that businesses are having complying with the regulations in San Francisco. The San Francisco regulations require that businesses post employee schedules two weeks in advance. B21-512 requires that businesses post employee schedules three weeks in advance. Additionally, the San Francisco regulations contain numerous exemptions for events such as weather or public utility failures. These exemptions are not included in B21-512, meaning that businesses would still have to comply with the scheduling regulations in the event of unexpected events.

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[1] Hatamiya, Lon. "A Practical Analysis of San Francisco's Predictive Scheduling and Fair Treatment for Formula Retail Employees Ordinance: Difficult Challenges for both Employees and Employers in Implementation." The Hatamiya Group for the California Retailers Association. December, 2015.

Restaurant Operators Need Flexibility that B21-512 Does Not Allow

Frequently in the restaurant industry, surges in demand can occur unexpectedly and restaurants need flexibility to schedule their employees accordingly.

For example, in mid-September it was unknown whether the Nationals would make the M.L.B. playoffs. Home playoff games result in major surges in demand for many restaurants across the District. If restaurants are required to schedule employees three weeks in advance, managers would be forced to guess whether or not the Nationals would make the playoffs. Even when the Nationals make the playoffs, restaurants would have to guess three weeks in advance which days might have home games and how far the team would advance in the playoffs. Guessing the wrong way would have major financial consequences for the restaurant as it would either not have enough staff for a large crowd or would be overstaffed for a crowd that did not exist.

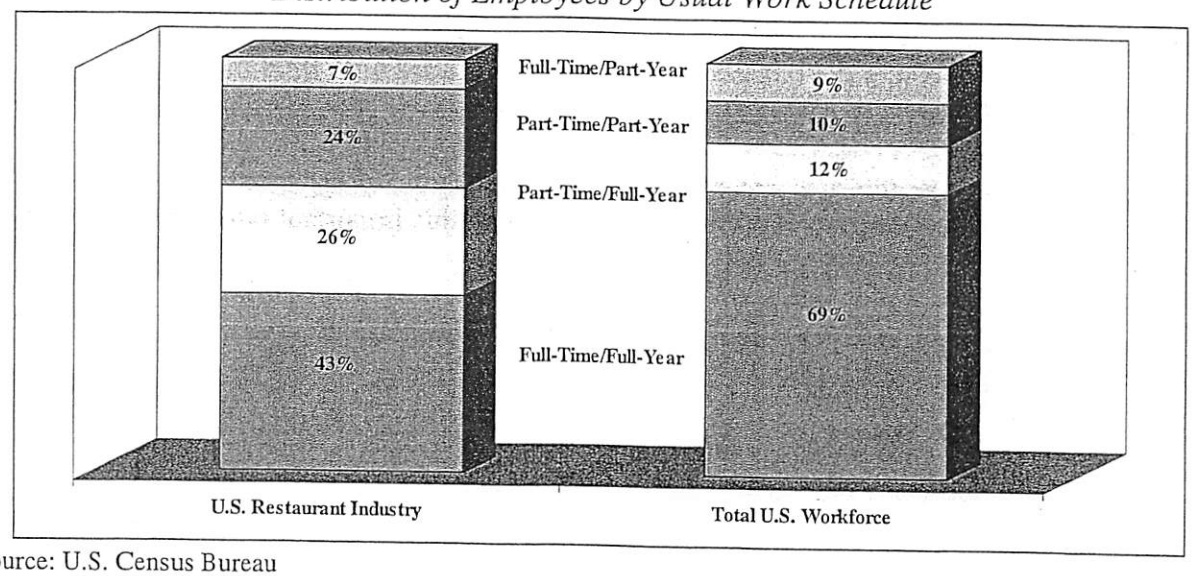
While sporting events are perhaps the starkest example of unpredictable events, in a city like Washington D.C., unexpected events occur all the time ranging from federal government shutdowns to road closures. All of these events can cause unexpected surges or reductions in customer demand for restaurants. In order to respond to these demand changes, restaurants need flexibility in scheduling their employees that will not be possible if restaurants are penalized for changing schedules within a three week time period.

Part Time Workers Are Essential for the Restaurant Industry

The restaurant industry is different from many others because of the high proportion of part time workers that are employed by restaurants. According to Census Bureau figures, only 43% of restaurant employees work full time (35 or more hours per week) and are employed for the full year (50 or more weeks per year). In the overall U.S. workforce, a significantly higher 69% of employees work full time.

Restaurants Employ a High Proportion of Part-Time Workers

Distribution of Employees by Usual Work Schedule



Source: U.S. Census Bureau

Note: Full-time is defined at 35 or more hours per week. Full-year is defined as 50 or more weeks per year.

Many restaurant employees work part time to help pay for their education and value the flexibility that a part time job in the restaurant industry can offer. However, B21-512 prohibits restaurants from offering part time employment to new employees by requiring restaurants to offer existing employees additional hours, even if these employees do not want additional shifts. This requirement will force restaurants to make fundamental changes to their hiring practices. These changes could result in fewer people being hired by restaurants in the District or restaurants understaffing.

B21-512 Arbitrarily Impacts Chain Restaurants and Will Discourage Homegrown Chains from Expanding

Over the past several years, chain restaurants have been an active driver of development in neighborhoods across the District ranging from Columbia Heights to Navy Yard to NoMa. Chain restaurants covered by this regulation compete for the same customers, hire the same employees, and operate next door to restaurants that will not be covered by these regulations. B21-512 will place chain restaurants at a distinct disadvantage and will discourage existing chains from expanding and new chains from opening in the District at all.

Over the past decade, several new chain restaurant concepts have been founded in the D.C. area. Most of them currently have less than 20 locations but are growing aggressively. B21-512, which only applies to restaurants with 20 or more locations nationally, will discourage these homegrown chain concepts from rapidly expanding because when they open their 20th location they will have to comply with all of B21-512's complex regulations.

Conclusion

In conclusion, this legislation is a risky proposal that could have serious negative implications for the restaurant industry in the District. San Francisco has yet to figure out how its scheduling requirements will work despite having passed the legislation two years ago. This legislation is more complicated and expansive than the San Francisco legislation. Wouldn't it make sense to wait and see the results in San Francisco before moving forward with a similar proposal in the District?

Thank you for this opportunity to speak here today. The National Restaurant Association and our members look forward to working with the Council on this important issue going forward.

THE UNIVERSITY of WISCONSIN MADISON

Testimony submitted by Dr. Anna Haley-Lock
to the Council of the District of Columbia
re Bill 21-512, "Hours and Scheduling Stability Act of 2015"
January 13, 2016

Good morning. Thanks to Chairman Orange and members of the Committee for the opportunity to testify.

My name is Dr. Anna Haley-Lock. I am an Associate Professor at the University of Wisconsin-Madison School of Social Work, and faculty affiliate of the Institute for Research on Poverty. I have studied conditions of lower-wage and hourly jobs, from both employer and employee perspectives, for the last 16 years. I have been asked to testify today to share evidence from my research that supports the need for passage of Bill 21-512.

[NOT READ] We know from an array of research that unpredictable schedules – those that workers don't know about until last minute, get changed by the employer last minute, or involve fewer hours than the worker expected, with many people on payroll who each get limited hours – have many negative effects on workers and their families. They make it hard to attend school to increase one's skills, to get a second job, and to budget and save for the future.[1] These scheduling practices also contribute to parents' having less time with their children, and difficulty arranging child care.[2]

With Dr. Linn Posey-Maddox (UW-Madison School of Education), I investigated how parents' work schedules affect their *communities*, through their engagement in their children's schools.[3] By "engage," we mean parents' participating in school and classroom events, and in school organizations like PTOs – involvement that has become increasingly emphasized in US education reform initiatives, and by public schools facing budget cuts.[4] School engagement also provides parents with a critical voice in the direction of their children's education, and in an institution that is central to their communities.

I would like to share what we heard in interviews with Vicki, a customer service representative, and Mary, a restaurant server.

Vicki said that she "can never honestly tell you when I'm going to be out of work.... If we get slammed 5 minutes before we close, we still have to help everybody that's in there." Vicki faced job insecurity if she declined to stay on shift until all customers were served: she would risk her employer giving her fewer or less desirable hours. Because of this, Vicki said she repeatedly sacrificed plans to attend events at her children's school. Bill 21-512's provision of premium pay when employers extend worker shifts at the last minute would encourage an employer like Vicki's to better staff the ends of shifts, offer legal protection to Vicki from employer retaliation if she declines to work the extra time, and financially compensate her for her inconvenience if she does choose to extend her shift.

Mary waited tables at a national restaurant chain while raising her sister's two young girls. Her work schedule was posted for a week at a time, a few days before the work week began. From one posted schedule to the next, Mary never knew when she would work; her work days, shifts, and number of hours regularly changed. Each week's posted schedule was also just a "guesstimate," prone to numerous

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changes by her employer during the course of the week. Mary told us that "[there have] been days that I started at 11 [am] and was done before noon.... If it's slow and nobody's coming in, they cut the floor [waitstaff]." Together, this left Mary unable to know when she would be available to be involved in her nieces' school, and desperate to take whatever hours came her way, planned or last minute. Bill 21-512's requirement for 21-day advance schedule posting, combined with its promotion of full-time work – and complementing DC's existing "reporting pay" law[5] – would revolutionize the life of someone like Mary, giving her greater financial stability and ability to plan to be involved at school.

[NOT READ] I'd like to close with a personal anecdote. Two months ago, my 14-year old's friend – I'll call this friend Sam – was admitted to an inpatient child and adolescent psychiatric hospital because he was suicidal. When we arrived at the hospital to visit, we encountered Sam's parents as they were leaving. With considerable guilt, they shared that this had been the first time they had been able to come see Sam at the hospital since his admission four days before. *4 days before*. Sam's folks are low-income, both working for food service chains. They always desperately need all of the hours they can get, and for both of them, their hours are given and often changed last minute. So – 4 days. Bill 21-512 would mean Sam's folks could've planned around or even temporarily reduced their work hours with less fear, because they'd know better when all of their hours would be, and because they'd stand a better chance of getting more hours in general.

For DC residents sharing the realities of Vicki and Mary and Sam's parents, please support what this bill does to make the hours of DC workers more sufficient and stable. Thank you for your time.

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[1] Anderson, V., Austin, S., Doucette, J., Drazkowski, A., & Wood, S. (2015). Addressing income volatility of low income populations. LaFollette School of Public Affairs Workshop in Public Affairs working paper, Spring.

[2] Henly, J., Shaefer, L., & Waxman, E. (2006). Nonstandard work schedules: Employer- and employee-driven flexibility in retail jobs. *Social Service Review, 80*(4): 609-34; Li, J., Johnson, S., Han, W., Andrews, S., Kendall, G., Strazdins, L., & Dockery, A. (2014). Parents' nonstandard work schedules and child well-being: A critical review of the literature; Morsy, L. & Rothstein, R. (2015). Parents' non-standard work schedules make adequate childrearing difficult. EPI Issue Brief #400, August; Presser, H. (2000). Nonstandard work schedules and marital instability. *Journal of Marriage and Family, 62*(1): 93-110; Wolf, S., Gennetian, L., Morris, P., & Hill, H. (2014). *Patterns of income instability among low- and middle-income households with children.* Family Relations, *63*(July): 397-410.

[3] Haley-Lock, A., & Posey-Maddox, L. (2015). Fitting it all in: How mothers' employment shapes their school engagement. *Community, Work, & Family,* published online April 20: http://www.tandfonline.com/doi/abs/10.1080/13668803.2015.1023699.

[4] Bello, M. (2010). Parents stepping in to help raise more money for schools. USA Today, May 5; National Family, School, and Community Engagement Working Group (2009). *Recommendations for Federal Policy.* June; U.S. Department of Education (2010). Supporting Families and Communities: Reauthorizing the Elementary and Secondary Education Act.

[5] Alexander, C., & Haley-Lock, A. (2015). Underwork, work hour insecurity, and a new approach to wage and hour regulation. *Industrial Relations, 54*(1): 695-716.

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An AFL-CIO "Union City"

Testimony of Joslyn N. Williams, President

on B21-0512, the "Hours and Scheduling Stability Act of 2015"

Before the Committee of the Whole

Honorable Phil Mendelson, Chairman

13 January 2016

Mr. Chairman and members of the Committee, my name is Joslyn Williams and I am the president of the Metropolitan Washington Council, AFL-CIO which is the regional labor federation made up of 175 local union representing 150,000 members, 60,000 of whom live in the District of Columbia.

I am here today to testify in support of Bill 21-0512, the Hours and Scheduling Stability Act of 2015. Labor supports this legislation which is intended to provide retail and food service workers in the District of Columbia's private sector with some form of workplace stability that everyone needs and deserves to have a healthy and productive life.

Having some control over when and how often you will be called into work, and in fact to know with enough advance notice what your schedule will be, are fundamental rights in the workplace. Indeed, this is one of the key issues that workers bargain over when they come together to form a union and bargain for their working conditions.

Employer approaches to employee scheduling differ industry by industry. In retail and food service, we have seen more and more employers adopting last minute scheduling, last minute call-ins and overall reduced hours. Workers do not get the stability they need for personal and family lives, morale and efficiency at the workplace suffer, and the safety of the workers is put at risk.

Currently, in the food service and retail business there are no standards for employee scheduling. Even in the unionized sector, the issues of advance scheduling and adequate hours still have to be fought for, and when the non-union sector is allowed to do anything it wants, union workers are impacted as well. In other words, it is still hard for even union workers to secure reliable scheduling.

Workers who have not yet been organized and do not enjoy good union contracts, are defenseless against employer practices without the government stepping in to ensure minimum standards are maintained for all.

We need the DC City Council to step up and create the standards that will protect workers in the nation's capital. Supporting this legislation will send a clear message to retail and food service workers, union and non-union, that this City Council is willing to protect those workers who don't have the power or authority to change their work circumstances on their own.

The Metropolitan Washington Council, AFL-CIO adamantly urges the Committee and the Council to vote in favor of Bill 21-0512.

Thank you.

UNIVERSITY of MARYLAND
SCHOOL OF SOCIAL WORK

Jennifer E. Swanberg, Ph.D.
Professor

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Hearing of the Council of the District of Columbia
Committee on Business, Consumer, and Regulatory Affairs
***Hours and Scheduling Stability Act of 2015,* B21-512**
Submitted by Dr. Jennifer E. Swanberg, January 13, 2016

Good morning Chairman Orange and Committee Members,

Thank you for this opportunity to testify in support of Bill 21-512.

My Name is Dr. Jennifer Swanberg. I am a Full Professor at the University of Maryland School of Social Work. I am here because after nearly 25 years of studying the ill-effects of low-wage work on employee wellbeing and recommending solutions to improve job quality, I believe we have two options in front of us today. Either to be among the few cities in the United States to take a stand on economic security for many of its retail and food service workers, or to do nothing and let workers continue to suffer.

One area of my research focuses on cancer and employment. This legislation, if passed, would have profound effects on service workers who are fighting this debilitating disease in three important ways:

1. Workers would be able to coordinate their medical appointments around a consistent and predictable work schedule;
2. Service workers would have equal access to professional advancement opportunities even if they need to temporarily reduce work hours for their cancer care; and
3. Employees with less than full-time hours would be able to accrue employer-provided benefits such as health insurance. This is an important issue for all workers, but especially so when one becomes seriously ill.

I'd like to tell you a story from one of my studies that illustrates why we need this legislation.
Sandy is a 57 year old woman who was working part-time as a sales clerk at a national retailer when she found out she had stage 1 breast cancer.

She immediately took three weeks of unpaid leave to handle the initial phases of her cancer care as she did not want to be hassled for requesting changes in her schedule. Five days after her tumor and lymph nodes were removed, Sandy was back on the job. However, her work hours were cut in half, down to 15 hours a week. Additionally, she was no longer assigned to work a set four-day schedule. Instead the days and shifts she was assigned varied from week to week. This made it very difficult for Sandy to plan her cancer care. Ultimately, she quit her job within a few months of her return after she was passed over for a promotion. At the time of the interview, although Sandy was cancer-free, she was unemployed.

Last-minute scheduling, irregular work hours and unequal advancement opportunities compound the challenges faced by employees fighting cancer. According to The National Cancer Institute, 18,000 District of Columbia residents will be diagnosed with cancer this year. Approximately two-thirds of these cases are working-age adults. This means that hundreds of cancer patients employed in DC's retail and food service jobs will want or need to keep working during and after their cancer treatment. They and the rest of their colleagues will benefit immensely from the DC Council taking action and leading this legislative agenda. Thank you.

Testimony of Gina Schaefer
Owner at A Few Cool Hardware Stores

In support of DC Council B21-0512, the Hours and Scheduling Stability Act of 2015
Before the Committee on Business, Consumer, and Regulatory Affairs

January 13, 2016

Chairman Orange and members of the Committee, thank you for the opportunity to speak here today.

I'm going to give my testimony using an op-ed I submitted to the Washington Post on this issue.

When I opened my first hardware store in Logan Circle with my husband Marc in 2003, we wanted to be part of the resurgence of small, independent mom-and-pop stores in D.C. Now, we have 11 stores all over the area and employ more than 225 people. Since the very beginning, I've subscribed to the theory that business is a two-way street. I tell my team that as an employer, I hope to be respected by them, and that they in turn should get the same respect back

That's why our starting wage is higher than the minimum wage, and why we offer healthcare, dental, profit sharing and 401k benefits for our employees. It's part of our commitment to providing not just a good place to work, but a great place to work. But beyond benefits, there are also small, but incredibly meaningful choices we have as business owners that make a world of difference to those who help make our stores run.

For example, we post our schedules at least two weeks in advance, and schedules aren't changed without staff being informed so that our team knows when they'll be working and can plan their lives around their work. For the convenience of our staff, we use an online payroll and time clock system, so that every time a schedule is posted, our team members can access it from anywhere they want.

Obviously, life happens and no one is immune from getting sick or facing emergencies from time to time. To accommodate inevitable conflicts and the unexpected, we make advance scheduling change requests as easy as possible through this online system, and make sure every employee has contact information for their co-workers who are available to work if they need to swap out shifts due to emergencies. We don't use on-call shifts either— where people have to keep an open schedule not knowing if and when they will be called in and paid to work—we realize how ridiculous they are. And when shifts become available, we first make them available to our store associates who work part-time before hiring someone new.

All of these scheduling practices aren't simply for the benefit of our team members. We want our managers to focus on developing their teams and taking care of our customers. The less time they have to spend changing schedules, the more time we have to wow everyone who walks through the door. When our store associates get enough hours at work and a decent schedule, the more likely they are to stay with us and keep our customers happy. And likewise, when District residents have sustainable jobs, they're more able to shop at locally owned stores with their families.

I hope other companies will also strive to give their employees the stability they need and deserve in their lives. And I support the Hours and Scheduling Stability Act that the D.C. Council is considering right now that would ensure that more people who work in the District have access to predictable schedules

and enough hours to sustain themselves and their families. As an advocate for local, independent businesses here in D.C., I know how hard my fellow small business owners work to make sure their stores thrive. This law should build upon the successes they have had in valuing their employees, and still allow enough flexibility for employers to adjust to the many unique challenges and demands of running a small business. It would be a big step forward if City Council should usher in these commonsense scheduling standards so that the chain companies that operate in our city do right by our community—the way mom-and-pop store owners have been doing things for years.

The key to our business is that we link what our company needs with what our employees need. Doing so is good business practice. This two-way street enables our stores and the people who work for us in the District to flourish.

I'm happy to answer any questions you may have.

Gina Schaefer
A Few Cool Hardware Stores

NATIONAL WOMEN'S LAW CENTER
EXPANDING THE POSSIBILITIES

Testimony of Emily J. Martin
Vice President and General Counsel

National Women's Law Center

Submitted to the DC City Council
January 13, 2016

Thank you for the opportunity to submit this testimony on behalf of the National Women's Law Center. The National Women's Law Center has been working since 1972 to secure and defend women's legal rights, and to help women and families achieve economic security. Today, women's income is more critical than ever before to families' economic security. Working mothers are primary breadwinners in 41 percent of families with children, and they are co-breadwinners—bringing in between 25 percent and 50 percent of family earnings—in another 22 percent of these families.[1]

Unfortunately, unstable, unpredictable work schedules over which workers have little control too often undermine the ability of working women in Washington, D.C. to provide for themselves and their families. Particularly in the retail and food service industries, workers may regularly be required to be on call for shifts that never materialize, may have schedules and thus incomes that fluctuate wildly and unpredictably from week to week, or may never be assigned enough hours to obtain full-time work. Unpredictable, unstable schedules pose particular challenges for workers with significant responsibilities outside of their job such as caring for children or elderly relatives, pursuing education and workforce training, or holding down a second job. Women make up more than two-thirds (68 percent) of D.C.'s low-wage workforce,[2] where difficult scheduling practices are most common.[3] In fact, in D.C., a working woman is twice as likely to have a low-wage job as a working man.[4] In addition to holding the majority of low-wage jobs,[5] women still shoulder the majority of caregiving responsibilities in families;[6] consequently, difficult scheduling practices hit women especially hard. For the 40 percent of families with children in Washington, D.C. that are headed by single mothers,[7] work scheduling challenges can be especially acute since there is often no one else with whom to share caregiving responsibilities.

I. Work Scheduling Practices that Fail to Take Workers' Lives into Account Undermine Workers' Best Efforts to Provide for Themselves and Their Families

The fallout from scheduling practices that do not take workers' needs into account can be devastating.[8] Difficult scheduling practices undermine workers' efforts to fulfill their caregiving responsibilities and make maintaining stable child care nearly impossible. They also make it tougher to pursue education or training while holding down a job, as many workers want to do to make a better life for themselves and their families. For workers who need a second part-time job to make ends meet because they cannot get enough hours at their primary job, unpredictable

scheduling practices can make juggling two jobs very difficult. And workers managing serious medical conditions are often denied the control over their schedules that they need to manage their health.

A. Having Little Say in Their Schedules Makes It Nearly Impossible for Workers to Organize Their Lives

Many workers in low-wage jobs have few opportunities for meaningful input into the timing of the hours that they work, and are unable to make even minor adjustments to their work schedules without suffering a penalty.[9] These penalties appear to fall especially heavily on women. According to data collected by D.C. Jobs with Justice in 2015 from a non-representative survey of 361 non-supervisory, hourly employees in the retail, restaurant/food service, and other personal service industries in D.C.("the D.C. survey"), 27.2 percent of women who responded and 31.9 percent of women with children under 18 have avoided asking for changes to their schedules because they were afraid that these requests would provoke retaliation. (By contrast, only 19.6 percent of men who responded and 25.6 percent of men with children under 18 reported the same.[10]) The D.C. survey also found that the share of women who reported being penalized for either asking for a different schedule or limiting their work availability (23.2 percent) was twice as large as the share of men who reported being penalized (12.8 percent).[11]

B. Little Advance Notice of Schedules Means the Only Plans Workers Can Make Are Those They Can Break

Providing notice of work schedules a week or less in advance is common in many industries, including retail and food service. According to research analyzing the work schedules of a representative sample of early-career adults (26-32 years old), over a third (38 percent) of early career employees overall knew their work schedules only one week or less in advance.[12] Such short notice was significantly more common among hourly workers (41 percent) than others (33 percent), and among part-time (48 percent) than full-time workers (35 percent).[13] Of those workers surveyed in the D.C. survey, one-third of employees received their work schedules with less than three days' notice, and nearly 50 percent of respondents said that they usually learn their schedule less than one week in advance.[14] Many were given less than 24 hours' notice—11.0 percent of all workers, 11.4 percent of all women, and 12.8 percent of women with children under 18 got their schedules less than 24 hours in advance.[15]

Another practice, especially common for retail workers, is to schedule workers for "call-in shifts," which means they must call their employers to find out whether they need to report to work that very day and are not paid if they are not called into work, despite the need to keep that time free.[16] Responding to the D.C. survey, 30.7 percent of all respondents, and 32.6 percent of women and 29.2 percent of women with children under 18 reported being scheduled for call-in shifts.[17]

C. When Hours Vary Widely from Week to Week, Budgeting Can Be Impossible

Many workers in low-wage jobs experience unstable schedules that vary from week to week or month to month, or periodic reductions in work hours when work is slow. For early-career adults hours fluctuate substantially for both hourly and non-hourly workers; [18] and for hourly workers in particular, such fluctuations can make it extremely difficult to make ends meet. Nationally,

according to data from the Bureau of Labor Statistics, in a single month, hours vary 70 percent on average for food service workers and 50 percent for retail workers.[19] Nearly a quarter (23.5 percent) of D.C. survey respondents had their schedules changed once or more a week, including 24.6 percent of women and 29.8 percent of women with children under 18.[20] For the typical employee surveyed, the number of hours worked per week rises and falls 13 hours every month.[21] Further, workers with variable schedules may not qualify for child care subsidies due to large fluctuations in work hours and thus in income that push them in and out of eligibility.[22] In addition, such variability can make it extremely difficult for workers simply to meet basic expenses like food, rent, and utilities. And even in months when workers end up being scheduled for sufficient hours to meet their expenses, they still experience the incredible stress and uncertainty that comes with not knowing in advance how much income they will be bringing home.

D. Unstable, Unpredictable Work Schedules Make It Hard for Workers to Ensure Their Children Are Well Cared For

Low-wage workers' ability to access quality, affordable and stable child care is often compromised by unpredictable work schedules.[23] With work schedules and incomes that fluctuate from week to week, many workers have no choice other than to cobble together child care at the last minute.[24] Because many child care centers require a weekly or monthly fee to hold a child's spot, regardless of how often the child attends, center-based care is often infeasible for workers who do not know when, or even if, they will work in any given week. Relying on family, friends, and neighbors to provide child care – as most workers in low-wage jobs must do – is complicated by the fact that their child care providers may also be balancing an unpredictable part-time work schedule at their own jobs with providing child care. When workers are unable to find child care or child care falls through, workers must miss work and lose pay. In one study, 40 to 60 percent of workers who reported missing work due to child care problems also reported losing pay or benefits, or being penalized in some way.[25] Another common problem for workers with child care responsibilities is being required to stay past the end of a scheduled shift. In a survey of restaurant workers, nearly a third of workers reported that they had been required to stay past the end of a scheduled shift and, as a result, paid fines to child care providers for picking their children up late.[26] In the D.C. survey, 27.1 percent of women with children under 18, and 20.5 percent of men with children under 18, reported that their work schedule negatively impacts their child care arrangements.[27]

E. Many Part-Time Workers Want Full-Time Hours

Many part-time workers are desperate for full-time hours. In 2014, one in five (20.7 percent) of part-time employees worked part-time involuntarily, including for reasons of slack work or business conditions and because they were unable to find full-time work.[28] Low-wage workers are far more likely to work part-time involuntarily than other workers: in 2013, the rate of involuntary part-time work for employees in low-wage workers (11.5 percent) was more than double the rate of involuntary part-time work among employees overall (5.0 percent).[29] Workers in low-wage occupations made up over one-third (37 percent) of all involuntary part-time workers in 2013, despite low wage workers only making up 16 percent of all workers.[30] Two-thirds (65.9 percent) of women in the D.C. survey reported that getting more hours at their main job was very important, and an additional 17.3 percent said it was somewhat important. The figures were higher for women with children under 18—91.3 percent said that getting more hours was very important

(84.8 percent) or somewhat important (6.5 percent).[31] Overall, 4 out of 5 workers surveyed said it was very important or somewhat important to get more hours.[32]

Part-time workers may not only work fewer hours than they wish but may also be paid less for those hours they do work. Part-time workers were paid significantly less per hour than full-time workers in more than half (56 percent) of the 324 occupations where average hourly earnings for full- and part-time workers could be compared, and earned more in less than four percent of these occupations, according to a 2007 study.[33] Part-time workers are also far less likely to have access to benefits.[34] And women who work full time are more likely to be promoted than those working part time. A study of women across their careers shows that full-time workers are consistently more likely to be promoted than part-time workers.[35]

II. The Hours and Scheduling Stability Act of 2015 Would Begin to Curb Difficult Scheduling Practices in D.C.

Workers need a say in their schedules in order to meet their responsibilities at work and in the rest of their lives. The Hours and Scheduling Stability Act of 2015 would allow the District to build on its track record of providing strong workplace protections for hourly workers. Already Washington, D.C., along with Puerto Rico and 8 states, provides for reporting time pay—requiring employers to pay an employee for at least four hours at minimum wage for each day an employee reports to work (or pay for the employee's scheduled shift, whichever is less).[36] And D.C., along with California, requires split shift pay,[37] meaning that employees who work a shift of daily hours in which the hours worked are not consecutive and the total time out for meals exceeds one hour must be paid one additional hour of pay at the minimum wage.[38] But additional protections are needed to curtail the unfair scheduling practices that create sometimes insurmountable barriers for people who are striving to provide for their families. The Hours and Scheduling Stability Act of 2014 would provide baseline scheduling protections for hourly workers employed in chain retail and restaurant establishments—industries where abusive scheduling practices are common—through several key provisions:

- **Advance notice of schedules.** The Act would require three weeks' advance notice of work schedules for covered employees—those working in chain retail and restaurant establishments. When changes are made with less than three weeks' notice an employer would be required to pay an affected employee an extra hour of pay for each affected shift. This "predictability pay" disincentivizes last minute changes and partially compensates employees for the costs imposed by unpredictable, variable schedules.

- **Compensation for call-in shifts.** The Act would require an employer to pay a covered employee four hours of pay at the employee's regular rate of pay for any call-in shift in which the employee was not actually called in to work.

- **Strengthened reporting time pay protections.** The Act would ensure that covered employees are paid four hours at their regular rate of pay when they report to work as required and are sent home—rather than the four hours at minimum wage required under current D.C. law.

- **Access to hours.** The Act would require covered employers to offer available hours to existing, qualified employees working less than forty hours a week before hiring new employees.

- **Ending pay discrimination against part-time workers.** The Act would prohibit covered employers from paying employees less per hour based solely on the fact that they are part-time employers or from denying them promotion opportunities based on their part-time status.

Enactment of the Hours and Scheduling Stability Act would establish the District as a leader in the growing national movement for fair work schedules. In response to a wave of worker organizing, eleven states introduced bills addressing workplace scheduling abuses in 2015,[39] and more legislative activity is expected in the coming year across the country. Advance notice of work schedules, compensation for call-in shifts, reporting time pay are key elements of most of these bills, similar to the D.C. bill.[40] Moreover, in 2014, San Francisco passed a Retail Workers Bill of Rights, which includes many of the key provisions as the D.C. bill,[41] and in 2013, Vermont enacted legislation protecting employees' right to request schedule changes without retaliation.[42]

III. Minor Modifications to the Hours and Scheduling Stability Act Would Further Strengthen Its Protections

The Act does not protect employees who ask for schedule changes or for a particular work schedule from retaliation—yet retaliation in the form of reduced work hours or even termination—is not uncommon for employees who place some limits on their availability or otherwise request particular schedule modifications. Again, 27.2 percent of women who responded to the D.C. Jobs With Justice survey and 31.9 percent of women with children under 18 have avoided asking for changes to their schedules because they were afraid that these requests would provoke retaliation,[43] almost a quarter of women reported actually being penalized for either asking for a different schedule or limiting their work availability (23.2 percent). In order to provide employees some minimal voice in their schedule, the Act must prohibit retaliation against employees when they ask for changes in their schedules or for a schedule that takes their needs into account. An employee who asks her employer if she can have Tuesday nights off to attend night classes, or a schedule that allows her to see her children in the evenings, should not risk punishment just for making the request. Indeed, nine of the states that proposed fair scheduling legislation in 2015 provided some form of protection for workers making scheduling requests.[44] D.C. should do the same.

In addition, the current draft of the Act provides that a covered employee may not be required to work additional hours with less than three weeks' notice unless the employee consents to work these hours. However, if an employer can only replace a worker who takes time off when another employee affirmatively consents to work, the employer may respond by refusing to allow employees to take time off with less than three weeks' notice, as such time off creates holes in the schedule that an employer must fill. As a result, employees who need time off for illness, school events, because a child care provider is unavailable or the myriad of other reasons that sometimes unavoidably require time away from work may find that these requests are summarily rejected and, indeed, become a basis for discipline (particularly given the lack of protection from retaliation in the current bill draft flagged above). To avoid the potential unintended consequence of constraining

employees' ability to take time off, the bill should be modified to provide that an employer may not require an employee to work hours not included in the schedule the employer posts 21 days in advance, *except* where the employer has exhausted all good faith, reasonable attempts to obtain voluntary workers, and the schedule is being changed based on the unforeseen unavailability of an employee previously scheduled to work that shift.

III. Fair Scheduling Practices are Good for Employees, Businesses, and the Bottom Line

Scheduling practices that fail to take workers' needs into account result in higher rates of turnover and absenteeism and lower worker engagement.[45] In contrast, fair scheduling leads to more productive and committed employees and lower turnover.[46] In other words, when businesses provide flexible working arrangements, they benefit. Research shows that the benefits of implementing fair scheduling practices for lower-wage workers are comparable and even greater than the benefits from providing those arrangements to their higher-wage counterparts.[47] Among the benefits are reduced absenteeism, increased retention, reduced health care costs, and increased revenue.[48] When workers have schedules that work, everyone wins.

IV. Conclusion

When workers have schedules that work, everyone wins. This bill is an important step toward creating workplace policies that truly work for workers and their families.

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[1] The share of mothers who are breadwinners or co-breadwinners has increased from 27.5 percent in 1967 to 63.3 percent in 2012. SARAH JANE GLYNN, CENTER FOR AMERICAN PROGRESS, BREADWINNING MOTHERS, THEN AND NOW 6 (June 2014), *available at* https://cdn.americanprogress.org/wp-content/uploads/2014/06/Glynn-Breadwinners-report-FINAL.pdf.

[2] National Women's Law Center (NWLC) calculations based on Current Population Survey, Annual Social and Economic Supplements (CPS-ASEC) for 2014 using Miriam King, et al., *Integrated Public Use Microdata Series, Current Population Survey: Version 3.0* [Machine-readable database] (Minneapolis: University of Minnesota: 2010). The "low-wage workforce" is comprised of workers in "low-wage occupations," which are detailed occupations with median hourly wages of $10.50 per hour or less national based on the Bureau of Labor Statistics' Occupational Employment Statistics, Bureau of Labor Statistics, May 2014, National Occupational Employment and Wage Estimates, United States, *available at* http://www.bls.gov/oes/current/oes_nat.htm. All figures are for all employed workers unless otherwise noted.

[3] *See generally*, *supra* note 1. http://www.nwlc.org/sites/default/files/pdfs/collateral_damage_fact_sheet_june_2015.pdf.

[4] National Women's Law Center (NWLC) calculations based on Current Population Survey, Annual Social and Economic Supplements (CPS-ASEC) for 2014 using Miriam King, et al., *Integrated Public Use Microdata Series, Current Population Survey: Version 3.0* [Machine-readable database] (Minneapolis: University of Minnesota: 2010). The "low-wage workforce" is comprised of workers in "low-wage occupations," which are detailed occupations with median hourly wages of $10.50 per hour or less national based on the Bureau of Labor Statistics' Occupational Employment Statistics, Bureau of Labor Statistics, May 2014, National Occupational Employment and Wage Estimates, United States, *available at* http://www.bls.gov/oes/current/oes_nat.htm. All figures are for all employed workers unless otherwise noted.

[5] NWLC calculations based on Miriam King et al., Integrated Public Use Microdata Series, CPS: Version 3.0 (IPUMS-CPS), (Univ. of Minn. 2010). Data are for 2013. All figures are for employed workers. Median hourly wages: Bureau of Labor Statistics (BLS), Occupational Employment Statistics (OES), May 2014. National Occupational and Employment and Wage Estimates, *available at* http://www.bls.gov/oes/current/oes_nat.htm.

[6] KENNETH MATOS & ELLEN GALINSKY, WHEN WORK WORKS: WORKPLACE FLEXIBILITY IN THE UNITED STATES, A STATUS REPORT 1 (Families and Work Institute 2011) ("Mothers spend the same number of weekday hours with their children (3.8) in 2008 as they did in 1977 and the majority of married/ partnered women report doing most of the cooking (70%) and cleaning (73%) in their households."), *available at* http://familiesandwork.org/downloads/WorkplaceFlexibilityinUS.pdf.

[7] NWLC calculatiqns based on U.S. Census Bureau, American Community Survey 2013, *available at* http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_13_1YR_S1101&prodType=table. Figures are for families with own children under 18.

[8] *See generally* Liz Watson et al., National Women's Law Center, Collateral Damage:Scheduling Challenges for Workers in Low-Wage Jobs and Their Consequences (June 2015), *available at* http://nwlc.org/wp-content/uploads/2015/08/collateral_damage_fact_sheet_june_2015.pdf.

[9] LIZ WATSON & JENNIFER E. SWANBERG, FLEXIBLE WORKPLACE SOLUTIONS FOR LOW-WAGE HOURLY WORKERS: A FRAMEWORK FOR A NATIONAL CONVERSATION 6 (Workplace Flexibility 2010, May 2011), *available at* http://workplaceflexibility2010.org/images/uploads/whatsnew/Flexible%20Workplace%20Solutions%20for%20Low-Wage%20Hourly%20Workers.pdf.

[10] NWLC, D.C. FAMILIES NEED FAIR WORK SCHEDULES 2 (July 2015), *available at* http://nwlc.org/wp-content/uploads/2015/08/dc_families_need_fair_work_schedules.pdf. NWLC analysis based on data from

[11] *Id.*

[12] SUSAN J. LAMBERT, PETER J. FUGIEL, AND JULIA R. HENLY, PRECARIOUS WORK SCHEDULES AMONG EARLY-CAREER EMPLOYEES IN THE US: A NATIONAL SNAPSHOT 6 (Aug. 2014), *available at* http://ssascholars.uchicago.edu/work-scheduling-study/files/lambert.fugiel.henly_.precarious_work_schedules.august2014.pdf.

[13] *Id.*

[14] DC JOBS WITH JUSTICE, UNPREDICTABLE, UNSUSTAINABLE: THE IMPACT OF EMPLOYERS' SCHEDULING PRACTICES IN DC 7 (June 2015) 7.

[15] D.C. FAMILIES NEED FAIR WORK SCHEDULES, *supra* note 10 at 2.

[16] STEPHANIE LUCE & NAOKI FUJITA, DISCOUNTED JOBS: HOW RETAILERS SELL WORKERS SHORT 15 (Retail Action Project 2012), *available at* http://retailactionproject.org/wp-content/uploads/2012/03/7-75_RAP+cover_lowres.pdf.

[17] D.C. FAMILIES NEED FAIR WORK SCHEDULES, *supra* note 10 at 2.

[18] *Id.*

[19] Schedules That Work Act, H.R. , 113th Cong. (2014) (from Sec. 1 Short Title & Findings, based on an analysis of the National Longitudinal Survey of Youth by Susan Lambert).

[20] D.C. FAMILIES NEED FAIR WORK SCHEDULES, *supra* note 10 at 3.

[21] *Id.*

[22] *See generally* Karen Schulman & Helen Blank, *Pivot Point: State Child Care Assistance Policies 2013* (NWLC 2013).

[23] *See generally* LIZ BEN-ISHAI, HANNAH MATTHEWS, & JODIE LEVIN-EPSTEIN, SCRAMBLING FOR STABILITY: THE CHALLENGES OF JOB SCHEDULE VOLATILITY AND CHILD CARE (Ctr. For Law and Social Policy Mar. 2014), *available at* http://www.clasp.org/resources-and-publications/publication-1/2014-03-27-Scrambling-for-Stability-The-Challenges-of-Job-Schedule-Volat-.pdf.

[24] *Id.*

[25] WATSON & SWANBERG, *supra* note 9, at 8.

[26] RESTAURANT OPPORTUNITIES CENTER UNITED, THE THIRD SHIFT: CHILD CARE NEEDS AND ACCESS FOR WORKING MOTHERS IN RESTAURANTS 9-10 (July 2013, *available at* http://www.scribd.com/doc/161943672/The-Third-Shift-Child-Care-Needs-and-Access-for-Working-Mothers-in-Restaurants.

[27] D.C. FAMILIES NEED FAIR WORK SCHEDULES, *supra* note 10 at 2.

[28] NWLC calculations based on Bureau of Labor Statistics (BLS) Current Population Survey (CPS) Annual Table 20: Persons at work 1 to 34 hours in all and in nonagricultural industries by reason for working less than 35 hours and usual full- or part-time status *available at* http://www.bls.gov/cps/cpsaat20.htm (Last visited June 23, 2015). Note that this figure is for people at work part time during the reference week, rather than those who usually work part time. Data on involuntary part-time workers also includes workers who usually work full time but worked between 1-34 hours during the reference week of the survey. These differences mean the numbers of voluntary and involuntary part-time workers do not add to the total (which is reported here as people who usually work part time). However, including data on those who usually work full time but are not working full time during the reference week for noneconomic reasons captures many people who are on vacation or otherwise missed a day of work. Other reasons for working part-time involuntarily

include seasonal work (3 percent of all involuntarily part-time workers) and job started or ended during the week (1 percent of involuntarily part-time workers).

[29] NWLC calculations based on King, *supra* note 5.

[30] *Id.*

[31] D.C. FAMILIES NEED FAIR WORK SCHEDULES, *supra* note 10 at 3.

[32] DC JOBS WITH JUSTICE, *supra* note 14, at 5.

[33] David M. Pongrace and Alan P. Zilberman, U.S. BLS, A Comparison of Hourly Rates for Full- and Part-Time Workers by Occupation, 2007 (July 2009) at 2 *available at* http://www.bls.gov/opub/mlr/cwc/a-comparison-of-hourly-wage-rates-for-fulland-part-time-workers-by-occupation-2007.pdf. Of the twelve occupations in which part-time work had significantly higher average hourly earnings than full-time work, half were healthcare or related occupations.

[34] BLS Employee Benefits in the United States – March 2015 Table 2. Medical care benefits: Access, participation, and take-up rates *available at* http://www.bls.gov/news.release/ebs2.t02.htm (Last visited July 24, 2015). Figures are for civilian workers; NWLC calculations based on BLS Employee Benefits in the United States – March 2015 Table 6: Select paid leave benefits: Access *available at* http://www.bls.gov/news.release/ebs2.t06.htm (Last visited July 24, 2015). Figures are for civilian workers.

[35] John T. Addison, Orgul Demet Ozturk, & Si Wang, Job Promotion in Midcareer: Gender, Recession, and "Crowding", Bureau of Labor Statistics Monthly Labor Review at Table 3 (Jan. 2014) *available at* http://www.bls.gov/opub/mlr/2014/article/job-promotion-in-midcareer.htm.

[36] Min. Daily Wage, 7 D.C. Mun. Reg. Tit. 7 § 907.

[37] NWLC, OVERVIEW OF SELECTED STATE AND LOCAL SCHEDULING PROTECTIONS (Jan 2015), *available at* http://www.nwlc.org/sites/default/files/pdfs/overview_of_selected_state_and_local_scheduling_protections_jan_2015.pdf.

[38] *Id.*

[39] NWLC, RECENTLY INTRODUCED AND ENACTED STATE AND LOCAL FAIR SCHEDULING LEGISLATION (Sept. 2015), *available at* http://nwlc.org/wp-content/uploads/2015/08/recently_introduced_and_enacted_state_local_9.14.15.pdf.

[40] *Id.*

[41] *Id.*

[42] OVERVIEW OF SELECTED STATE AND LOCAL SCHEDULING PROTECTIONS, *supra* note 37.

[43] D.C. FAMILIES NEED FAIR WORK SCHEDULES, *supra* note 10 at 2.

[44] RECENTLY INTRODUCED AND ENACTED STATE AND LOCAL FAIR SCHEDULING LEGISLATION, *supra* note 37.

[45] A BETTER BALANCE, FACT SHEET: THE BUSINESS CASE FOR WORKPLACE FLEXIBILITY 2-4 (Nov., 2010), available at http://www.abetterbalance.org/web/images/stories/Documents/fairness/factsheets/BC-2010-A_Better_Balance.pdf.

[46] *Id.*

[47] Anna Danziger & Shelley Waters Boots, *Lower-Wage Workers and Flexible Work Arrangements,* WORKPLACE FLEXIBILITY 2010 GEORGETOWN UNIVERSITY LAW CENTER 7 (2008), *available at* http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1000&context=lega.l

[48] A BETTER BALANCE, *supra* note 45.

DCNHA D.C. Nightlife Hospitality Association

PUBLIC HEARING TESTIMONY
COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON BUSINESS, CONSUMER, AND REGULATORY AFFAIRS

"HOURS AND SCHEDULING STABILITY ACT OF 2015"
BILL 21-512

MARK LEE
EXECUTIVE DIRECTOR
D.C. NIGHTLIFE HOSPITALITY ASSOCIATION
(DCNHA)

January 13, 2016

D.C. Nightlife Hospitality Association (DCNHA) is a 501(c)6 nonprofit trade association and business membership organization representing bar, restaurant, nightclub, and entertainment venues contributing to a vibrant community nightlife and dynamic nighttime economy in the nation's capital!

DCNHA D.C. Nightlife Hospitality Association

Chairperson Orange, Council Members, Council and Committee Staff:

My name is Mark Lee and I serve as Executive Director of the D.C. Nightlife Hospitality Association (DCNHA), a nonprofit trade association representing local bar, restaurant, nightclub, and entertainment venues of all types and sizes, located throughout the city, and contributing to a vibrant community nightlife and dynamic nighttime economy in the District.

As the leading hometown private sector business category and primary employer, leading job creator, major tax revenue contributor and economic development generator, local hospitality establishments have a major stake in D.C. Council consideration of proposed Bill 21-512, the "Hours and Scheduling Stability Act of 2015" – also known as a "predictive scheduling" law.

As currently drafted, this legislation would affect only a small number of D.C. hospitality establishments. To be clear, it would not apply to any of our Member businesses in its current form. The independent local restaurants, bars, and nightclubs across the District, however, clearly understand they will become the next target.

Although this bill applies only to franchise food and beverage service operations with more than 20 nationwide locations and formula retail chains with more than five locations nationwide, approval will almost certainly lead to eventual expansion of the mandate to all workplaces in the District.

That's when you will come after us – local hospitality venues with small staffs, frequent business fluctuations, complex staffing situations, and little ability to absorb the operational costs.

We know it, you know it, and everyone else knows it.

For those reasons, we are here today to share our concern – and the very real alarm in the local small business hospitality community – regarding this ill-advised measure and its inevitable expansion.

We urge you to reject this proposal, just as the state legislature in neighboring Maryland recently had the good sense to do.

We first ask a simple question: What is the scope of a problem for which this edict is an appropriate solution? How does that compare to the extraordinary new burdens the sponsors seek to impose?

Is it no longer legitimate that certain categories of employment offer jobs with a reasonable degree of staffing and scheduling uncertainty from time to time? Is it that no employee should ever feel obligated to contribute a modest level of flexibility as an occasional responsibility for the intrinsic benefit of having a job?

We believe that current D.C. law guaranteeing a four hour wage payment provides adequate protection and compensation in instances when an employee reports for a scheduled shift when inadequate work is available or work is available for fewer hours than scheduled.

We continue to be dismayed by the tendency of some Council members to seek enactment of the first and the worst by proposing the most notorious and most business-unfriendly laws in the country. This is another one of those instances.

First, it is wholly unreasonable to require employers to provide a final staff schedule fully 21 days in advance. This proposed requirement substantially exceeds the required timeframe even in the mere handful of jurisdictions that have imposed a mandated scheduling timeline.

Hospitality venues are subject to fluid business variances not in their control. Late scheduling of event bookings, last-minute reservations, or special events at other nearby businesses can easily affect business volume. Nightlife establishments may not know what attendance will be until ticket sales are known.

It is unrealistic to expect nighttime venues to fully predict three weeks in advance what every staffing requirement will be. Forcing businesses to unnecessarily schedule and compensate unneeded shifts is a significant financial hardship measured against razor-thin operating margins.

Second, hospitality businesses are startled by the attempt to force conversion of part-time positions into full-time positions by prohibiting hiring new employees prior to a delay and offers to all existing staff. This mandate represents an astonishing governmental arrogance and intrusion into the management of private businesses. It is also entirely inconsistent with the unique staffing configurations characteristic of restaurants and bars and commonly required for similar small-staff workplaces to achieve operational needs.

Worst of all, the proposed rules will actually produce negative results for employees.

Overstaffing is not feasible – establishments can't afford the increased costs and tipped servers and bartenders will be harmed by reduced income if gratuities are spread among an unnecessarily oversized number of staff.

What's more likely is that understaffing will become the norm, with employees enjoying close-to-home proximity and flexible personal schedules voluntarily "checking in" to see if additional staff is required. This protocol will result in workers receiving fewer scheduled shifts and earning less income.

A member business owner recently asked me how many new desk chairs they should purchase based on whether the entire Council will be showing up to look over their shoulder to micromanage their business operation – or only the Council members sponsoring attempts to pile-on new layers of rules and regulations like this one.

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D.C. Nightlife Hospitality Association (DCNHA)
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TESTIMONY BEFORE

THE

COMMITTEE ON BUSINESS, CONSUMER AND REGULATORY AFFAIRS

ON

B21-331, the "BUILDING SERVICE EMPLOYEES MINIMUM WORK WEEK ACT OF 2015"

JANUARY 13, 2016

PRESENTED BY:

PEGGY JEFFERS,
EXECUTIVE VICE PRESIDENT,
APARTMENT AND OFFICE BUILDING ASSOCIATION OF METROPOLITAN WASHINGTON

WITH

KIRSTEN M. BOWDEN, ESQ.
VICE PRESIDENT OF GOVERNMENT AFFAIRS, DC
APARTMENT AND OFFICE BUILDING ASSOCIATION OF METROPOLITAN WASHINGTON

Good morning Chairperson Orange, members of the Committee on Business, Consumer and Regulatory Affairs and staff. I am Peggy Jeffers, Executive Vice President of the Apartment and Office Building Association of Metropolitan Washington (AOBA). I appear today on behalf of AOBA, a non-profit trade association representing owners and managers of more than 49,000 apartment units and over 80 million square feet of office space in the District of Columbia. With me today is Kirsten Bowden, AOBA's Vice President of Government Affairs for the District of Columbia.

I. THE IMPORTANTANCE OF COLLECTIVE BARGAINGING AGREEMENTS

While we appear before you to address our concerns with Bill 21-331, the "Building Service Employees Minimum Work Week Act of 2015," we must first underscore that AOBA was not a party to the negotiations nor the Collective Bargaining Agreement entered into between the Service Employees International Union (SEIU) Local 32BJ and the Washington Service Contractors Association (WSCA), which precipitated this legislation. As this measure seeks to strip the future collective bargaining rights of the custodial service industry and cripple its ability to craft a program that meets both the needs of the tenants it services and the employees who provide the service, we implore the Council to oppose this measure. We urge you, rather, to defer to the expertise of these parties and their well established forum of bargaining and empower this service industry with the freedom needed to craft a labor agreement that meets the needs of the marketplace without the threat of mandated legislative interference.

It should not be lost in today's discussion that it has been 25 years since the "Justice for Janitors Campaign" successfully integrated existing union membership with non-union janitorial workers. Since that time, almost all of the janitorial service cleaners in Washington have been zealously represented by Local 32BJ. Those that haven't unionized have done so because of the unique characteristics of their employees and/or their tenants, as noted in the remarks provided by the DC Chamber of Commerce, who represents these entities. This vast representation within the industry begs the question – *why is this legislation necessary*? Unlike some unions that operate in jurisdictions that have restricted laws affecting employees' right to bargain, thus weakening the union's abilities at the collective bargaining table, Local 32BJ and WSCA have strong safeguards protecting their collective bargaining rights. Collectively, they have undertaken, without a legislative agenda backing their efforts, nationally recognized enhanced wage and labor standards for its service-sector employees. Their contract negotiations have ensured higher than minimum wage salaries, educational benefits, training opportunities, 'green' sustainability practices, paid vacation, holidays and sick days, to name a few of the benefits. Most notably, their collective bargaining agreements have provided this industry with the ability to enhance its marketability by tailoring shifts to meet the specialized needs of its tenants, while offering employees with the opportunity to supplement a full-time day job, provide a secondary household income, and a flexible source of income while furthering their education.

While we believe it is the legislative intent of the Council to adopt policies that promote employment, ensure economic security and foster the continued growth of the business sector, it remains unclear whether the measure before us will accomplish these aspects. Rather, as we will briefly highlight, this legislation, if adopted, would present an undue financial burden on the commercial business sector, potentially result in job loss, and stifle the economic outlook of this

service sector as its fundamental right to bargain the terms of its contract will be constrained. It is for these reasons that we request that the Council not codify aspects of this negotiated contract.

II. THE UNINTEDED CONSEQUENCES OF MANDATED MINIMUM WORK WEEKS

As we recently noted when discussing the potential impacts of the "Universal Paid Leave Act," the Council must be mindful of the District's current economic climate, the overall cost of doing business here and how the implementation of its regulatory polices can tarnish or enhance our members' ability to attract and retain tenants. Notably, a fully leased commercial office building is financially beneficial to the District. At present, commercial office buildings generate approximately $900 million per year in real property tax revenues, which are projected to increase by $200 million per year over the next budget cycle. A decrease in demand for office space could impact the city's ability to fund its current programs, let alone any new ones. The current legislative proposal and its associated costs would be in addition to the numerous fees and charges building owners are required to bear, which must be viewed in the context of the total cost of doing business in the District.

A. ECONOMIC IMPACTS ARE TANGIBLE AND SOON WILL REACH A TIPPING POINT

Businesses cannot view this or any other legislative proposal in a vacuum, nor should the District. Increasing the minimum work week to 30 hours for the janitorial service industry will result in the impacted members incurring additional costs, most of which will be passed through to the tenants of these building. There are some who are simply unable, due to market or statutory restrictions such as with the General Services Administration, to pass through any increased costs. Higher operating expenses and rents can place the District at a competitive disadvantage in the region, especially as our neighboring jurisdictions are experiencing double-digit vacancies and are actively recruiting District businesses to their communities. For the District, which is so dependent on revenues directly and indirectly generated by the commercial office building sector, the cumulative effect of operating costs driven upward by commercial real property taxes and legislation like B21-331 could have long-term consequences.[i]

For many building owners and managers, the four biggest expenses are taxes, utility, security and cleaning costs. Notably, many commercial properties have undertaken significant capital expenditures to reduce their electricity consumption and their carbon footprint, which can be measured in the success the District has obtained as a national leader in ENERGY STAR and LEED certified buildings. It is also worth noting that while energy conservation efforts have resulted in lower consumption, utility costs continue to soar due to infrastructure costs, fuel adjustment charges, regional capacity charges, etc. And, we anticipate even higher costs as we brace for the impact of the District's undergrounding efforts. Further, the increased electricity consumption that will be incurred as a result of the extended hours is likely to diminish our members' ENERGY STAR scores and LEED ratings and exasperate an already tenuous utility burden. Included with AOBA's written testimony is a sample of the operating expenditures associated with these categories.

Cleaning costs: BOMA's Office Experience Exchange Report (EER)/Average $2.16/sq. ft ($1.76-2.48/sq. ft.)[ii]

Security costs (commercial office building): BOMA EER/Average $1.12/sq. ft. ($.86-$1.58)

Real Property Taxes:

- Real property taxes for some commercial properties in the District are now working out to be somewhere between $11.00 and $12.00 per square foot.
- Real property taxes for multifamily properties in the District can range from hundreds of dollars to more than $1,000/per unit.

Utility expenses: 28-33% of operating expenses on average.

- **District's Billion Project plan to underground targeted electricity distribution feeders:** There are two surcharges that will be imposed on ratepayers to finance the cost of the District's undergrounding plan.[iii]
    - **Pepco Underground Project Charge ($500 million):** Charge billed by Pepco for costs associated with the undergrounding project.
    - **DDOT Infrastructure Improvement Charge ($350 million):** This charge will cover the financing costs of bonds issued by the District, DC Public Service Commission financial advisor, and DDOT construction costs.
        - **Projected financial impact to DC businesses may be further increased than anticipated:** The current estimated financial cost to District businesses is projected to significantly increase if GSA successfully contests that it is not subject to the DDOT Infrastructure improvement charge which it alleges is a tax. *GSA represents a large portion of Pepco's commercial customer classes.*
- **Washington Gas' $1 billion Accelerated Pipeline Replacement Surcharge;**
- **DC Water:** DC Water's recently adopted FY 16 rates will result in millions of dollars in rate increases and billions of dollars in capital expenditures.

B. SHIFT CHANGES AND IMPACTS ON PRIMARY JOBS AND TRANSPORTATION NEEDS

While the janitorial industry does employ both full and part-time individuals, the convention remains, especially in the District, that a large portion of these jobs are second shift positions that start approximately at 6 p.m. For many employees, this second shift job supplements their income in addition to a full-time day job. However, by regulating this sector of work to a minimum of 30 hours per week, the needs of these individuals may be jeopardized as they will be required to work until 12 a.m. or beyond. As we noted earlier in our testimony, the District's commercial sector is unique and unlike the other jurisdictions that have mandated a minimum work week, I should note, without the need for a legislative mandate. The Federal government and law firms comprise a large sector of this tenancy and in many instances stipulate that their cleaning services be conducted after their primary business hours have concluded. The ability to tailor the janitorial needs of these businesses is tantamount to the industries' competitiveness and brand.

Further, under this scenario, some employees who cannot work this extended shift and/or who rely on mass transit for their transportation needs will have no other option but to resign. And, those employees who find themselves working into the wee hours of the morning may experience hardships at home, at school or at their primary position, not to mention the safety risks of departing their jobsite at these hours. We assert that these realities are not mere conjecture, but rather are the knowledge obtained by the industry. And, while we cannot predict the number of jobs that will be impacted, discussions within our membership and the industry suggests that there will be some job loss. The analysis of the job impact is a metric that can be analyzed, and if necessary, modified in 2019 when the next CBA negotiations begin. However, as this legislation does not sunset with the terms of the CBA contract, this job loss could be compounded as the regulations would continue to mandate this minimum work week requirement.

III. CONCLUSION

For AOBA members, providing a collaborative, rewarding and supportive work environment to attract and retain the best talent in the industry is the bedrock of their missions. For many years, AOBA member companies have supported the efforts of the SEIU Local 32BJ and the WSCA as they have negotiated the terms of their Collective Bargaining Agreements. As the Council seeks to analyze the impact of this measure and the impact of the unintended consequences, we urge you to not pass this measure and provide these entities with the opportunity to bargain freely, without legislative interference, in hopes that they can continue to effectively manage the needs of the labor and their tenants. Thank you for the opportunity to testify regarding Bill 21-331, the "Building Service Employee Minimum Work Week Act of 2015." We will be happy to answer any questions from the Committee.

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[i] Class 2 collections account for approximately 67 percent of total real property tax collections. FY 2015 Proposed Budget and Financial Plan, Revenue, 3-11.

[ii] The BOMA EER is an annual publication that provides comprehensive income and expense data for the commercial office building sector.

[iii] Non-residential ratepayers, restaurants, universities, hospitals, hotels, small and large tenants in commercial office buildings and more, are all already projected to bear 89% of the approximately *one* billion dollar undergrounding program.

January 13, 2016

Testimony before the Hon. Vincent Orange, Sr., Chair
Committee on Business, Consumer, and Regulatory Affairs

RE: B21-512, the "Hours and Scheduling Stability Act of 2015"

Good morning, Chairman Orange, members of the Committee on Business, Consumer and Regulatory Affairs, staff and members of the public. My name is Tim Ehlert, and I am here representing Buffalo Wild Wings, Inc.

Buffalo Wild Wings is headquartered in Minneapolis, MN, and as a brand we operate 1166 restaurants (591 company restaurants and 575 franchise restaurants) in all 50 States and 6 countries. We operate one corporate location within the District of Columbia at 1220 Half Street, SE – roughly 500 feet from the centerfield gate at Nationals Park.

I'm here today to comment on the Hours and Scheduling Stability Act of 2015. We appreciate the Committee providing us the opportunity to discuss this important issue.

As you know, this legislation as currently drafted will significantly alter one of the most fundamental aspects of operating a business – hiring and scheduling. I plan to pose a number of questions related to potential operational challenges, and while there may not be answers today I'd like to use this opportunity to begin a dialogue so we may work together moving forward.

As mentioned, we operate well over 20 locations nationally, which would make our DC location subject to the proposed scheduling and hiring requirements.

Why only apply the mandate to chain restaurants?

In a quick glance at Google® Maps, there are roughly 20 restaurants within a few blocks of Nationals Park. Of those, only 6 would be subject to this mandate – three being sandwich shops, two casual dining restaurants, and one fast-casual restaurant. Given the number of people on shift in and employed by casual dining restaurants like ours, the impact will likely be far greater for us than for restaurants with fewer workers, but 20 locations nationally. Additionally, with the goal being to provide stability for employees, such a narrow scope would mean most of the workers in DC would not be impacted.

Why 21 days?

The restaurant industry is very unpredictable. This can be both a blessing and a curse. Event-driven traffic is a significant business driver for us, but it also makes scheduling extremely difficult. Buffalo Wild

Wings' business, which relies heavily on sporting events, significantly adds to that unpredictability. Let me give you a couple of scenarios.

In 2015, Nationals games were rained out or suspended on four occasions. On three of those occasions, the games were rescheduled for the next day or later in the week (all within a seven-day window). Weather can play a significant factor in not only outdoor sports scheduling, but also our day-to-day traffic. The most reliable weather forecast usually goes out only about 10 days, and we all know how much that can change within that timeframe. In a rainout scenario, we would significantly over-scheduled for the original game night, and significantly under-scheduled for the double-header day. Unlike our competitors in the area who would not be subject to this mandate, we would be required to pay predictability pay to all of our team members whose schedule would be impacted through no fault of ours.

My next scenario involves potential playoff games. For us, traffic can significantly increase if the local college and/or professional teams make it to the postseason. But none more impactful than if (and as a Nats fan I'll say when) the Nationals make it into the postseason. First round, Wildcard games are win and you move on. Two days later the Division Series games start, and are best-of-five. Last year, three of the four Division Series matchups went all five games. Two days after the Division Series wraps up, the League Championship Series begins. These are best-of-seven, and neither series last year went all seven games. The World Series then follows a few days after – also a best-of-seven – it went five games this year. In every scenario, the home and away schedule is not known until the matchup is set.

Under this new mandate and because we operate near a stadium and cater to sports fans, we will be significantly impacted by this proposal both administratively and likely financially, whereas the majority of our competitors in the area will not. The games mentioned above will all fall within a time where the 21-day schedule would have already been released – causing significant administrative burdens to schedule team members for busy game day shifts that wouldn't be known until days in advance and will be the most sought-after shifts given the increase in traffic in our restaurant.

How will we handle new scheduling?

As drafted, all new employees would need to wait 21 days before working their first shift in order for us to be in compliance with the proposed notice requirement. While initially thought to be a 21-day notice requirement, I believe it actually would be a 42-day notice requirement given the fact new employees would need a 21-day schedule on day 1, as well as 21 days of advanced notice before starting any shift.

How do we manage the required written consent?

Upon hiring, our team members provide us with their availability. Managers work to schedule shifts only on days that team members have already stated they are available to work. Inevitably, there are occasions where we may have no one available, but instead of scheduling someone without asking – generally team members are first asked if they'd like to pick up an extra shift. Under the proposed scheduling mandate, an employee can consent to work hours not included in their written work schedule, but consent must be recorded in writing – which can be transmitted via electronic means – so would electronic mean email, text message, website? We do not currently email or text with our team members, and consent over the phone would not qualify. A paper consent form would need to be created and used, but since consent forms are not required to be retained as part of the recordkeeping requirements – wouldn't verbal consent suffice? If one team member requests sick leave, vacation time,

personal days or any other leave – wouldn't the need for someone to cover their shift be employee-initiated, and thus not subject to the written consent requirement?

Are the schedule revision requirements necessary for only employer-initiated changes or all changes regardless of who initiated them?

Employers would be required to provide employees with revised written schedules within 24 hours of any change being made, and update the posted written schedule for all employees within 24 hours of any change. As you can imagine, with the number of shift changes, sick days, sports schedule changes and weather-related impacts that may cause a schedule change for workers in a restaurant, these requirements will require a significant amount of time and effort from scheduling managers on a daily basis in order for a restaurant to be in compliance. Additionally, providing revised written work schedules within 24 hours to affected employees will only be possible if the employee reports to work the next day, or stops by the restaurant.

Is there a chance that predictability pay may qualify an employee for overtime?

As previously mentioned, an employer will be required to pay all non-previously scheduled employees an additional hour of pay if an employer changes their work schedule within the 21-day period. That additional hour is to be paid at an employee's regular rate of pay. Given that D.C. Official Code § 32-1002(7) allows "regular rate of pay" to be creditable toward overtime compensation according to 29 U.S.C. § 207(e)(5), (6), and (7), then if the extra hour of predictability pay would put the employee in a nine-hour or 41-hour situation would an employer be required to pay the predictability pay at an overtime or premium rate? If they predictability pay occurred in the middle of the work schedule, would the 40th hour worked in that week technically be the 41st, and then trigger a premium rate? Would an employer be required to pay predictability pay to the employee picking up the shift for an employer who initiated a request to use sick leave, vacation time, personal days, or other leave policies offered by the covered employer?

Which benefits would fall under the accrual requirement?

Under the equal treatment for employees regardless of hours worked section, would an employer be required to enroll all employees in the employer's health plan – even those that may not qualify or want the coverage in order to satisfy the eligibility to accrue employer-provided benefit requirements? This section is somewhat confusing because an employee must be eligible to accrue benefits, but an employer can still have minimum hourly requirements for the receipt of those benefits. Paid sick leave is already accrued by all team members. Vacation days are accrued by eligible managers, so would vacation days then need to be accrued by all team members, but then only be eligible for usage once the team member reached the requisite number of hours or seniority level? Health care benefits are not accrued, but offered based on the number of hours worked. We would need clarification on what constitutes an accrued benefit, and how we would correctly manage accrual for all team members.

Will there need to be a review of or a new standard set for seniority or merit systems?

Given that an employer can use the basis of seniority, a merit system, or a system which measures earnings by quantity per hour or quality of production to differentiate pay, is the equal treatment requirement really an equal starting wage requirement? Will there be new standards those systems will need to meet for compliance?

How flexible will the requirements be related to offering of work hours to existing employees before hiring new employees?

The legislation requires a covered employer to post a notice of available work (this is obviously in addition to the other required posted schedule - correct?), including the total hours of work being offered (per day or total?), the schedule of available shifts (is this meant to say work schedule or is it also required to be for the entire 21-day schedule?), whether those shifts will occur at the same time each week (this leads one to believe the available hours are only required to be listed for a work schedule as defined in the Act), the length of time the employer anticipates requiring coverage of the additional hours (given the fluctuation in traffic patterns in restaurant and retail what would qualify as an appropriate anticipation – indefinitely? A month? Three months? If the anticipated amount is incorrect, would this be grounds for a violation?), the process by which employees may notify the employer of their desire to work the offered hours (isn't this already set by the consent provision? Electronic means? Verbally?), and the criteria the employer will use for distribution of hours (what will be an appropriate criteria – first come, first serve? Seniority?).

The notice shall be posted for at least seven days, in a place that is ready accessible and visible to all employees, before a covered employer may hire additional employees or subcontractors. So if an employee quits during the scheduled 21-day window, and a shift or shifts open up that no one on the staff can work, an employer must wait at least seven days before hiring a new staff member? Then that new staff member will have to wait 21 days before they can start in order to meet the 21-day notice requirement? As previously mentioned, we do not communicate via text or email with our employees, so we may not see all of our in employees every week. Will every employee need to decline the available hours, and will we need to document their declination? If no employee responds to the offer of work and an employer must wait seven days before hiring a new employee, would an employer be required to operate with fewer staff members until the seven-day window expires?

In order to hire new employees, which in the restaurant and retail sector happens often, an employer will be required to document the time and method used to offer additional hours to existing staff. Employers will be required to preserve this documentation for 3 years after the date of a hire of a new employee. Would a dated schedule of available shifts satisfy this requirement? Why specifically mention the 3-year requirement in this section, when there is a notice and recordkeeping section that outlines all the required documents? Shouldn't this requirement be listed there for consistency?

Will there be a differentiation between employer and employee-initiated changes?

This question applies to many scenarios. Because an employee shall not be required to search for or find a replacement employee to cover any hours during which an employee is unable to work a scheduled shift, is the need for an additional worker then employee-initiated? Technically, an employee who is unable to work a scheduled shift initiated the need for an employer to change the schedule to fill the open shift. Given an employee initiated the change, then an employer should not be required to pay predictability pay to the employee who is working the vacated shift – correct?

What are employers not provided similar protections to those offered for employees?

Given that protections provided in the Act apply to any person who mistakenly, but in good faith alleges violations of this act, shouldn't those same protections be extended to a covered employer who

mistakenly, but in good faith violated the Act? Due to the significant recordkeeping requirements outline in this Act, shouldn't an employer be afforded the same good faith protections?

How is an employer to know if any of the following protected activities has occurred, and how would an employer ever prove that they didn't?

The Act provides for a rebuttable presumption of unlawful retaliation under this section whenever a covered employer takes adverse action against an employee within 90 days of when that employee:

- Files a complaint with the Department (straightforward – let the legal process play out as there may have been a violation)
- Informs any person about a covered employer's alleged violation (how would this be even known by an employer? It needs to be an official action in order to be tracked. An employer would have to disprove that an employee informed "any person" about a violation.)
- Cooperates with the Department (fair, but could be unknown by the employer)
- Opposes any policy, practice or act that is unlawful (fair)
- Informs any person of his or her rights under this act (Again, how would this even be tracked? An employer would have to disprove that an employee informed "any person" about his or her rights.)

Are only the required records outlined in the notice and recordkeeping sections admissible during any civil or administrative action or would all required documentation need to be kept to protect a business owner?

The Act states that an employer shall preserve for a period of not less than 3 years records showing:

- the hours worked daily by all employees (hours worked may be different than scheduled, so would the Department need detailed daily payroll records – likely causing the creation of a new document outlining daily worked hours?)
- the wages and predictability and minimum pay paid to all employees (would payroll records suffice or would separate recordkeeping documents be required?)
- the initial work schedule and all subsequent revisions to the work schedule of all employees (given that it states initial work schedule and all revisions for all employees would the initial individual schedules and the updated team schedule suffice, or would all individual and team schedules be required to be retained?)

Conclusion

As you can see, there are a number of operational challenges and questions posed by this proposal. The requirements outlined in the proposed Act will significantly impact businesses that operate in unpredictable environments. Given the fact that a similar mandate is only in effect in one jurisdiction in the country, and that jurisdiction has only had the law effective for six (6) months, it is still too soon to determine the positive and negative impacts of such a law. As mentioned, Buffalo Wild Wings is willing to be part of the discussion moving forward, and we want to thank you for allowing us time to provide our initial comments and questions. Flexibility is at the heart of what makes the restaurant industry attractive to so many job seekers. The goal of this Act is to provide stability. Let's work together to see if we can't accomplish both without significantly burdening employees and employers with new and significant administrative hurdles. Thank you very much for your time, and I am happy to answer any questions you may have.

RILA
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TESTIMONY OF

**JOE RINZEL, SENIOR VICE PRESIDENT,
GOVERNMENT AFFAIRS**

RETAIL INDUSTRY LEADERS ASSOCIATION

BEFORE THE

COUNCIL OF THE DISTRICT OF COLUMBIA COMMITTEE ON BUSINESS, CONSUMER AND REGULATORY AFFAIRS

HEARING ON

"BILL 21-512, THE HOURS AND SCHEDULING STABILITY ACT OF 2015"

JANUARY 13, 2016

Chairman Orange, and other Members of the Committee, my name is Joe Rinzel and I am the Senior Vice President of Government Affairs at the Retail Industry Leaders Association (RILA). Thank you for the opportunity to testify today about the Hours and Scheduling Stability Act.

RILA is the trade association of the world's largest and most innovative retail companies, many of whom have storefronts and employees here in the district. RILA's more than 70 member companies operate approximately 194 locations throughout the district. These companies, which include Target, Walmart, Costco, Whole Foods, Lowe's, Home Depot, AutoZone, Walgreens, Petco, CVS, Best Buy and others have built or expanded their physical presence in the district within the past decade. These companies have developed long standing comprehensive scheduling practices that value the needs of the employee and balance those needs with the appropriate demand for staffing to satisfy consumer demand.

Retailers are opposed to the Hours and Scheduling Stability Act and see it as an ill-conceived piece of legislation that will make the District of Columbia one of the most challenging localities in the nation for retailers to do business. There are several aspects of the legislation that would be impossible to implement but most egregious, is the toll this proposal would take on the employee's access to a flexible schedule. Virtually every retail employee will tell you they do not wish to trade flexibility for a fixed schedule, and that is precisely what this legislation would force. Retail employees enjoy the ability to create and maintain a schedule that works best for their own personal or family needs. By limiting how and when a retail supervisor or manager can communicate with their employees to accommodate these needs, means eliminating any

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flexibility for *both* the employer and the employee. This is not predictive scheduling, this is restrictive scheduling.

Retail is not one-size fits all

Many of the clauses in this bill are written in a manner that seeks to achieve uniformity in an otherwise dynamic environment. Retail is an industry in which the needs of a particular store are as unique as the needs of their employees. It is expected that there is an established level of flexibility to ensure that the needs of both are met. Legislation such as this neither promotes nor maintains the flexibility that is so critical to this industry.

Requiring employers to post their schedules twenty-one (21) days in advance is unrealistic. Many retail store managers determine their staffing needs based on specific operational information that is carefully determined along with their regional or corporate counterparts and is in line with their existing scheduling practices. If store managers are forced to make uninformed guesses as to what their staffing needs will be three weeks in advance, employees would be subject to additional schedule changes, which is the effect of this legislation.

While employers do their best to ensure that employees are issued schedules in advance, sometimes changes are out of their control. Whether delays, family emergencies, employee illness or other "act of God" scenarios all require managers to respond to varying situations, often at the last minute. This legislation seeks to penalize employers for making common sense choices to respond to the real time needs of the business. Successful businesses should not be stripped of their ability to staff to their operational needs at all times – and in all situations.

Impact on community engagement and economic development

Beyond the effect that this bill has on day-to-day operations, many special programs, such as the Mayor's Summer Youth Employment Program, would be impacted. Retailers are proud to participate in workforce development programs and to provide local employment opportunities particularly to young, inexperienced workers. Since the proposed legislation forces retailers to offer additional hours to existing employees before hiring new employees, retailers would be unable to participate in these types of programs that give first time workers much needed experience. Seasonal workers, including students and holiday workers, would also be affected by this aspect of the proposal.

The retail industry has made massive investments in the district over the past decade and have had a dramatic impact on the neighborhoods they've opened in. As anchors in these locations, they've attracted restaurants and other small businesses, as well as creating new jobs and career opportunities for thousands of DC residents. This proposal would take DC backward. It would

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make the District one of the least attractive locations in the country for retailers, and it will absolutely impact current and future store planning and employment here in the District.

This is not a jobs-friendly bill, it is not a business-friendly bill, it is not an employee friendly bill and it is not an economic-development friendly bill. On behalf of RILA and the retail industry, we respectfully urge the Council to reject this legislation and keep the District a welcoming location for future growth and development.

WASHINGTON LAWYERS' COMMITTEE
FOR CIVIL RIGHTS AND URBAN AFFAIRS

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON BUSINESS, CONSUMER, AND REGULATORY AFFAIRS

PUBLIC HEARING ON

B21-512:
HOURS AND SCHEDULING STABILITY ACT OF 2015

JANUARY 13, 2016

TESTIMONY OF THE WASHINGTON LAWYERS' COMMITTEE FOR CIVIL RIGHTS AND URBAN AFFAIRS

My name is Christine Tschiderer and I am an Equal Justice Works Fellow at the Washington Lawyers' Committee for Civil Rights and Urban Affairs. For nearly fifty years, the Washington Lawyers' Committee has addressed issues of discrimination and entrenched poverty through pro bono litigation. Chief among the Committee's goals is to ensure equitable employment opportunities for all D.C. workers. I am pleased to present the Committee's testimony in support of The Hours and Scheduling Stability Act of 2015, which would provide meaningful protections to thousands of hard-working, low-income families in the District.

To highlight the need for this legislation, one need only consider the experiences of the hundreds of workers who contact the Committee each month seeking legal assistance. Our clients work minimum-wage jobs with hours that fluctuate week to week and day to day. Many are underemployed, barely making ends meet on part-time work when they would like to be working much more. They arrange care for their children, pay bus fare and travel a lengthy commute, only to be sent home without pay because business is slow. Some have experienced a drastic, unexpected reduction of their hours, rendering income that was once just enough to get by suddenly insufficient. Other clients have been taken off the schedule entirely – often after seeking a modification to allow them to attend a doctor's appointment or tend to a sick child – and told simply "we'll call you when we need you." Under current law, employees can be terminated for failing to find someone to cover their shift if they need a scheduling modification, but employers can change work schedules with impunity.

These practices – drastically fluctuating hours, last-minute schedule changes, and no guarantee that you'll be paid if you show up to work – wreak havoc on any worker who depends on his or her paycheck for necessities like food and rent, and they make it nearly impossible to commit to a second job in order to attain some measure of financial security. But the consequences of these practices are felt most acutely by workers with caregiving obligations. Scheduling instability is a nightmare for the thousands of families who must patch together child or elder care between the schedules of several

working parents and family members with unpredictable hours. Fluctuation in parents' incomes may prevent them from being able to afford paid childcare, while significant changes in their hours can render them ineligible for childcare vouchers. Nor they can afford not to work.

But this bill, if passed, would minimize these burdens in significant ways. First and foremost, requiring a notice period within which work schedules need to be set will allow employees to manage their lives outside of work. With the benefit of advance planning, employees can schedule appointments and other commitments around their work shifts and resolve any scheduling conflicts long before they arise. Consequently, the benefits of providing notice will inure to employers as well.

Second, several provisions of the bill, including the requirement that employees be compensated with an hour of "predictability pay" or for a minimum number of hours when a last-minute change is made, help to offset the costs to employees of unpredictability. These provisions are reasonable because they do not prohibit employers from making changes to schedules once they have been posted, but they compensate employees for the costs that those changes impose. In this way, the legislation serves to equitably balance the benefits and burdens of maintaining some scheduling flexibility between an employer and its employees.

Finally, requiring that employees be paid for a minimum amount of time on any day that they report for duty is both fair and reasonable. It allows employers to react to demand and send employees home when they are not needed, while compensating them for the out-of-pocket and opportunity costs they incurred to show up to work.

Importantly, the bill allows employers to accommodate reasonable schedule changes requested by employees without incurring any of the costs just described. However, we believe that the bill can and should offer even greater protection in this area in order to reduce workplace conflicts for caregivers and create schedules that truly work for both employers and employees. Specifically, we believe that the bill should include a "right to request" certain scheduling accommodations, such as hours that align with a child's school schedule or that allow an employee to drive a parent to important medical appointments, and that employers should be obligated to meaningfully consider whether such accommodations can be made without unduly interfering with their business operations. Although there will certainly be times when a scheduling accommodation cannot be made, this would ensure that such requests are given due consideration.

Many employers willingly entertain such requests, but under current law they have no obligation to do so. Nor is there any legal protection against retaliation for an employee who asks for a scheduling accommodation, and many low-wage workers accustomed to having little control over their working hours are fearful of the consequences of doing so.

The Committee therefore urges the Council to include provisions that would (1) require covered employers to engage in an interactive process with employees who

request reasonable scheduling accommodations, similar to their obligations to consider such requests under the Americans with Disabilities Act and the recently-enacted Protecting Pregnant Workers Fairness Act; and (2) make it unlawful to retaliate against an employee for requesting such accommodations.

We applaud the Council for its leadership on this issue and urge you to pass this important legislation. Thank you for your time.

Testimony of Carla Hashley,
Operations and Events Manager, Jews United for Justice, and DC resident

Committee of The Whole,
Council of the District of Columbia

on the Hours and Scheduling Stability Act, B21-512

Wednesday, January 13, 2016

My name is Carla Hashley. I'm the Operations & Events Manager at Jews United for Justice, but I speak today as a former retail worker in support of strong wages, stable hours, and predictable schedules being advanced in the Just Hours bill.

I've worked since I was 16 years old. After finishing graduate school, which I juggled with a part-time job at The Gap, I moved to Washington, DC, for a salaried office job. After a round of layoffs, I found myself working at The Gap again.

Working as both a sales associate and as a manager exposed me to both sides of the abusive and unpredictable scheduling practices that this bill is fighting.

As an associate, I'd get my schedule only days in advance. I was also often scheduled to be "on-call," which meant I had to be available, but might not end up working. When your hours are constantly changing, you're always living on the brink. It was impossible to budget or get a second job. I was fortunate that I wasn't also trying to expand my education or provide for a family.

After a few months at the Gap, I became a manager. To keep costs low, I had to use a bare bones crew, cut on-call shifts, and even turn regular shifts into on-calls. I hated treating my staff this way. Just a few months earlier I'd been in their shoes. But it's what The Gap demanded.

This isn't just one bad actor, by the way. I've worked at several national chains, and these scheduling practices are standard operating procedure.

Large, profitable corporations should treat their employees decently, not as just cogs in a machine to be used or discarded. I'm glad that The Gap announced that it will end the practice of on-call scheduling, and hope that other companies follow suit.

But we can't wait for corporations to do the right thing on their own. That's why I hope the DC Council will ensure that DC's chain stores and restaurants use responsible scheduling practices that create stable and decent jobs for everyone working here. Fair scheduling allows people to work hard, earn enough, and build strong futures for themselves and their families.

Thank you.

Testimony of Leticia Reyes - January 13th hearing on B21-331
The Building Service Employees Minimum Work Week Act of 2015

Good afternoon, my name is Leticia Reyes.

Despite wanting more work, I work only five hours a day. I don't have a choice--that is all that is offered. I wish that I had more hours at my job. It would benefit my family and would help keep the building cleaner.

I have two children, ages 25 and 26. One of my children is at University and I am helping her. All I want is for my children to succeed and to have enough money to live a decent life. I need more hours to be able to pay my bills. Recently I've had a difficult time paying my electric bill for $800, it was almost turned off.

My son and daughter both work to help pay the bills but we still struggle sometimes. If the companies gave us the option to work full time, I would love to work more hours. It would change my life. I currently also care for my mother. Getting a second job would be difficult because I would be spending so much time commuting to each job that I would not have time to care for my mother. Transportation costs me so much money! The bus is filled with single working mothers like me, who can't afford their bills or rent. They look so sad, so I try to cheer them up.

We need one full time job. Right now I rely on DC Alliance and Medicaid. I shouldn't have to rely on the government for health care.

I have lived in DC (Ward 4) for many years. I see the poverty that many people in my community face. It is caused by a lack of good jobs. People want to work. I want to work. I have a job, union job and I work hard every day. Turning this job into a full time job would help my family join the middle class and would help lift up my entire community.

Testimony of Jacob Feinspan,
Executive Director, Jews United for Justice

Committee on Business, Consumer, and Regulatory Affairs,
Council of the District of Columbia

on the Hours and Scheduling Stability Act of 2015 (Bill 21-512) and Building Service Employees Minimum Work Week Act of 2015 (Bill 21-331)

Wednesday, January 13, 2016

Good morning. My name is Jacob Feinspan and I am the Executive Director of Jews United for Justice, a grassroots organization with more than 5000 supporters in the District. We strongly support the Hours and Scheduling Stability Act of 2015 and Building Service Employees Minimum Work Week Act of 2015.

These pieces of legislation will strengthen families in DC and make this a city where hard working people can succeed. The council, and Chairman Orange in particular, has led our city forward in recent years –raising the minimum wage, expanding access to paid sick days, and passing ban the box and wage theft legislation. We can be proud to set a standard in the nation's capital, and our community believes that this legislation is a common sense proposal that continues that process.

Enabling hard working residents to have predictable schedules and a pathway to full-time work, especially when combined with the proposed Paid Family Leave program that this council is considering, will help families thrive and make DC a great place to live and work.

Being a parent means coordinating an immense number of moving pieces – work, child care, meals, homework, checkups. As a father of two small children, I can say that without a doubt, the single most important thing for my kids to thrive is having a clear routine and schedule. When they know what to expect, and that their mother and I will be there for them, they can focus on learning and exploring. And when things are different every day, especially when they change at the last minute, they feel uncertain, stressed, and are clearly less able to feel happy, relaxed, playful, or focused. It's not just working parents who feel that stress and worry – our children feel it right away, not only as a byproduct of parents' emotions but in the constant change of their lives. If we want all our children to succeed and for our city to close the achievement gap at school we need to make it possible for hard working parents to have a predictable work schedule and the stability of full-time work.

I want to thank Chairman Orange for his leadership, and for the many co-introducers for their support, and we look forward to working with the council for the swift passage of the Hours and Scheduling Stability Act of 2015 and Building Service Employees Minimum Work Week Act of 2015.

Testimony of Kenneth Yates

In support of DC Council B21-0512, the Hours and Scheduling Stability Act of 2015
Before the Committee on Business, Consumer, and Regulatory Affairs

January 13, 2016

My name is Kenneth Yates from Ward 4 and I'm here to support the Hours and Scheduling Stability Act. First I would like to thank Council Member Orange and the other Council members who introduced and co-sponsored this important bill. I also want to thank all of the Council Members for discussing this very important problem with hours and scheduling.

Fortunately my employer in Ward 2, Trader Joe's, is relatively above average when it comes to respecting the lives of workers and they do this simply by posting schedules at least two weeks in advance. The schedule only changes thereafter when the workers choose, on their own accord, to trade or give a shift away. However, it becomes complicated when a majority of my co-workers who hold secondary jobs, don't receive the same level of consideration from other employers.

It already concerns me that many of my fellow workers require secondary jobs in order to keep on top of their financial obligations. That being a reality, it is my belief that moving forward with the Hours and Scheduling Stability Act, could send a powerful message to workers about our city's commitment to ending poverty. However, my fear is that this bill, as written, doesn't go far enough in providing employers with incentive *not* to violate it. One hour compensation for schedule changes hardly seems enough for the inconvenience it will have on workers, and mere pocket change for employers that this bill will affect. Additionally, workers who earn a tipped-minimum wage should be compensated with a wage equal to a regular minimum wage, or better.

That being said, I enthusiastically support the Hours and Scheduling Stability Act and I'm asking for your support as well. My fellow workers are informed and feel this is a logical step towards ending poverty and will be following this issue closely. It would, at the very least, ensure that workers aren't spending the majority of their free time and energy trying to negotiate their daily lives with a potentially indifferent employer, leaving them instead with energy that can be directed towards more constructive endeavors.

In closing, I want to thank Council Member Orange once again for introducing this bill and all who have sponsored and supported the bill. I appreciate this opportunity and your consideration.

Testimony of Ismael Abelar - January 13th hearing on B21-331
The Building Service Employees Minimum Work Week Act of 2015

Good afternoon, my name is Ismael Abelar and I have one part-time job cleaning offices at Metro Center.

Because I'm working just 5 hours a day I'm, unable to afford to pay all my bills. I can't even afford to pay for food – I'm only able to afford junk food. It's demeaning to have to eat this way and now I have cholesterol problems because of it. My job is physically demanding so I feel terrible trying to keep up.

I'm relying on DC alliance to treat my depression and cholesterol. But my health would get better with employer paid health care since DC Alliance has limitations for my medication. There are a lot of union members looking for more hours because cost of living is rising. Employers are limiting full-time positions so we can't get health care and more money.

I'm renting a basement apartment in Fort Totten but the landlord is increasing rent so I won't be able to afford to stay there longer. Full-time work would change my life a lot. It would mean more money so I could afford a healthier diet and a better place to live.

Testimony of Kimberly Mitchell

In support of DC Council B21-0512, the Hours and Scheduling Stability Act of 2015
Before the Committee on Business, Consumer, and Regulatory Affairs

January 13, 2016

Hi, my name is Kim Mitchell. I'm a ward 7 resident and I would like to speak to you today in truth and love. First I want to thank Council Member Orange and the other committee members for having this important conversation. The citizens and workers of the nation's capital deserve to have Just Hours become law with the Scheduling and Stability Act because companies all over this country have been giving unjust hours and unjust schedules.

For instance, I've worked at Macy's for over 9 years and for the first time in the history of that building at 1201 G St since Hect's built and Macy's took over, it was open on New Year's Day from ten in the morning to ten at night. Never in the history of that building has it ever been open for forty-eight hours straight on Thanksgiving Day and Black Friday until last year. When we should be able to spend time with our families celebrating and preparing for the holidays, they overload us with hours, sometimes at the last minute, while they are cutting our hours everywhere else.

This doesn't just happen during the holidays. Macy's can change their schedule to fit a sale or the business of that day at any time without notice. That means that when Macy's plans a sale at the 12th hour they change the schedule to have everyone working that day. If the sale isn't going well, they cancel shifts later in the day. If you are lucky, they will call you and tell you not to come in, but in most cases they don't call at all. They wait for you to spend the money to come in just to tell you that you aren't needed. If someone comes to your home to provide a service, they charge you a fee for that time and service.

This holiday season has been the worst though. It's not just that they cut your hours. When they schedule you for 8 hours and you end up being asked to stay for 20 hours to finish the work, as happened to one of my fellow associates this week, they smile at you like they are doing you a favor. It's not just about the hours, it's about having stability.

In my case since the week of Black Friday, up until Christmas I worked an average of around 47 hours a week. I could have had 60. The very next week after Christmas they cut me to 28 hours. So I stayed and worked inventory this week to get the extra hours because I felt like this might be the last time I could get a few extra hours. This past weekend, I really should have been staying home with my daughter helping her with her school work. It's not just helping my with my daughter's school work I'm missing. I have had to miss teacher's conferences, planned doctor's appointments and I never have time for myself.

That is why I urge you not only for my behalf, but for my fellow co-workers to pass the Hours and Scheduling Stability Act and give us Just Hours. We're the nation's capital, its leading city. The District has been leading the nation on so many worker issues like the minimum wage, paid sick days, paid family leave and more. We're in the middle of a transition and I think this Council should keep leading the nation by supporting this bill.

Once again, thanks to Council Member Orange and all the committee members who are supporting this bill and for all of the support you've given to the citizens of D.C. I'm happy to say I feel like we're here today not fighting against you, but fighting with you to keep leading the way in the nation's capital. Thank you.

Testimony of Justino Gomez - January 13th hearing on B21-331
The Building Service Employees Minimum Work Week Act of 2015

My name is Justino Gomez. I have been a part-time cleaner at the World Bank since 2005. I find it difficult to pay my bills and support my three daughters on part time hours.
I adopted a foster child when she was four years old. But I've only seen my family in El Salvador once in the last 21 years. I feel alone, I miss them very much.

Because of my age, I've been unable to get hired for another part time job
I need more guaranteed hours. I want to work full time at one job to make ends meet.
Full time hours would change my life because I would finally make enough to pay my bills. I would also be able to help pay for my family's food, doctors' appointments, medicine and my daughter's college education.

When we ask for full time hours, we are not asking for charity. There is plenty of work in our buildings to justify full time hours. In fact, sometimes I feel like there isn't enough time to finish. We work incredibly hard, racing to finish a huge area in a short amount of time. We are counting on the Council to help change our lives, and this industry for the better. Thank you.

Testimony of Norma Pineda - January 13th hearing on B21-331
The Building Service Employees Minimum Work Week Act of 2015

Good afternoon, my name is Norma Pineda.

I've been cleaning the World Bank / IFC for over 17 years. I always request full-time hours, but they never hire me. They only let me work four hours a day.

I try to babysit whenever possible to make extra money, but it's never enough.

My husband works just 5 hours a day cleaning offices in DC too and has no health insurance.

When he lost job in 2010, we nearly lost our house because we only had my 4 hours of income to rely on.

My husband and I both need more hours so we can earn more money to stay up to date on our rent and get health insurance.

I need treatment for my high blood pressure and high cholesterol. My medicine is very expensive, so I've had to alternate - taking one medicine one month - and then the other medicine the following next month.

I also have to send money to my handicapped brother in El Salvador. He had both of his legs amputated and relies on my assistance to survive.

I work hard every day and want my 4 children to do better than I do. But without full time hours, I fear they won't. Full time hours would help the tenants in the buildings, it would help our families, and it would help the City because we could have more money in our pockets to fuel the economy.
Thank you

TESTIMONY OF LAUREN BONDS
B21-512, THE "HOURS AND SCHEDULING STABILITY ACT OF 2015"
WASHINGTON, DC
JANUARY 13, 2016

Good morning and thank you for allowing me to speak with you all today.

My name is Lauren Bonds, I am an Assistant General Counsel at the Service Employees International Union (SEIU) and for the past three years I have been providing legal support to the Fight for 15 campaign. The Fight for 15 is a national movement that started in New York City in November 2012 when 200 fast food workers walked off their jobs to protest for $15 an hour and the right to form a union without retaliation. Since then, the campaign has spread to nearly 250 cities and inspired protests around the world. In my testimony today, I plan to discuss scheduling practices at franchise fast food outlets and the role corporate franchisors play in standardizing these practices throughout the industry.

While the workers in our campaign live in different parts of the country and work for a variety of fast food employers, they almost always cite the same three employment practices that are keeping them in poverty: low pay, involuntary part-time employment, and a lack of consistent scheduling. Regardless of whether you are talking to a McDonald's cook in Jackson, MS or a Taco Bell cashier in Las Vegas, NV, they will tell you they are not getting enough hours at their store and unpredictable scheduling prevents them from getting a second job.

The workers in our campaign share this universal experience of part-time work and inconsistent scheduling even though they are often directly employed by thousands of different local small business owners with differing philosophies on how to treat their workforce. This uniformity can be attributed to the fact that fast food corporations retain significant control over the staffing practices of their franchise stores. Corporations require these small business owner to implement the same exploitative staffing practices that they use at corporate stores. By keeping labor costs low at franchised outlets, McDonald's, Wendy's, and other companies can extract more money in rent and royalty payments from their franchisees and direct revenue to improvements that will benefit the corporation's bottom line.

Nearly half of all fast food workers are scheduled less than 35 hours per week.[1] A part-time workforce helps employers save money on labor costs in the short term by avoiding responsibility for healthcare and other employee benefits. Thus, franchisees are strongly encouraged, and sometimes forced, to employ the majority of their staff on a part-time basis. For

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[1] *Data Brief, Super-Sizing Public Costs: How Low Wages at Top Fast-Food Chains Leave Taxpayers Footing the Bill*, NAT'L EMP'T LAW PROJECT 2 (Oct. 2013), http://www.nelp.org/page/-/rtmw/uploads/NELP-Super-Sizing-Public-Costs-Fast-Food-Report.pdf?nocdn=1

instance, former McDonald's franchisee Kathryn Slater-Carter was penalized for refusing to schedule her workers for fewer hours. Corporate instructed Slater-Carter she needed to cut her number of full-time employees in order to "increase funds for store renovations."[2] McDonald's used the threat of terminating her franchise license to eventually compel her into complying. If Slater-Carter's experience reveals anything, it is that a law requiring franchisees to offer hours to existing employees will not interfere with their freedom to make staffing decisions since that power lies with the corporate parent.

Similarly, corporations dictate that franchisees use aggressive, variable scheduling arrangements that ensure a store has only the staff that management wants at that time. Franchisees are often encouraged to send workers home early when business is slow or asking them to clock out and remain on the premises until customer traffic increases.

To use McDonald's as an example again, corporate closely tracks its franchisees' labor costs to make sure they do not exceed a percentage of each store's gross sales. McDonald's mandatory manager training teaches franchisee managers how to read sales projections and reduce the number of staff in real time in order to maintain optimal staffing levels.[3] Like McDonald's, Burger King and Wendy's provide franchisees with extensive staffing guidance and evaluate them on their ability to adjust staffing levels to correspond with sales projections.[4]

In sum, franchisee scheduling practices are indistinguishable from those of stores owned and operated by large fast food corporations. This is largely due to the fact that franchisees are instructed to provide their employees with the same low hours and unpredictable scheduling workers at corporate stores receive. Because unjust scheduling practices pervade the entire industry and are equally present at franchise and corporate stores, franchised outlets should not be excluded from coverage of bill B21-512.

Thank you for your time.

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[2] Declaration of Kathryn Slater-Carter, attachment to court submission in *Ochoa v. McDonald's Corp.*, 3:14-cv-02098

[3] Staffing, Scheduling and Positioning for Operational Excellence, Owner/Operator and Mid Manager guide, page 20 (2010)(noting that the system adjusts to scenarios where the "manager reacted [to slow consumer traffic] by sending someone home"). *A Part-Time Life, as Hours Shrink and Shift*, Ny.Y Times, Oct. 27, 2012 ("So if the lunchtime rush at a particular shop slows down at 1:45, the software may suggest cutting 15 minutes from the shift of an employee scheduled from 9am to 2pm).

[4] See Eg. Burger King Franchise Operations Assessment, exhibit to court submission in *Burger King Corp. v. Duke and King Acquisition Corp. et. al.*, 1:10-cv-20992

Testimony of Patricia Griffin
BCRA Public Hearing on B21-331 & B21-512

1/13/15

Good morning Mr. Chairman, members of the Committee, ladies and gentlemen. My name is Patricia Griffin and I am here to testify on B21-512, "Hours and Scheduling Stability Act of 2015".

As DC becomes increasingly expensive, we need our service sector jobs to be stable enough for residents to maintain an income and work their way up, whether through workforce training and/or adult education classes.

Even with the minimum wage increase, shifting schedule and insufficient hours remain barriers for people who are looking to provide for themselves and family. When you don't know when you're going to be call into work or for how long, scheduling a doctor's appointment, taking the car in for repairs, attending school or church often has to be put on hold.

Big corporations have manipulated the rule by intentionally denying employees more hours and implementing scheduling systems that wreak havoc on their ability to take care of their families. For people who are looking for work, they often can only find part-time jobs with fluctuating hours, meaning they can't find a job with the prospect of stable income.

This bill would help so many people who work in the retail and fast foods areas by:

- Offer available hours to qualified current employees before hiring new ones
- Compensate employees when their schedules are changed or they're schedule "on-call"
- To making better plans for their time at work and personal time off.
- To be able to keep better track of their finances, doctor's appointments, teacher's conference, and planning time with their families.

In implementing this bill it will improve the employee's performance on the job, incur less call outs, improve day-by-day operations on the job, and improve their family life. I believe it's a must with growing businesses in the District of Columbia.

Thank you, Mr. Chairman. This concludes my statement.

Testimony of Elianne Farhat
Fair Workweek Initiative | Center for Popular Democracy
Before the Committee on Business, Consumer, and Regulatory Affairs
On B21-331, the "Building Service Employees Minimum Work Week Act of 2015"
January 13, 2015
Washington, D.C.

Good morning Chairman Orange and other members of the committee. My name is Elianne Farhat, and I am the Deputy Campaign Director at the Center for Popular Democracy's Fair Workweek Initiative. Thank you for the opportunity to present testimony before you today.

The Center for Popular Democracy, or CPD, promotes equity, opportunity and a dynamic democracy in partnership with more than 43 organizations in 30 states across the country. The Fair Workweek Initiative, anchored by CPD, supports efforts to restore a workweek that enables working families to thrive. We are nationally recognized for our policy and research expertise that is grounded in elevating the voices of working people to ensure they shape the solutions to our country's most pressing economic and social challenges.

When the Fair Labor Standards Act became law in 1938, Americans were working *too many* hours. Working people were struggling with work days that were abusively long and work weeks that did not ensure enough time for rest or family. Today, as employers shift to rely on more part-time work as an element of a low-cost labor strategy, the problem is increasingly the scarcity of *enough* work hours to earn a family-sustaining income.

As of this month, six million Americans want full-time work but can only find part-time jobs – that is *double* the number in 2007, despite signs of an economic recovery.[i] People working part-time, despite their desire for full-time hours, incur what amounts to a "part-time penalty" as they earn lower wages than their full-time colleagues, experience lower wage growth, and are denied critical employer provided benefits.[ii] A congressional study in 2010 found that people working part-time in an industry may earn as little as 58% of what their full-time co-workers earn.[iii]

This level of involuntary part-time work slows economic growth for all of us, exacerbates disparate health and well-being outcomes, and is particularly prevalent in historically low-wage industries and for women and people of color. During the current economic recovery, Federal Reserve economists have noted wage growth among part-time workers has lagged significantly behind wage growth for full-time employees.[iv] This means that workers and their families who were hit hardest by the recession will never fully benefit in our economic recovery.

The truth is, public policy has not kept up with the realities of the today's workweek and has failed to protect working families by ensuring equitable, stable work schedules that provide adequate hours. *The Building Service Employees Minimum Work Week Act* is an opportunity for the District of Columbia to take a targeted and meaningful step forward in addressing the problem of involuntary part-time employment in the District by establishing minimum workweek hours for building service workers.

Involuntary part-time employment among building service workers, particularly for commercial office workers, is a solvable problem in the District.

Large commercial buildings have full-time cleaning and service needs that can be performed by full-time service workers. In fact, in other metropolitan geographies such as New York and Chicago, more than 80% of commercial cleaners work 30 or more hours each week. In the District of Columbia, only 61% of office cleaners work 30 hours each week and more than a fifth work less than 20 hours each week.[v] It is clear from the experience in other cities that this is a sector that can support full-time work.

Not only is it possible for employers to provide full-time jobs for building service workers, it is imperative to the health and well-being of hardworking people that they do.

Insufficient hours combined with relatively low wages means that office cleaners either have insufficient income to support their families or are required to juggle multiple part time jobs – with all the logistical and scheduling challenges that entails – just to make ends meet.

Part-time workers have elevated poverty rates. According to the Current Population Survey, poverty rates for households with at least one child under the age of 18 and without at least one full-time/full-year earner are 27.5%. For those families with a full-time, full-year earner, the rate is just 3.4%. For female-headed households without at least one full-time employed earner, the poverty rate is 46.3%, for African-American households the poverty rate is 43.5% (female-headed 55.5%), and for Latino households it is 44.1% (female-headed 58%).

Working families are not the only ones baring the cost of inadequate hours – it also falls on businesses, which may see short-term easing in labor compensation costs, but will pay much more in turnover costs and lost efficiencies of more experienced workers. According to a study by the Center for American Progress, the cost of frequent turnover is high: "it costs businesses about one-fifth of a worker's salary to replace that worker."[vi]

The research is clear – low wages and insufficient work hours have a detrimental impact on the health and well-being of workers, their children and their extended families. The resulting instability has harmful effects for all us – on everything from work performance and turnover to participation in our communities to family economic security and well-being.

The District can and should take steps to establish minimum workweek hours in an industry clearly able to support full-time work. This smart updating of our wage and hour protections ensures that hardworking people in building services are able to fully participate in our economic recovery, and support themselves and their families in a healthy and sustainable way.

FAIR WORKWEEK INITIATIVE

THE CENTER FOR POPULAR DEMOCRACY

[i] "The Employment Situation – December 2015," Bureau of Labor Statistic – US Department of Labor, January 8, 2016, http://www.bls.gov/news.release/pdf/empsit.pdf.

[ii] Representative Carolyn B. Maloney, "The Earnings Penalty for Part-Time Work: An Obstacle to Equal Pay," Joint Economic Committee -- US Congress, April 20, 1010, http://www.jec.senate.gov/public/?a=Files.Serve&File_id=74203874-3821-44e4-b369-4efbe14d8745. Fang and Silos, "Wage Growth." "Employee Benefits in the United States – March 2015," Bureau of Labor Statistics – US Department of Labor, July 24, 2015, http://www.bls.gov/news.release/pdf/ebs2.pdf.

[iii] Maloney, "Earnings Penalty," 2.

[iv] Fang and Silos, "Wage Growth."

[v] Lawrence Mishel, "Memo: Janitor work hours in building services," Economic Policy Institute, 2015.

[vi] Heather Boushey and Sarah Jane Glynn, "There are Significant Business Costs to Replacing Employees," Center for American Progress, November 16, 2012, https://cdn.americanprogress.org/wp-content/uploads/2012/11/16084443/CostofTurnover0815.pdf.

Testimony of Dagnachew Dagne

In support of DC Council B21-0512, the Hours and Scheduling Stability Act of 2015
Before the Committee on Business, Consumer, and Regulatory Affairs

January 13, 2016

Good afternoon Council members and everyone.

I am Dagnachew Dagne and I currently work at Au bon pain at union station. I have been working for ABP for more than a year and a half, and I'm currently getting paid $10.65. I am a part time student and part time worker. My job title is prep, barista, stocker and more. Most of my co-workers and I believe that we don't get paid for our efforts worth.

At my workplace we have a schedule set out on Thursday's and it usually the same days and hours, but still they posted every week. Also, we don't have steady hours. My working hours may change suddenly as the business goes up and down, so is hard for me to plan in advance any of my personal affairs.
It is sort of a slow business time but they are cutting most people hours making it very hard for us to keep up with our bills. Please help us resolve this situation.

Thank you for your time,

Dagnachew Dagne

Testimony of Patricia Griffin
BCRA Public Hearing on B21-331 & B21-512

1/13/15

Good morning Mr. Chairman, members of the Committee, ladies and gentlemen. My name is Patricia Griffin and I am here to testify on B21-512, "Hours and Scheduling Stability Act of 2015".

As DC becomes increasingly expensive, we need our service sector jobs to be stable enough for residents to maintain an income and work their way up, whether through workforce training and/or adult education classes.

Even with the minimum wage increase, shifting schedule and insufficient hours remain barriers for people who are looking to provide for themselves and family. When you don't know when you're going to be call into work or for how long, scheduling a doctor's appointment, taking the car in for repairs, attending school or church often has to be put on hold.

Big corporations have manipulated the rule by intentionally denying employees more hours and implementing scheduling systems that wreak havoc on their ability to take care of their families. For people who are looking for work, they often can only find part-time jobs with fluctuating hours, meaning they can't find a job with the prospect of stable income.

This bill would help so many people who work in the retail and fast foods areas by:

- Offer available hours to qualified current employees before hiring new ones
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- To making better plans for their time at work and personal time off.
- To be able to keep better track of their finances, doctor's appointments, teacher's conference, and planning time with their families.

In implementing this bill it will improve the employee's performance on the job, incur less call outs, improve day-by-day operations on the job, and improve their family life. I believe it's a must with growing businesses in the District of Columbia.

Thank you, Mr. Chairman. This concludes my statement.

Testimony of Leticia Reyes - January 13th hearing on B21-331
The Building Service Employees Minimum Work Week Act of 2015

Good afternoon, my name is Leticia Reyes.

Despite wanting more work, I work only five hours a day. I don't have a choice--that is all that is offered. I wish that I had more hours at my job. It would benefit my family and would help keep the building cleaner.

I have two children, ages 25 and 26. One of my children is at University and I am helping her. All I want is for my children to succeed and to have enough money to live a decent life. I need more hours to be able to pay my bills. Recently I've had a difficult time paying my electric bill for $800, it was almost turned off.

My son and daughter both work to help pay the bills but we still struggle sometimes. If the companies gave us the option to work full time, I would love to work more hours. It would change my life. I currently also care for my mother. Getting a second job would be difficult because I would be spending so much time commuting to each job that I would not have time to care for my mother. Transportation costs me so much money! The bus is filled with single working mothers like me, who can't afford their bills or rent. They look so sad, so I try to cheer them up.

We need one full time job. Right now I rely on DC Alliance and Medicaid. I shouldn't have to rely on the government for health care.

I have lived in DC (Ward 4) for many years. I see the poverty that many people in my community face. It is caused by a lack of good jobs. People want to work. I want to work. I have a job, union job and I work hard every day. Turning this job into a full time job would help my family join the middle class and would help lift up my entire community.

Testimony of Maura Flores

In support of DC Council B21-0512, the Hours and Scheduling Stability Act of 2015
Before the Committee on Business, Consumer, and Regulatory Affairs

January 13, 2016

Good morning/Good afternoon Council Members, my name is Maura Flores, I've worked at Union Station at Sbarro for 5 years, and I make minimum wage at $10.50 per hour with very little benefits. Because the income I make at Sbarro is not enough to cover all my needs, I have to work a second job as a home visitor vendor.

At Sbarro, we the workers don't have a steady schedule, the General Manager usually post the schedule for next week every Monday and sometimes every Tuesday. Though I work usually four days of the week, Wednesday, Thursday, Friday and Sunday, I might work sometime on Saturday and I never know how many hours I will work because sometimes I work 7 hours sometime I work 9 hours; my manager said it depends on the business. Other people don't have steady days of work, they have to call on Monday or Tuesday in order to know when they are supposed to work.

Also, some weeks I don't complete my 40 hours of work, if the business is slow I work only 35, 36 or 37 hours, the manager usually assigns more hours to relatives and favorite workers.

Testimony of Raymunda C. Alfaro

In support of DC Council B21-0512, the Hours and Scheduling Stability Act of 2015
Before the Committee on Business, Consumer, and Regulatory Affairs

January 13, 2016

Good morning/Afternoon council members,

My name is Raymunda C. Alfaro, I've been working at Union Station with Taco Bell for more than 3 years and make $10.50 with no benefits. I'm a mother of a two year old child and I work to help my husband to meet our needs.

At work, I have a schedule that makes my work even harder - the owner posts the weekly schedule every Sunday and most of the time I don't have the same hours or the same day off. It is hard for me to plan in advance the caring of my child and to know if I will work the same hours every week.

The owner has control of every aspect of the administration and remains at his office, away from the workplace; the site manager can't make any changes, so it makes difficult for me and my co-workers to use our sick days and even more difficult to change the schedule as per what the workers need.

Thank you for listening,

Raymunda Alfaro

DEPARTMENT OF EMPLOYMENT SERVICES

Deborah A. Carroll
Director

Muriel E. Bowser
Mayor

Before the

COMMITTEE ON BUSINESS, CONSUMER, AND REGULATORY AFFAIRS
Honorable Councilmember Vincent Orange, Chairperson

Public Hearing

On

Bill 21-331, the Building Service Employees Minimum Work Week Act of 2015
And
B21-512, the Hours and Scheduling Stability Act of 2015

Wednesday, January 13, 2016

10:00 am

Room 500
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Committee on Business, Consumer, and Regulatory Affairs
Bill 21-331, the Building Service Employees Minimum Work Week Act of 2015
And
B21-512, the Hours and Scheduling Stability Act of 2015

Good morning Chairman Orange and members and staff of the Committee on Business, Consumer, and Regulatory Affairs, I am Deborah Carroll, Director of the Department of Employment Services (DOES). I am pleased to be back before this committee, on behalf of Mayor Muriel Bowser, to present the Administration's views on B21-331, the Building Service Employees Minimum Work Week Act of 2015 and B21-512, the Hours and Scheduling Stability Act of 2015.

Since the Great Recession, the District of Columbia, like many other jurisdictions across the country, saw an increase in the number of workers who desire full-time jobs, but take work in part-time positions because those are the only jobs they can find. Often, part-time workers work irregular hours and shifts that fluctuate from week-to-week and even day-to-day, including mandatory overtime work requirements with little advance notice. These recent trends in workplace scheduling

make it difficult for many District families that work part-time to balance work and family obligations.

B21-331, the Building Service Employees Minimum Work Act

Bill 21-331, the Building Service Employees Minimum Work Week Act of 2015 applies to all covered employers that directly employ at least one covered employee or contracts or subcontracts for the services of at least one covered employee within a covered location, an office building or a group of office buildings with over 350,000 square feet that have common ownership and management. The act establishes the minimum work week for any covered employee at 30 hours. Up to 20% of work hours scheduled for employees engaged in cleaning may be preserved for part-time staff with a minimum shift of four hours per night and 20 hours per week for up to 10 such part-time positions per covered location. The bill would establish a maximum fine of $5,000 per violation.

The act mandates an extensive administrative process to verify and enforce compliance. The Act requires the employee to file a a formal complaint concerning a violation and the Mayor is required to provide notice to employees of an investigation. If it is determined that the employer violated the act, there is an appeal process through the Administrative Appeals Act. If the employee is not satisfied, then the employee can bring a complaint de novo in the Superior Court of DC. Relief includes reinstatement, payment of lost wages, actual medical costs incurred by the covered employee as a result of the violation, liquidated damages in the amount $100/day for each day the violation continues, reasonable attorney's fees and costs of the action to be paid by the defendant to the prevailing party.

This bill puts into law an agreement reached between the Service Employees International Union (SEIU) Local 32 BJ, which represents janitorial and building maintenance workers in our office buildings. The 30-hour guaranteed minimum work week will allow these workers access to employer provided health care benefits. This bill seeks to

improve worker standards that would improve the lives others who work to clean and maintain places of work.

Recommendation

As drafted, the bill bypasses the Grievance and Arbitration Procedure detailed in the Collective Bargaining Agreement (CBO) between the SEIU Local 32BJ and goes straight to the government for resolution. This shifts the burden and cost to the government for matters that should be addressed and mitigated between the union and the employer. In addition, the bill provides for a new hearing before the Superior Court of the District of Columbia even after the exhaustion of administrative remedies provided by the Mayor. To ensure both union and non-union employees have access to an adequate grievance process, DOES recommends a change in the provision and will gladly work with the Council to craft the appropriate language.

Additionally, the bill provides for reimbursement of attorney's fees under the schedules established under *Salazar v. District of Columbia*. It is important to note that the District of Columbia opposes the rates established under the Salazar ruling. The Salazar compensation rates are higher, and the District has appealed the ruling of the Salazar rates. If the Council approves legislation awarding "Salazar rates", plaintiffs will argue that the District of Columbia endorses those rates. Both the administration and the Office of the Attorney General strongly oppose the compensation rate schedule under *Salazar*.

B21-512, the Hours and Scheduling Stability Act

The Council has been sympathetic to the needs of District of Columbia workers who work variable schedules when it passed the Accrued Sick and Safe Leave Act in 2008 and the Earned Sick and Safe Leave Amendment Act of 2013. These legislative efforts guaranteed District workers the right to earn paid annual leave for physical or

mental illness, preventive care, family care, parental leave and absences resulting from domestic or sexual violence. The Council is also considering legislation to establish a paid family leave program for all District workers and residents. This legislative agenda speaks to the problem that many workers face difficulties in managing their work schedules and family obligations.

District workers are currently protected under a minimum daily wage, which requires D.C. wage earners to be paid at least four hours on each day that they report to work unless the employee is regularly scheduled to work less than four hours. The District's minimum wage is currently established at $10.50 per hour, and it is due to increase to $11.50 on July 1, 2016.

Bill 21-512, the Hours and Scheduling Stability Act of 2015 addresses directly the issue of workplace scheduling. The bill applies to general employers in the retail and food services sector. Covered food service establishments are those that:

1. Employ workers in the District of Columbia as classified under 7221 and 7222 of the North American Industry Classification System, which cover full-service restaurants (7221) and limited-service eating places (7222);
2. Are part of a chain of 20 or more establishments nationally, or is a franchise of food service establishments where the franchisor owns or operates 20 or more establishments located nationally; or,
3. Are covered retail establishments that must be part of a chain of at least five establishments nationwide with at least one establishment located in the District of Columbia. Examples of the establishments covered under the bill include chain, big box stores and fast food restaurants.

Under the legislation, employers will be required to post schedules for all employees scheduled to work or be on-call at least three weeks in advance. Employees will be compensated for one-hour at their regular rate of pay for changes in shift schedules made with less

than 21 days' notice, in addition to wages earned, for each shift that is cancelled, added, or changed. Employers will be required to provide the lesser of either four hours of pay or the number of hours in the employee's shift at their regular rate of pay when the employee is required to be on duty or on-call for a specified shift, but the employer cancels the shift with less than 24 hours' notice.

Bill 21-512 also gives preference to existing employees for the opportunity to work additional hours before a covered employer hires additional employees, subcontractors, or contractors with temporary services or staffing agencies. It also provides existing part-time employees with the same starting hourly wage, access to time off, and eligibility for promotions. The legislation provides for the customary posting requirements and protections for employees who exercise their rights under the act from employer retaliation. And yet, the proposed legislation is not without challenges.

Challenge #1 - How do we provide part-time workers with some stability so they can manage the demands of job and family while

recognizing that employers require the flexibility to schedule workers on the basis of their business needs?

Challenge #2 - For DOES especially, how will we monitor compliance and maintain records?

Recommendations

As with any labor legislation, some burden must fall on business to ensure that full compliance is achieved and that employees are treated fairly. The legislation circumvents the existing internal complaint system and essentially outsources hour disputes to the administration. The concern is that this would undermine business' administrative authority over employees and the CBA. More importantly, it eliminates and undermines a businesses' ability to be responsive to the needs of its customer base. As written, an employee can take unscheduled leave, and when the employer attempts to call in another employee to cover for them, is penalized by paying the employer an additional dollar per hour and a host of other penalties.

This may create a perverse incentive for employees to abuse the system to gain a higher wage rather than build a culture of teamwork and accountability on the part of employees and employers. Furthermore, the lengthy claims process could prove contentiously unpleasant for employers and employees. The additional costs incurred to secure legal representation, appear before an administrative law judge and present their case and prove innocence of the charges would be burdensome for both parties, at best. Innocence also connotes a criminal process, which I am sure the Council did not intend.

Various concerns have been raised about the Hours and Stability Act, among them the mandate that covered employers must offer any additional work hours to interested employees raises concern that this may impede further hiring by business as well as result in disputes concerning "good faith" measures. In addition, means of communication with employees may prove an onerous area for employers. If they are unable to achieve quick communication with the

employee concerning scheduling changes within the established time, they will be found in violation of the Act and required to pay employees for lost hours.

Our recommendation is for legislation that is less arduous to businesses and strengthens the relationship between employers and employees. As drafted, the act increases government costs by bypassing the employer-employee grievance process and places enforcement costs and the administrative burden on the government. We are looking forward to working with the Council to address those concerns.

Mr. Chairman, the Council heard from many witnesses who testified earlier both in support of and in opposition to the bills before us today. It is clear that when you prepare a Chairman's mark, you will need to address a full range of issues concerning implementation, administration and enforcement. As the Committee assesses various options, I hope we can continue this dialogue to improve these scheduling bills in order to establish greater predictability in workplace

scheduling and greater stability for families without undue impact on employers.

Thank you, Mr. Chairman, for providing me the opportunity to speak on these bills. I am happy to answer questions.

TESTIMONY SUBMITTED FOR THE OFFICIAL RECORD

Testimony of David Farquhar
CEO of Workplace Systems

With regard to DC Council B21-0512, the Hours and Scheduling Stability Act of 2015
Before the Committee on Business, Consumer, and Regulatory Affairs

January 8, 2016

Chairman Orange and members of the Committee, thank you for the opportunity to submit testimony regarding DC Council B21-0512.

Workplace Systems is a global provider of Smart Scheduling™ software that drives revenue for employers of hourly workers. Our cloud-based software helps employers to leverage historical transaction or traffic data to predict when shoppers will be in a store, connect it with knowledge of employee availability and work preferences, and create schedules that maximize customer service, revenues, and employee satisfaction. Today, we help create schedules for workers in tens of thousands of retail locations around the world, and are familiar with the nuances of scheduling laws in a wide variety of cities and countries.

In our review of B21-512, we see that the Hours and Scheduling Stability Act would require a retail or food service employer to provide their employees a written work schedule 21 days before the first scheduled hour of a shift, and to offer additional hours of work to existing employees before hiring additional employees or subcontractors. These requirements are similar to the requirements of San Francisco's Retail Workers Bill of Rights, although B21-0512 has a longer notification period.

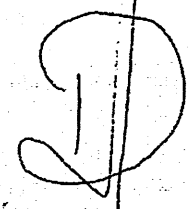
Our experience is that Smart Scheduling™ software can facilitate both requirements if an employer chooses to use it in this manner. Furthermore, this can be achieved with an even greater notice period than B21-0512 contemplates – we work with one national retailer who creates schedules as much as 16 weeks in advance with an extremely accurate prediction of labor demand (though would not suggest that this is possible for all retailers in all business specialties).

It is also worth noting that Smart Scheduling™ software allows employees to review their schedule via a mobile device or web browser, which avoids the need for the employee to come in to a physical store to see a schedule if it is posted on their days off.

Our own assessment of the impacts of Smart Scheduling™ as well as the early results of a study we are working on with Harvard Business School indicates that there is compelling and empirical evidence that implementing these scheduling practices increases employee engagement, which results in significant commercial benefit to the employer in almost every case.

Please do not hesitate to contact us me at david.farquhar@workplacesystems.com or at 312.726.3734 if there is any additional information or guidance that I can provide.

Sincerely,



DAVID G FARQUHAR
CEO

Goodwill
Greater Washington

January 12, 2016

Vincent Orange, Chairman
Committee on Business, Consumer and Regulatory Affairs
Council of the District of Columbia
1350 Pennsylvania Avenue NW
Suite 107
Washington, DC 20004

Re: Comments on Proposed Hours and Scheduling Stability Act of 2015

Dear Mr. Orange,

I am writing to share my concerns about the proposed Hours and Scheduling Stability Act of 2015 (the "Bill") and the impact that it will have on Goodwill of Greater Washington ("Goodwill") and the people Goodwill employs.

For 80 years, Goodwill has been living out its mission to transform lives and communities through the power of education and employment. As the needs of the Washington area have evolved, so too have Goodwill's workforce training programs in service to the more than 50,000 people whose lives have been touched since its founding in 1935.

Goodwill's work is accomplished through three, mission-driven divisions: (1) Retail: operates 16 stores (but only one within the District of Columbia) plus an e-commerce platform and currently employs over 500 individuals in front-line operations, most of whom face barriers to employment; (2) Contracts: employs over 200 individuals, most of whom have significant disabilities, to perform custodial and other work at 13 sites including Bolling Air Force Base and the U.S. Senate Office Buildings; and (3) Workforce Development: provides free job-training and employment services to more than 3,000 people each year.

Goodwill believes that passage of the Bill would have a significant negative impact on the operation of Goodwill's business and would negatively impact its employees. While we believe that the entire Bill is unnecessary and bad policy and should not move forward at all, we are highlighting here a few issues of special concern.

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Greater Washington

1. **The 21 day advance posting of schedules requirement is far too long and would have the effect of giving employee's less flexibility in requesting time off.** Goodwill currently posts schedules 7 days in advance. The 21 day requirement in the bill triples the advanced notice required. In order for an employer to post a schedule 21 days in advance, employees would have to provide their availability 5 weeks in advance. For example, for the week of February 7-13, the schedule would have to be posted by January 17. An employer would have to gather information about employee's availability and create the February 7-13 schedule during the week of January 10-16, 5 weeks before the last days of the week that is being scheduled. Many employees have not planned their personal schedules 5 weeks in advance. Because this Bill imposes a financial penalty on employers for changing one employee's schedules to accommodate leave requests of another employee, employers will have less flexibility to accommodate leave requests made on less than 5 weeks' notice. This would ultimately result in less flexibility for employees to change their schedules to accommodate things that come up within 5 weeks before their shift. If the Bill moves forward, it should be amended to utilize a 7 day advanced posting requirement rather than a 21 day requirement.

2. **The Bill's requirement to offer work hours to existing employees would impose a significant burden on employers.** If the Bill were passed, any employee whose scheduled hours were less than 40 per week would be able to bid on hours from the schedules of any departing employee to bring their hours up to 40 per week. Assume an employer with the following employees and schedules:

   James: Monday – Friday, 8 a.m. to 3:30 pm (35 hrs/wk, 30 minute lunch break)
   Jane: Monday – Friday, 10 a.m. to 5:30 pm (35 hrs/wk, 30 minute lunch break)
   Julie: Monday – Friday, 12 p.m. to 7:30 pm (35 hrs/wk, 30 minute lunch break)
   John: Saturday – Sunday, 10 a.m. to 5:30 p.m. (14 hrs/wk, 30 min lunch break)

   Assume Jane quits and when the employer posts her hours for other employees to bid on, the employer gets the following responses:

   James asks for Monday – Thursday from 3:30 to 4:45 pm (bringing him to 40 hrs)
   Julie asks for Monday – Friday from 10:45 a.m. to 12 p.m. (bringing her to 40 hrs)
   John asks for the Friday shift (bringing him to 21 hours)

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Greater Washington

After these three employees have cannibalized Jane's schedule, the employer is left to find an employee who is willing to fill a schedule that consists of:

Monday – Thursday 10 a.m. to 10:45 a.m.,
12 p.m. to 3:30 p.m. and
4:45 p.m. to 5:30 p.m. (18 hrs/wk)

This is bad for employees because it will convert a full time job opening into a part time job opening. If this sort of thing happened once, that would be an inconvenience to employers. Because turnover in the retail sector is significant, even a small employer like Goodwill would have to go through this process one or more times every month. That would create an unreasonably high administrative burden.

3. **The Bill has the unintended consequence of impacting Goodwill employees who do not work in the retail or food service sectors.** Goodwill has a retail division and a custodial contracts division operating within the same entity. The Bill, on its face, applies to the employees of a retail employer who are engaged in retail operations or any other operations. Thus, if the Bill is passed, its provisions would apply to Goodwill's custodial contracts operations, and the hourly employees within that division who work in the District. This is an unintended consequence of the way the Bill is written. Thus, if the Bill moves forward, we request that it be amended to specify that it only applies to the employees of a covered employer who work in retail or food services.

4. **The cumulative burden of the employment related laws that have been passed by the District in recent years and that are proposed is very heavy.** Goodwill is a non-profit that seeks to help District residents with disabilities and other disadvantages find and keep employment. The cumulative direct and indirect financial burden of the recent avalanche of employment related laws negatively impacts Goodwill's ability to deliver its mission. Polices such as this are causing Goodwill to engage in conversation around potentially moving both its headquarters and its District of Columbia retail store outside of the District.

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Thank you for the opportunity to present this written testimony to the Committee and for taking the time to review it.

Sincerely,

Catherine Meloy

Catherine Meloy
President & CEO

Cc: Elissa Silverman
Charles Allen
Brandon T. Todd
Brianne Nadeau
Pete Johnson

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CLASP
policy solutions that work for low-income people

TESTIMONY IN SUPPORT OF THE DISTRICT OF COLUMBIA
"Hours and Scheduling Stability Act of 2015"

TO: Vincent B. Orange, Sr., Chair
Committee on Business, Consumer, and Regulatory Affairs
FROM: Elizabeth Ben-Ishai, Senior Policy Analyst, Center for Law and Social Policy
DATE: January 13, 2016

My name is Elizabeth Ben-Ishai. I am a senior policy analyst at the Center for Law and Social Policy (CLASP). CLASP is a national organization that works to improve the lives of low-income people by developing and advocating for federal, state, and local policies that strengthen families and create pathways to education and work. CLASP is based in the District of Columbia and has long been involved in initiatives to improve job quality for D.C. workers.

CLASP strongly supports the Hours and Scheduling Stability Act of 2015.This legislation includes important provisions to address the lack of predictability, stability, and flexibility many hourly workers in the food and retail industries currently experience – conditions that have an adverse effect on individuals, communities, and businesses in the District. If passed, this legislation would increase family economic stability; enable workers to meet their obligations both at work and home; and boost the local economy by reducing turnover and increasing productivity.

According to a 2015 study of the service sector in the District, nearly half of employees surveyed receive their job schedules less than one week in advance.[1] An astonishing one-third of these workers receive less than three days' notice. Without sufficient notice of work hours, many families struggle to find quality child care arrangements, plan transportation, attend classes to the further careers, and hold second jobs, which are often necessary for lower wage workers. The same survey also found that many workers experience last minute changes to their schedules; must make themselves available at all times, yet rarely receive the full-time hours they desire; and are often required to be "on call" without pay and with only a 50 percent chance of being called in to work for wages. In the District, scheduling policies are a racial equity issue: workers of color are disproportionately affected by unfair scheduling practices.[2]

The issues affecting workers in the District are part of a nation-wide trend toward "just-in-time" scheduling practices, which attempt to match labor to customer demand, with little attention to the effects on workers' lives. Moreover, such practices often have adverse effects on businesses, as described below. Nationally, 41 percent of early career workers in hourly jobs receive one week or less advance notice of their schedules, and three-quarters see their hours fluctuate from week to week.[3] Thus, as the figures cited above from a D.C.-specific study indicate, District workers are faring at least as badly as the national average, and often worse. The District's City Council is not alone in considering legislative action to improve work conditions related to scheduling. Around the country, more than a dozen state legislatures have considered scheduling public policies, and many municipalities are also examining laws.[4] San Francisco became the first locality to pass a scheduling bill – "The Retail Workers Bill of Rights" – in 2014.

The Hours and Scheduling Stability Act includes the following provisions (in brief below), which would create more stability and predictability for workers in the food service and retail industries employed by "chain"[5] establishments:

- Employers must provide employees with 21 days notice of their schedules;
- Employers must compensate employees for changes to schedules after the schedule has been posted ("predictability pay");
- Expands D.C.'s reporting time pay law to ensure that employers compensate employees for shifts that are cancelled or reduced (as already required by law) *and* when employees are placed "on call" but not called in with less than 24 hours' notice;
- Employers must offer qualified existing employees additional hours of work before hiring new staff or temporary workers;
- Employers must not discriminate against part-time employees; they are entitled to equitable pay, leave, and advancement opportunities;
- Enforcement and record keeping provisions are in place to ensure that the law would be meaningful for the workers it is intended to protect and that those who exercise their rights do not face retaliation;

These provisions are not only good for workers, they are also feasible for and often beneficial to employers. Many large employers already provide their workers with three weeks of advance notice of schedules, including Wal-Mart and Costco. Employers often rely on scheduling software to help them manage their workforce. Workplace Systems, a company that sells scheduling software, explains in its recent compliance guide for San Francisco's new scheduling law (which includes many provisions similar to the proposed law in the District) "[C]ompanies that comply with the regulations may [...] see increases in employee engagement, decrease turnover, and achieve more sales through better-served customers." The company's Vice President, JD Miller, also noted in a recent webinar that, using technology, employers can easily comply with scheduling laws like San Francisco's.

Employers can accurately predict most of their labor needs, according to researchers.[6] Thus, while predictability pay is a fair way to compensate workers who must contend with last minute scheduling changes, employers should be able to avoid the costs of this premium pay by employing careful scheduling practices at the outset – practices that are good for business.

All employers, even smaller ones, can reap the benefits of fair scheduling. Even though they would not be subject to this law, a growing number of smaller DC employers are speaking out in support of fair scheduling. For example, Marcia St. Hilaire-Finn, owner of a Petworth child care center with about 30 staff, notes, "Having happy employees is critical for the success of our business. Fair and flexible scheduling is one way we accomplish this." Tony Lucca, a DC restaurateur who employs more than 60 people states, "For us, fair scheduling just makes sense. It not only helps our workers; it also makes life easier for me and my managers...Because of how we treat our staff, we have relatively low turnover and employees are satisfied with their jobs." For more on the business case for fair scheduling practices, please see CLASP's brief outlining the research and highlighting District employers who support this Act, located at http://www.clasp.org/resources-and-publications/publication-1/Job-Schedules-that-Work-for-Businesses-in-the-District.pdf.

Thank you for considering the The Hours and Scheduling Stability Act. We strongly urge you to move this legislation forward to quickly address the pressing needs of D.C. workers.

Sincerely,

Elizabeth Ben-Ishai, Ph.D.
Senior Policy Analyst
CLASP

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[1] Ari Schwartz, Michael Wasser, Merrit Gillard, and Michael Paarlberg, *Unpredictable, Unsustainable: The Impact of Employers' Scheduling Practices in D.C.*, DC Jobs with Justice, Jobs with Justice Education Fund, DC Fiscal Policy Institute, and Georgetown University Department of Government, 2015, http://www.dcjntent/uploads/2015/06/DCJWJ_Scheduling_Report_2015.pdf.

[2] Schwartz et al, *Unpredictable, Unsustainable: The Impact of Employers' Scheduling Practices in D.C.*

[3] Susan J. Lambert, Peter J. Fugiel, Julia R. Henly, *Precarious Work Schedules among Early-Career Employees in the US: A National Snapshot,* The University of Chicago, 2014, https://ssascholars.uchicago.edu/sites/default/files/work-scheduling-study/files/lambert.fugiel.henly_.precarious_work_schedules.august2014_0.pdf

[4] The Center for Law and Social Policy, "A National Repository of Resources on Job Scheduling Policy," http://www.clasp.org/issues/work-life-and-job-quality/scheduling-resources.

[5] Chain is defined as 20 or more food services establishments and 5 or more retail establishments nationwide, with other provisions affecting whether an employer is covered by the law.

[6] Liz Ben-Ishai, *Job Schedules that Work for Businesses,* Center for Law and Social Policy, July 15, 2015, http://www.clasp.org/resources-and-publications/publication-1/2015.07.14_J.

TESTIMONY IN SUPPORT OF THE DISTRICT OF COLUMBIA
"Hours and Scheduling Stability Act of 2015"

TO: Vincent B. Orange, Sr., Chair
Committee on Business, Consumer, and Regulatory Affairs
FROM: Tony Dundas-Lucca, Owner of 1905 and El Camino Restaurants
DATE: January 13, 2016

My name is Tony Dundas-Lucca. I am the owner of two D.C. restaurants, 1905, located in the Shaw neighborhood, and El Camino, located in Bloomingdale. I have been a business owner in the District for about eight years. 1905 has been open since 2008 and El Camino opened in November of 2014. Between the two restaurants, I employ approximately 60 people. I am also a Ward 5 resident.

I am pleased to submit this testimony in support of the Hours and Scheduling Stability Act of 2015. The provisions of this bill are commonsense standards with which we would have no problem complying. The bill would benefit both workers and businesses.

In my experience, staffing is one of the most challenging aspects of the restaurant business. In an industry that is not always set up to encourage professional standards for its staff, I have worked hard to create an environment in my restaurants that instills structure and motivates employees to perform their jobs effectively.

We provide all employees with their schedule roughly **one month in advance** – more than would be required by the proposed legislation. We use an online scheduling system that enables staff to have input into their schedules, trade shifts, and plan ahead.

These practices aren't costly for us to implement – on the contrary, they are part of what enables us to maintain relatively low turnover in a high turnover industry. Many employees stay with us for more than a year – a rarity in our industry. We save on the costs of hiring and training new staff, and benefit from the higher morale and productivity of our satisfied workers.

Providing workers with fair, predictable schedules is not only the right thing to do for employees, it also saves me and my managers the stress and headaches of juggling ever-changing schedules.

Although we provide our employees with advance notice of their schedules, as well as scheduling stability, of our own volition, I believe it's crucial to set minimum standards by establishing public policies. This levels the playing field and ensures all workers in our industry (and others) work under fair and sustainable conditions.

I strongly urge you to move this legislation forward without delay. It is in the best interests of workers, businesses, and the District as a whole.

Sincerely,

Tony Dundas-Lucca
Owner, 1905 and El Camino

PennState
Abington

Lonnie Golden, Division of Social Sciences | 215-881-1234 | Lmg5@psu.edu
1600 Woodland Road | Abington, PA 19001-3990

January 13, 2016

Testimony of Professor Lonnie Golden

Good morning Chairman Orange and Committee on Business, Consumer, and Regulatory Affairs Members. Thank you for this opportunity to testify today at these hearings for Bills:

- B21-331, the "Building Service Employees Minimum Work Week Act of 2015"

- B21-512, the "Hours and Scheduling Stability Act of 2015"

I am Professor of Economics and Labor-Employment Relations at Penn State University (Abington). I am a labor economist who studies the causes and consequences of work hours. I support the two bills proposed today, both as an academic researcher (and as a long-ago, former UFCW local 1540 member supermarket utility clerk as my first job, where I experienced scheduling (in)stability first hand in my formative years. The toughest job I've ever had.)

I have analyzed data from the US Current Population Survey and from the General Social Survey, two widely used nationally representative surveys, plus a recent poll of the employed, nationally and within certain States, conducted by PPP Polling for the Employment Instability Network of the University of Chicago. I have received and read the Jobs for Justice recent survey of 415 DC service workers, *Unpredictable, Unsustainable.*

The timing of adopting the ***Hours and Scheduling Stability Act*** could not be better for the District, or anywhere else. Several years into an economic recovery, despite the great progress on reducing unemployment, there is still a historically high level of hours mismatch, particularly of "underemployment" – workers hungry for more income willing to put in longer work hours. The stubbornly high rate of working "Part time for Economic Reasons" – a.k.a. "involuntary part-time employment," persists at a level far above where it would have been following past recessions – while spiking at 9 million nationally, and now down below 6 million, it is showing little sign of returning back to its pre-recession level of 3-4 million only.

About one-third of part-time jobs are held by those who prefer to work 35 or more hours per week. This scourge of chronically high underemployment is due mainly to so many workers having to settle for part-time jobs, when they prefer full-time work hours and job status, simply because that is what is available. While they prefer shorter hours, this does not imply they prefer more variable or unpredictable hours, any more than those with full time jobs. Yet, this is what they currently have to live with, arguably without receiving any boost in pay for this adverse working condition. The practices that would be dis-incentivized with the proposed Act

address three key reasons behind higher underemployment – last minute scheduling of work that employees cannot pick up that day; the practice of "open availability" of work any time though delivers no more than part time work and income; and, finally, call-offs that send employees home before the end of their scheduled shift without pay—which entail 50% of Food/Restaurant workers and 20% of Retail workers in the DC sample of service workers.

Polls across various states are finding that between 20 to 33 percent of workers would "prefer to work more hours for additional pay," as compared to the "same hours for the same pay" (while 1 in 3 to 5 workers prefer more hours, about one in every 7 prefer fewer hours even with its less pay). This means that 1 in every 3 to 5 workers is experiencing a wasteful constraint on their work ethic and potential disposable income to spend.

Such Underemployment is noticeably higher in the industries being focused upon in these bills – Retail Trade, Food Production and Service, and Hospitality/Cleaning Services. The distribution of underemployment is disproportionately greater in Retail/Wholesale Trade and in Hospitality/Cleaning (also Health Care).

The proportion of workers who report that their "hours vary" from week to week is also markedly higher than the national average in the Food Production/Services and the Retail/Wholesale industries, too. Indeed, the typical worker in the Jobs for Justice Survey of DC area workers experienced variation from a low of 25 hours to a high of 38 hours per month.

Why does this matter? Not only do the PPP poll data show an **incidence** of 16 percent, about one in six workers, on irregular/on-call work schedules, this is higher among part-time workers this is 25 percent. It is also higher among workers earning under $22,500 per year, and in Retail Trade and Food Production/Services (29% and 21% respectively), Moreover, in studies conducted for the Economic Policy Institute using GSS data, we found that the consequences of working Irregular/on-call (as opposed to regular daytime, evening, night shifts) were:

-- By occupation type, is one and a half times higher than overal proportion among sales and related occupations;

-- By industry, somewhat more prevalent in agriculture, personal services, business/repair services, entertainment/recreation, finance/insurance/real estate, **retail trade,** and transportation communications.

-- reported greater frequency of work-family conflict (controlling for length of weekly hours of work and other demographic and work characteristics), among both hourly and salaried workers.

--reported greater work stress, but particularly among hourly paid workers.

-- also, somewhat more work-family conflict and work stress experienced by those working split-shift arrangements

-- being underemployed does NOT reduce work-family conflict, despite the shorter work hours (while part-time workers who prefer that part-time status do experience less work-family conflict), whereas employee-centered types of schedule flexibility have opposite associations with work-family intereference.

All these adverse side effects likely limit on job performance. They are likely magnified with the "open availability" type of practices.

Finally, Federal Reserve Bank sponsored survey data by GFK found that underemployment is particularly high among students, who often need to work to support schooling expenses – but also who we can least afford to experience chronic conflict between their job and class schedules – yet, we let them fend for themselves, all too often resulting in compromised academic performance and dropping out.

Addressing this cost shifting with minimum reporting pay (for early dismissal or call-offs without pay) and predictability pay (for last minute adjustments) will not necessarily result in loss of business sales, production or even jobs (since it is covering only large scale, chain companies).

If the costs of compliance can be limited, the procedures streamlined to be not too cumbersome (perhaps first applying with technology used in place of a required trail of written documents), and the new minimum standards not hinder, chill or replace the informal arrangements already practiced by the many "high road" employers with their employees in the District, employees could benefit immediately, and employers, too, in the longer run, with the result an end to the current cost-shifting and a more equitable sharing of the rewards to improved efficiencies in the highly competitive industries.

REFERENCES

Alexander, Charlotte, and Anna Haley - Lock. "Underwork, Work - Hour Insecurity: A New Approach to Wage and Hour Regulation." *Industrial Relations*, 54, no. 4 (2015): 695-716.

Bell, David NF, and David G. Blanchflower. (2013a) How to measure underemployment Peterson Institute for International Economics Working Paper 13.2 . August.

Center for Law and Social Policy, Retail Action Project, and Women Employed, Tackling Unstable and Unpredictable Work Schedules, 2014, http://www.clasp.org/resources-and-publications/publication-1/Tackling-Unstable-and-Unpredictable-Work-Schedules-3-7-2014-FINAL-1.pdf

Golden Lonnie. 2015. FLSA Working Hours Reform: Worker Well-Being Effects in an Economic Framework, DOI: 10.1111/irel.12111. Industrial Relations, Volume 54, Issue 4, pages 717–749, October 2015.

Golden, Lonnie, and Tesfayi Gebreselassie. "Overemployment and underemployment mismatches in the US work force: The preference to exchange income for fewer work hours." *Monthly Labor Review,* April (2007).

Golden, Lonnie. *Irregular Work Scheduling and Its Consequences*, Economic Policy Institute, Briefing Paper #394, April 9, 2015.

Henly, Julia R., and Susan J. Lambert. "Unpredictable Work Timing in Retail Jobs Implications for Employee Work–Life Conflict." Industrial & Labor Relations Review 67.3 (2014): 986-1016.

Lambert, Susan J., Peter J. Fugiel, and Julia R. Henly. Schedule Unpredictability among Early Career Workers in the US Labor Market:A National Snapshot. EINet (Employment Instability, Family Well-being, and Social Policy Network) at the University of Chicago: http://ssascholars.uchicago.edu/einet.

Luce, Stephanie, Sasha Hammad and Darrah Sipe, 2014. *Short Shifted*... Retail Action Project, New York: NY.

McKee-Ryan, Frances M., and Jaron Harvey. ""I have a job, but...": A review of underemployment." *Journal of Management* 37.4 (2011): 962-996.

Ruan N, Reichman N. Scheduling Shortfalls: Hours Parity as the New Pay Equity. *Villanova Law Review.* 2014 Oct 7;59(1):14-02.

Valletta, Rob and Catherine van der List. Involuntary Part-Time Work: Here to Stay? Economic Research 2015/June, SF FRB.

Watson, Liz, and Jennifer E. Swanberg. "Flexible workplace solutions for low-wage hourly workers: A framework for a national conversation." *Am. U. Labor & Emp. LF* 3 (2013): i.

Wilkins, R. (2007). The consequences of underemployment for the underemployed. *Journal of Industrial Relations,* 49(2), 247–275.

NRF
THE VOICE OF RETAIL

January 12, 2016

Chairman Vincent Orange
Council Committee on Business, Consumer, and Regulatory Affairs
1350 Pennsylvania Avenue NW
Washington, DC 20004

Dear Chairman Orange,

The National Retail Federation respectfully submits a statement for the record in opposition to Bill 21-512, "The Hours and Scheduling Stability Act of 2015." On behalf of the nearly 7,000 retail establishments in the District, I appreciate the opportunity to provide a retail perspective on this legislation and the harm it would inflict upon our industry. NRF strongly believes that restrictive scheduling legislation is a solution in search of a problem that will drive a wedge between management and employees and upend tried and true systems.

NRF is the world's largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants and Internet retailers from the United States and more than 45 countries. Retail is the nation's largest private sector employer, supporting one in four U.S. jobs – 42 million working Americans. Contributing $2.6 trillion to annual GDP, retail is a daily barometer for the nation's economy. The impact of the retail sector on the District is profound – more than 93,400 jobs are supported by retail in the city and the industry accounts for $6.7 billion in total GDP. Retailers are driving economic growth throughout our nation's capital, investing in the community and their employees, and improving the quality of life for residents and visitors alike.

Bill 21-512 would present serious challenges and unintended consequences for the employers and employees who comprise D.C.'s retail economy. Every retailer has a unique business process and customer base, and every employee has unique needs. In order to retain and recruit talent, many retailers already set their schedules a specific number of days in advance. For example, one local retailer explained that at her four stores in the metro area schedules are posted 10 days in advance for the month based on employees' requests. Each retailer has a unique system that works for both their business and employees, which leads to happy, engaged, and fulfilled employees. The scheduling of employees is a process that is best left to employers and employees.

This legislation would require retailers and restaurants to post rigid schedules 21 days in advance with steep penalties attached to any changes made thereafter. Government intervention through a one-size-fits-all approach ties the hands of employers and takes away the flexibility and opportunities that many D.C. residents seek in a retail job. The local retail industry is competitive and fast-paced and revolves around a number of variables. Currently, if an employee calls in sick, wants to attend an event at their child's school, needs extra time for a school paper, or any other host of circumstances, retailers are able to accommodate those often last minute requests by offering those shifts to other employees without incurring a government penalty. Similarly, if a delivery truck is delayed because of bad weather or if unexpectedly warm December weather increases foot traffic, retailers are able to adapt to ensure proper

NATIONAL RETAIL FEDERATION
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www.nrf.com

staffing levels and great customer service. These circumstances cannot be predicted 21 days in advance and an employer should not be punished with a fine for accommodating an employee's schedule change or other circumstances beyond their control.

Bill 21-512 also unfairly punishes retail employees. Retail employees value the flexibility that retail jobs provide, whether it's the ability to modify their schedules to fit their needs or pick up extra shifts that become available. While 21 days' notice is burdensome for employers, many employees are simply unable to predict their scheduling needs that far in advance. One small D.C. retailer explained that her employees would universally oppose the notice requirements contained in this bill because rigid scheduling mandates take away employees' ability to set schedules that accurately reflect their needs. This bill would also eliminate retail employees' current ability to pick up extra hours as they please that may be offered due to an unexpected circumstance such as unseasonably warm weather. Under this proposal, retailers may be unlikely to fill those shifts due to the penalties imposed by the bill. The result will be fewer opportunities for employees to access additional hours, a decline in customer service, and overworked employees due to understaffing.

The District's unique geographic location makes it extremely vulnerable to competition from surrounding jurisdictions that are not subject to the same laws. Retailers and restaurants across the District have expressed concern that proposals like the one before this Committee create a major disincentive to operate in the District and to expand. A Georgetown retailer with stores in Virginia and Bethesda cautioned that if this ordinance were to become law, she would have to seriously consider closing her District store to avoid subjecting all of her stores to these restrictive scheduling requirements. Furthermore, the bill's requirement that retailers first offer additional hours to their current part-time employees for seven days before hiring any new employees will have significant unintended consequences on job growth in the District and serve as a barrier to entry for employees seeking to join the retail workforce.

We also encourage members of the Committee to look to San Francisco as a cautionary tale since the city has experienced numerous challenges in attempting to implement a restrictive scheduling ordinance. In fact, ambiguities contained in San Francisco's law and the extent of government overreach embodied by the proposal have made the policy virtually impossible to implement. As regulators and retailers in San Francisco have tried to grapple with the requirements and the resulting lack of flexibility, both the employer and employee have suffered. Yet, instead of heeding the warning signs in San Francisco and the reluctance of other cities to move forward with their own similar proposals, this Committee is pursuing an even more expansive bill.

Scheduling mandates are restrictive for all parties involved and have sweeping unintended consequences. The Council should proceed with caution when considering measures that place D.C. businesses and employment opportunities for our residents at a competitive disadvantage. For these reasons, I respectfully urge you not to proceed with Bill 21-512. Thank you once more for the opportunity to submit comments for the record.

Sincerely,

David French
Senior Vice President
Government Relations

MRA
Maryland Retailers Association
171 Conduit Street, Annapolis, MD 21401
(410) 269-1440 • Fax (410) 269-0325 • www.mdra.org

January 18, 2016

The Honorable Vincent Orange
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

RE: B21-512, the Hours and Scheduling Stability Act of 2015

Dear Councilman Orange,

The Maryland Retailers Association (MRA) is dedicated to the interests and progress of the retail industry, representing hundreds of members and thousands of store locations throughout Maryland. Many MRA members also have a presence in Washington D.C. As a follow-up to the recently held hearing on January 13th, 2016, we respectfully submit the following letter to you opposing the Hours and Scheduling Stability Act of 2015.

The ability to set an employee's schedule in response to sales, peak seasons, economic conditions, weather or public events is essential to running a retail business. Many times schedule changes are necessary and by mandating that retailers create a schedule a certain amount of time in advance or incur a pay penalty will severely impact scheduling in a negative way. Government intervention through one-size-fits-all mandates involving the scheduling of employees is problematic and intrudes on the employer-employee relationship.

For many industries, a schedule that is posted too far in advance does not take into account all of the factors necessary to create an accurate schedule and companies may be forced to release a baseline schedule with limited hours (i.e., the lowest number of hours possible to keep the business open). From there, as business inputs are known (such as truck arrival, special promotion events, community events –sporting events, etc.), hours will be added and employees will need to pick up those hours on an ad-hoc basis. This rigid scheduling ignores the employees who choose jobs because of flexible scheduling. It also ignores the differences in how businesses operate.

Importantly, many employees value the workplace flexibility afforded by the retail industry and are satisfied with the balance their employer strikes between accommodating their needs and addressing key business needs. According to a recent study commissioned by the National Retail Federation, 76 percent of former retail employees and 66 percent of current retail employees have taken advantage of the unique scheduling flexibility in retail jobs to help them balance important priorities in their lives, such as going to school, working another job or raising a family. In order to retain and recruit talent, many employers already voluntarily provide employee schedules one to two weeks in advance, further demonstrating why costly and restrictive mandates are unnecessary. Unfortunately for employees who value flexible retail jobs, they will have to provide their availability far in advance, which may be a challenge for day care, school schedules, and other jobs or personal commitments.

With these concerns in mind, we respectfully oppose the Hours and Scheduling Stability Act of 2015 and urge you to reconsider this legislation that will harm businesses in Washington D.C. Thank you for your time and consideration.

Sincerely,

Cailey Locklair Tolle
President
Maryland Retailers Association

Cc: Chairman Phil Mendelson
Councilmember Kenyan McDuffie
Councilmember Anita Bonds
Councilmember David Grosso
Councilmember Elissa Silverman
Councilmember Brianne Nadeau
Councilmember Jack Evans
Councilmember Mary M. Cheh
Councilmember Brandon T. Todd
Councilmember Charles Allen
Councilmember Yvette Alexander
Councilmember LaRuby May

January 26, 2016

Councilmember Vincent Orange
Chairman, Committee on Business, Consumer and Regulatory Affairs
Washington, D.C. City Council
1350 Pennsylvania Avenue, NW
Suite G6
Washington, DC 20004

Re: The Hours and Scheduling Stability Act of 2015

Dear Mr. Chairman:

AutoZone respectfully submits this letter to convey our opposition to Bill 21-512, "The Hours and Scheduling Stability Act of 2015." This bill would inflict harm on the retail business, our AutoZoners and the continued growth of the D.C. community, and we strongly urge you to discontinue any effort to enact legislation that will upend our tried and true practices.

AutoZone, the leading retailer and a leading distributor of automotive parts and products in the United States, operates five (5) of our 5,400 stores and currently employs more than 89 individuals or "AutoZoners" in the District. In addition to operating stores since 1998, we have supported the Mayor's Summer Youth Jobs program, employing more than 50 young people in 2015, many of whom go on to become part-time or full-time AutoZoners. In addition, our store at 1207 H St. NE hosts the annual H Street Festival.

The auto parts business is not a self-service business. AutoZoners go the extra mile every hour of every day to take care of customers and ensure they have the parts they need for their cars to work well and get back on the road. This attention to detail and commitment to customer satisfaction is the culture that helps our business thrive and continues to help us provide jobs.

Many times we have only two AutoZoners scheduled in our stores. To ensure we can meet customers' needs we need to continue to have the flexibility in scheduling to meet customers' needs. .

Like most successful retailers, we manage schedules based on sales forecasts for the week, the weather and other projections. Schedules are posted seven days in advance. Managers are free to approve "swap shifts" and make scheduling adjustments, striking a balance between the needs of our customers and the AutoZoners' needs.

Moreover, AutoZoners want flexibility and the opportunity to adjust their schedules based upon their families and personal needs, availability and interests. The bill is a solution looking for a problem.

Case in point was the winter storm you lived through in D.C. this past weekend. If enacted, this bill would have restricted our ability to make sure we had enough AutoZoners in the stores to cover our customers' needs.

This legislation is restrictive, not predictive. Bill 21-512 would present serious challenges and unintended consequences for the employers and employees who comprise D.C.'s retail economy.
And it would create instability in the market.

Please don't take the District backwards; we are on a roll and eager to be part of your continued growth.
Thank you for your service and commitment to the Washington, D.C. community.

Please contact me at rj.hrapsky@AutoZone.com or (301) 203-1596 to discuss further.

Sincerely,

R. J. Hrapsky

RJ Hrapsky
Regional Manager, Washington, D.C.
AutoZone, Inc.

January 26, 2016

Honorable Vincent Orange
Chair, Committee on Business, Consumer, and Regulatory Affairs
District of Columbia Council, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Re: Hours and Scheduling Stability Act of 2015

Dear Councilmember Orange:

Thank you for giving us the opportunity to submit written testimony concerning the Hours and Scheduling Stability Act of 2015 (the "Act"). Costco has no objection to legislation that requires employers to make workplaces better for employees. However, Costco respectfully submits that the Act would provide little of value to Costco's employees and could have the unintended effect of limiting the number of jobs Costco could offer. Accordingly, we oppose the Act. It really is "a solution in search of a problem." We urge you and your fellow Committee members not to move the Act forward.

We believe the Act is flawed because it does not recognize and allow for the flexible nature of the retail business. In retail, demand for employees and hours varies throughout the seasons and as exceptional circumstances arise. To be successful, retailers need to be able to schedule employees to meet changing circumstances and the needs of the business. This may mean schedule changes for employees in order to allow a retailer to operate properly. A recent example is one of the biggest snowstorms on record in the District last weekend. Because of the overwhelming volume of people that came into shop before the storm, we were obligated to bring in additional employees on short notice. Then, as the storm worsened, we sent employees home early to make sure they were safe and to comply with the Mayor Bowser's urging for employees to be home or where they planned to be by 3:00 p.m. Under the Act, we would be penalized for operating in this fashion because we changed employees' schedules within 21 days.

Our employees also want flexibility in their schedules to accommodate their lives. Employees get sick, have child care issues, have changed school schedules, etc. In all these circumstances, employees need to be able to change their work schedules and employers need to be able to accommodate and work around these changes without being punished. In each instance where an employee needs to change his or her schedule or call in sick, under the Act an employer would have to pay predictability pay in order to call in a replacement employee. This punishes an employer and may cause employers to reevaluate whether to allow employees this flexibility.

Costco's policies

Costco has a written Employee Agreement which is our contract with all of our employees—both full-time and part-time. Costco's starting wage and wage scales are identical for full-time and part-time employees. Costco's average wage for hourly employees, including an accrual for twice-annual bonus checks for tenured employees, is about $22. The company offers high quality, affordable health care coverage to full-time and part-time employees who work a weekly average of 23 hours. Costco

guarantees full-time employees 40 hours per week and part-time employees 24 hours per week. On average, part-time employees actually work an average of 30 hours per week. We seek to maintain a ratio of 50% full-time and 50% part-time employees. About 90% of Costco's employees are eligible for health care benefits and 98% of those eligible are enrolled (which speaks to the affordability of the coverage for the employee.) Costco is committed to promoting from within and, as a result, many employees build their careers with Costco. The average tenure of a Costco employee in the U.S. is about 10 years and we have one of the lowest turnover rates in the retail industry.

Specific concerns about the Act

- Posting schedules 21 days in advance. Requiring schedules be posted 21 days in advance would hamper an employer's ability to schedule in accordance with actual business needs. Costco currently posts schedules a week in advance, and there is not a high demand by employees for additional notice. In our most recent update of our Employee Agreement (to be published in March 2016), we solicited input for changes from employee committees in each of our warehouse locations. We received thousands of suggestions for changes from employees across the country, but less than 10 were requests for schedules to be posted further in advance. Our employees are content with the scheduling process and there is little demand for additional notice.

- Compensation for changed shifts/predictability pay. Forcing an employer to provide predictability pay in every instance where a schedule changes within 21 days after the schedule is set is unfair to employers and could have adverse effects for employees. For example, an employer may ask employees if they want to volunteer to leave early on days that are not busy. However, if an employer has to pay predictability pay even if an employee leaves voluntarily, employers might under-schedule employees so they do not have to pay to send people home. Also, it is not fair to an employer to make it pay predictability pay to bring in a replacement if an employee calls in absent. We had over 2,900 sick calls last year. That is a circumstance outside of the employer's control and an employer should not be penalized in that instance.

- Equal treatment for employees. Costco, like other retailers, hires seasonal employees in advance of the Christmas holidays and hires additional college students during the summer. These jobs often can turn into permanent positions. Costco pays these seasonal and temporary employees on the same wage scales as permanent employees but does not offer the same benefits because of the short term of their employment. The Act would not allow this, and so could limit these employment opportunities because companies should not be expected to give temporary employees the same benefits as permanent employees.

- Offer of hours to existing employees. The requirement that a retailer make an offer of additional hours to existing employees before hiring new employees makes little business sense for a company like Costco. Costco is not an employer that seeks to artificially limit part-time employees' hours to keep them below some minimum threshold so they cannot earn benefits. Costco guarantees part-time employees to be scheduled 24 hours per week, and encourages them to talk with their manager if they want additional hours. Being required to offer part-time

employees even more hours does nothing to alter their benefit status or their opportunities at Costco.

Existing laws provide protection

The Act has provisions that aren't necessary as they are already covered by other DC laws. For example, DC's minimum daily wage rules require an employer to pay at least four hours of wages for each day an employee reports to work. And Costco's Employee Agreement provides that employees who are scheduled or called into work are guaranteed to work or be paid for at least four hours per work day. So many provisions of the Act are not needed. And many DC employers—as noted in testimony at the hearing on January 13, 2016 ,including Costco—already comply with many provisions of the Act, such as advanced scheduling and equal benefits for full and part-time employees. So there really is no need for legislation that imposes requirements on all retail businesses when only a few may be bad actors.

The provisions of the Act would seriously interfere with the way we run our business. Implementation of the Act would cause us to consider whether we want to expand in the District. Because of these issues, and because we believe the Act is not necessary, we strongly urge you not to move the Act forward.

Sincerely,

Joe Portera
Executive Vice President and Chief Operating Officer,
Eastern Division and Canada

cc:
Councilmember Brianne Nadeau
Councilmember Brandon T. Todd
Councilmember Charles Allen
Councilmember Elissa Silverman

SUPPLEMENTAL TESTIMONY ON FRANCHISING IN THE FAST FOOD INDUSTRY B21-512, THE HOURS AND SCHEDULING STABILITY ACT OF 2015

Lauren Bonds
Assistant General Counsel
Service Employees' International Union

This testimony and the accompanying exhibits address the question of whether fast food franchise stores whose franchisor and franchisees own and operate 20 or more stores in the aggregate nationally should be subject to the requirements of B21-512.

There have been three principal arguments against the inclusion of franchisees: (1) fast food franchisees are no different from the independent, small businesses exempt from the proposed bill; (2) franchisees lack sophisticated scheduling methods and do not engage in the same aggressive practices as their corporate counterparts; and (3) fast food franchisees are unable to afford predictability pay and other compliance costs. However, there is ample evidence that fast food franchisees enjoy significant benefits not available independent fast food businesses and they are uniquely positioned to absorb costs associated with compliance vis-à-vis traditional small business owners. Further, franchisees are encouraged and often required to use the same scheduling systems as corporate owned stores. The foregoing testimony demonstrates there is no reason fast food franchisees should be excused from giving their workers just and predictable work schedules. Section 2 (7)(B)(ii) is critical in ensuring fast food workers in Washington D.C. have predictable schedules. If this provision of the bill is amended out, the majority of fast food workers in Washington D.C. will be forced to endure the same exploitative scheduling practices that deprive them from pursuing the opportunities necessary to advance their lives.

Franchised stores are very different from independent small fast food businesses

Franchising entails a business establishing a brand and system of operations that it licenses to franchisees in exchange for payments. However, in the fast food industry, franchisees receive much more from the arrangement than the right to use the franchisor's brand. For instance they receive a built-in customer base, site and real estate assistance, employee and management training, and software system support. In exchange for these additional benefits, the franchisee must accept a significant degree of franchisor control over their business. Franchisors specify everything from operating hours, staffing levels, and scheduling practices.

Franchised stores have numerous advantages over traditional independent business:

- Franchisees benefit from name recognition and a pre-existing customer base. The International Franchise Association, a vociferous opponent of this bill, has acknowledged that the pre-sold customer base "would ordinarily take years to establish."[1]
- Franchisors provide franchisees with assistance in selecting the optimal site for maximum customer traffic and offer critical support in rental negotiations.[2]
- Franchisees save significant costs in creating and developing employee management, training, and hiring programs by using the franchisor's proven employee management systems.[3]
- Franchisors provide technology platforms and assist in other back office functions saving franchisees from spending time and resources on tasks like invoicing, scheduling, marketing, and customer service.[4]

In exchange for these benefits, fast food franchisees sacrifice autonomy in running their business.

Franchised stores have identical scheduling systems and staffing practices to stores owned and operated by their corporate parent. Fast food franchise stores have the same technological resources and general capacity to handle staffing needs.

The majority of large fast food franchisors retain significant control over the staffing and scheduling practices. Franchisors accomplish this by dictating when franchise stores must be open, requiring franchise stores to use sophisticated software that projects staffing needs based on customer traffic trends, and annual reviews of staffing practices.

Franchisors dictate operating hours, including opening and closing times, as well as holiday schedules.[5] For example, Burger King franchisees sued the corporation for requiring them to remain open until 2am.[6] Fast food franchisors also specify franchisee staffing levels.[7] McDonald's has imposed mandatory staffing and positioning software programs that tell franchise operators how many workers should be in the store at any given time based on sales.[8] Franchisees are also required to use McDonald's software to make weekly schedules. The

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[1] International Franchise Association, "WHAT ARE THE ADVANTAGES AND DISADVANTAGES OF OWING A FRANCHISE" http://www.franchise.org/what-are-the-advantages-and-disadvantages-of-owning-a-franchise

[2] "The Advantages of Franchising: Why Buy a Franchise?" October 3, 2013. http://www.franchisedeirect.com/information/guidetobuyingafranchise/whyinvestinafranchise/29/342

[3] Ben Baggett, "Starting Your Own vs. Building A Business," http://wwwfranchisegator.com/articles/starting-your-own-vs-building-a-business-11761/ See also: Joel Libava, "FRANCHISE OWNERSHIP: THE PROS AND CONS." http://www.franchiseking.com/franchise-ownership-pros-cons

[4] "Top Franchises 2014," Franchise Business Review. http://www.franchisebusinessreview.com/franchise-reportrs/top-franchises-2014/

[5] " What is A Franchise?" presentation at IFA legal symposium, May 15-17, 2011. p.31. http://www.franchise.org/sites/default/files/ek-pdfs/html_page/BASICS-TRACK---What-Is-A-Franchise_0.pdf

[6] "Late Night with the King: Franchisees sue over extended hours." Franchise Times. http://www.franchisetimes.com/September-2008/Late-night-with-the-King/

[7] Emily Decker (Vice Preisdent, General Counsel Buffalo Wild Wings), et al., "What is A Franchise?" presentation at IFA legal symposium, May 15-17, 2011, p.31. http://www.franchise.org/sites/default/files/ek-pdfs/html_page/BASICS-TRACK--What-Is-A-Franchise_0.pdf

[8] *Ochoa v. McDonald's Corp.*, 3:14-cv-02098 Declaration of Kathryn Slater-Carter (attached)

software system has functions to note workers' shift availability and calculates labor percentages that advise when workers should be sent home before their shift has ended.[9]

Finally, corporations ensure workers' are restricted to part-time work and low hours. While opponents of the bill claim decisions about the number of hours their workers receive are determined based on worker requests, franchisees tell a different story. For instance, former McDonald's franchisee Kathryn-Slater-Carter was penalized for failing to increase her store's use of part-time workers "in order to decrease labor costs and thereby increase for store renovations."[10] McDonald's used the threat of terminating her franchise license to compel her into compliance.

Franchisor control over franchisee scheduling practices refutes claims that fast food franchisees are small business owners that lack the logistical resources to comply with the law. Franchisees are required to have the same software and scheduling systems available at stores owned by the franchisor. Further, franchisees are not engaging in more benevolent scheduling practices than their corporate counterparts. They are required send workers home early and limit their hours by their corporate parent.

Franchised stores routinely provide financial incentives to franchisees to induce franchisees to take various actions and could do so to support any costs associated with "Just Hours"

While franchisors exert a high degree of control over franchisees' operations, as discussed above, that control is not absolute. In addition to their broad ability under typical franchise agreements to simply require franchisees to act, franchisors often provide financial incentives or assistance to franchisees in order to encourage certain practices. This is relevant to the bill because it offers a model for franchisors to shoulder responsibility for compliance costs and predictability pay.

Franchisors have significant flexibility in offering financial incentives to franchisees because franchisors often have more than one stream of revenue from franchisees. Of course, franchisors typically require franchisees to pay royalties as a percentage of franchisee sales. In addition, however, the following revenue streams are common in the fast food sector:

- ✓ **Sales of supplies.** Franchisors often either require or encourage franchisees to purchase food and/or other supplies from the franchisor.
- ✓ **Advertising funds.** Franchisors typically require franchisees to contribute a percentage

of their sales toward advertising. While those advertising dollars often do not go to the franchisor but to an advertising cooperative, franchisors often have the ability to direct the flow of funds to or from these nominally independent bodies to influence franchisee behavior, as discussed below.

- ✓ **Rent.** McDonald's and to a lesser extent some other franchisors are franchisees' landlords, offering another flow of cash that franchisors may use to shape franchisee actions. The extent to which franchisors use their control over these four franchisee cash flows –royalties, supply sales, advertising dollars and rent – to influence franchisee behavior can be partially

[9] *Supra* note 8
[10] *Supra* note 8

assessed by reviewing the SEC filings of publicly traded franchisors along with other publicly available information. A review of those sources finds numerous examples of franchisors offering franchisees reductions, discounts and/or rebates on all of these cash flows to encourage franchisees to take various actions, such as opening new stores, renovating existing stores or investing in major equipment. Here are some significant examples:

- **McDonald's:** The leading fast food franchisor imposes rents on franchisees as high as 16 percent of sales[11] on top of 4 percent royalties and 4 percent in advertising contributions. The company has used these revenue streams to offer numerous financial incentives to franchisees in recent years. McDonald's assistance to franchisees has included:
    - o Currently offering U.S. franchisees reduced rent as an incentive to remodel their stores.[12] In 2010 McDonald's similarly offered "rent relief" to encourage European franchisees to "reimage" their stores.[13] These are only the most recent examples of such renovation assistance, as the company has repeatedly provided franchisees in the U.S.[14] and overseas[15] various incentives to renovate.
    - o Unspecified incentives to U.S. franchisees to upgrade their debit/credit card payment systems in 2011.[16]
    - o Providing a rebate in the early 2000s to subsidize kitchen upgrades.[17]
- **Burger King:** Burger King has adjusted its various revenue streams in recent years to offer franchisees incentives for various purposes in recent years, including:
    - o Providing franchisees with royalty reductions, reduced franchisee fees and other "capital contributions" in the last several years to promote store renovations.[18]
    - o Reducing advertising fund contributions to promote new equipment purchases.[19]
- **YUM! Brands:** The parent company of KFC, Pizza Hut and Taco Bell has Provided franchisees with financial assistance in recent years including:
    - o Unspecified incentives for opening Pizza Hut and Taco Bell stores in rural areas of the U.S. in 2013.[20]

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[11] Julie Jargon, "Discontent Simmers Among McDonald's Franchisees," Wall Street Journal, June 2, 2015. http://www.wsj.com/articles/discontent-simmers-among-mcdonalds-franchisees-1433272884

[12] *Supra* note 11

[13] McDonald's CFO Pete Bensen, Q2 2010 McDonald's Corporation Earnings Conference Call - Final FD (Fair Disclosure) Wire July 23, 2010.

[14] Kathy Bergen, "McDonald's wants to rewrap restaurants," Chicago Tribune April 13, 2010.

[15] McDonald's CEO Jim Skinner, Q4 2008 McDonald's Corporation Earnings Conference Call - Fair Disclosure Wire January 26, 2009.

[16] McDonald's Secret PCI Sauce; News; Payment Card Industry American Banker October 4, 2011

[17] Sherri Day, "After Years at Top, McDonald's Strives To Regain Ground," New York Times, March 3, 2003. http://www.nytimes.com/2003/03/03/business/after-years-at-top-mcdonald-s-strives-to-regainground.html?pagewanted=all&src=pm

[18] Burger King Worldwide Inc. at UBS Global Consumer Conference Transcript - Fair Disclosure Wire March 14, 2013; Burger King Worldwide SEC Form 10-K, FYE December 31, 2014, p. 7.

[19] Burger King Worldwide SEC Form 10-K, FYE December 31, 2014, p. 8.

o Payments to Canadian and UK franchisees in exchange for opening new stores in 2012.[21]

- **Papa John's:** The number-three pizza chain has since at least 2010 offered various forms of financial aid to franchisees to promote various franchisor priorities, such as:
  - o Encouraging franchisees to open new stores by providing reduced royalties, waiving its franchise fee; providing free pizza ovens worth $50,000 and offering credits against purchases from Papa John's in-house supply arm.[22]
  - o Attempting to prevent distressed franchisees from closing stores in the wake of the recession by providing royalty relief as well as "Food cost relief by lowering the commissary margin on certain commodities" sold by the company's supply arm.[23]
  - o Providing a rebate on royalty payments for franchisees that meet sales growth targets.[24]
- **Domino's:** The country's second-largest pizza chain also offers incentives to franchisees, including:
  - o Encouraging franchisees to buy supplies from Domino's by sharing half of the profits from its supply operation with franchisees who purchase from Domino's exclusively.[25]
  - o Lowering royalty rates as an incentive for franchisees to open new stores.[26]

Clearly, when franchisors want franchisees to take actions that franchisors cannot simply mandate, they use the several cash flow streams under their direct or indirect control to offer financial incentives to promote those initiatives. Franchisors have created a system that puts pressure on franchisees' profit margins and provides a powerful incentive for franchisees to keep labor costs low. Therefore, now that the time has come to provide fast food workers with predictability pay, franchisors have the responsibility to fund those costs – and the demonstrated mechanisms to do so.

B21-512 will apply to a small number of Washington D.C. fast food establishments if franchises are excluded.

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[20] Q4 2012 Yum! Brands, Inc. Earnings Conference Call, Fair Disclosure Wire February 5, 2013; Yum! Brands, Inc. at Raymond James Institutional Investors Conference, Fair Disclosure Wire March 6, 2012.

[21] "Pizza Hut expansion to create opportunities in Wales," Daily Post December 11, 2012; Robert Gibbens, "Pizza Hut to boost number of Quebec restaurants," Canwest News Service, April 10, 2012.

[22] "Papa John's food service to continue franchise incentives in 2011," Franchise Plus December 21, 2010; "Papa John's Announces 2014 Development Incentive Program," January 8, 2014.
http://ir.papajohns.com/releasedetail.cfm?ReleaseID=818031 Papa John's Announces 2015 U.S. Development Incentive Program for New and Existing Franchisees, January 13, 2015
http://www.businesswire.com/news/home/20150113005293/en/Papa-John%E2%80%99s-Announces-2015-U.S.-Development-Incentive#.VYXj-PlViko

[23] Papa John's SEC Form 10-K, FYE December 30, 2012, p. 7.

[24] *Supra* note 23

[25] Domino's SEC Form 10-K, FYE December 30, 2014, p. 6

[26] Domino's SEC Form 10-K, FYE December 30, 2014, p. 4.

Fast food is a highly franchised industry. Virtually every fast food corporation operating in the District operates a signification portion of their stores through the franchising model. Many of the franchises that operate stores in Washington DC have fewer than 20 stores and would therefore be exempt from providing their workforce with predictable scheduling. If franchise stores that only reach the 20 store threshold by aggregating national franchise network are excluded from coverage, a large number of workers will not benefit:

- 0 out of 4 of Burger King stores will be covered by the bill[27]
- 1 out of 32 McDonald's stores will be covered by the bill[28]

In sum, there are few reasons to exclude franchised stores from coverage of the bill. Fast food franchise restaurants are drastically different from their small business counterparts, engage in the same scheduling practices as their corporate parent, and can rely on funding streams from the corporate parent to absorb the costs. In contrast, there is a very good reason to include fast food franchises in the bill. A large swath of workers be left out if Section 2, (7)(B)(ii) is removed or amended. If the bill is limited to franchise stores with 20 stores directly owned and operated by the franchisee, its protections will evade the District's workers that need it the most.

[27] Burger King Corp. Franchise Disclosure Document 2013 (attached)
[28] McDonald's Franchise Disclosure Document 2015 (attached)

	Base	Industry									
		Health care	Retail or wholesale trade	Education or a not-for-profit organization	Food services or production	Hospitality or cleaning services	Professional services	Construction or manufacturing	Transportation or utilities	Agriculture	Another industry
Fewer/More Hours Preference											
Prefer fewer hours even if it means earning less money	13%	23%	13%	8%	9%	-	8%	4%	18%	26%	16%
Prefer the same hours for the same pay	57%	43%	50%	70%	70%	11%	53%	57%	45%	57%	65%
Prefer to work more hours for additional pay	30%	34%	36%	21%	21%	89%	39%	38%	32%	17%	19%

	Base	Industry									
		Health care	Retail or wholesale trade	Education or a not-for-profit organization	Food services or production	Hospitality or cleaning services	Professional services	Construction or manufacturing	Transportation or utilities	Agriculture	Anothe industr
Fewer/More Hours Preference											
Prefer fewer hours even if it means earning less money	13%	11%	19%	12%	6%	11%	18%	11%	9%	24%	10%
Prefer the same hours for the same pay	68%	72%	58%	71%	59%	71%	61%	66%	74%	71%	69%
Prefer to work more hours for additional pay	20%	17%	22%	17%	35%	17%	22%	23%	17%	5%	21%

	Base	Fewer/More Hours Preference		
		Prefer fewer hours even if it means earning less money	Prefer the same hours for the same pay	Prefer to work more hours for additional pay
Industry				
Health care	22%	38%	16%	25%
Retail or wholesale trade	8%	8%	7%	10%
Education or a not-for-profit organization	29%	19%	35%	21%
Food services or production	5%	3%	6%	3%
Hospitality or cleaning services	1%	-	0%	4%
Professional services	13%	8%	12%	17%
Construction or manufacturing	6%	2%	6%	8%
Transportation or utilities	4%	6%	3%	4%
Agriculture	1%	2%	1%	1%
Another industry	11%	15%	13%	7%

	Base	Industry							
		Professional services	Retail or wholesale trade	Education, healthcare, or a non-for-profit organization	Construction or manufacturing	Transportation or utilities	Agriculture	Food services or production	Something else
Does # of Hrs Vary?									
Yes	55%	59%	63%	46%	54%	63%	84%	71%	48%
No	45%	41%	37%	54%	46%	37%	16%	29%	52%

	Base	Industry							
		Professional services	Retail or wholesale trade	Education, healthcare, or a non-for-profit organization	Construction or manufacturing	Transportation or utilities	Agriculture	Food services or production	Somethi el
Type of Shift									
Regular day shift	67%	71%	44%	81%	77%	58%	43%	40%	60
Evening shift	5%	3%	6%	4%	-	9%	5%	18%	5
Night shift	3%	3%	3%	1%	5%	6%	-	12%	-
Rotating shift	5%	1%	12%	1%	8%	8%	-	8%	8

Note 8 Attachment

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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – San Francisco

STEPHANIE OCHOA, *et al.*, on behalf of themselves and others similarly situated,

Plaintiffs,

vs.

MCDONALD'S CORP., *et al.*,

Defendants.

CASE NO. 3:14-cv-02098-JD

DECLARATION OF KATHRYN SLATER-CARTER

DECLARATION OF KATHRYN SLATER-CARTER

I, Kathryn Slater-Carter, declare as follows:

1. I am a former franchisee of two McDonald's restaurants in Daly City, California. I have personal knowledge of the facts set forth below and could competently testify upon these matters if called upon to do so. If called as a witness, I could and would testify competently to the matters below.

History as McDonald's Franchisee

2. My family has a long history with McDonald's. My father worked as a realtor for Ray Kroc, and later owned and operated several McDonald's franchised restaurants. I began working for my father's McDonald's restaurant business in 1979.

3. In 1981, my husband Edward Carter and I purchased an 8% interest in a McDonald's franchise location from one of my father's business partners. After my father retired and McDonald's acquired the interest in that location from my father in the fall of 1984, my husband and I purchased an interest in a franchise location on Serramonte Boulevard in Daly City. In 1989, following my father's death, my husband and I became the sole franchisees of the Serramonte Boulevard restaurant.

4. In December 1983, my husband and I became joint franchisees, together with my father, of another McDonald's restaurant located in the Serramonte Center shopping mall in Daly City. After my father died, my husband and I became the sole owners of the franchise rights to the Serramonte Center restaurant.

5. Before we acquired an interest in the Serramonte Boulevard restaurant, my husband attended Hamburger University in Oak Brook, Illinois, and was identified by McDonald's as the approved "owner-operator" for the two restaurants we operated. However, my husband and I were both signatories to the franchise agreements for the Serramonte Center and Serramonte Boulevard stores, and we worked together to manage the operation of both stores. I participated in meetings with representatives from McDonald's relating to the stores, including Business Review meetings, other formal operations reviews conducted by McDonald's, business unit meetings, and other meetings with McDonald's Pacific Sierra Region staff. I also represented the region at meetings of

the regional advertising cooperative, serving as both a director and treasurer of the cooperative.

6. In my role as co-franchisee, co-owner, and co-operator of the McDonald's franchises at the Serramonte Center and Serramonte Boulevard stores, I have personal knowledge of the terms of our franchise agreement with McDonald's, the requirements we were required to meet to maintain our status as McDonald's franchisees or to become or remain eligible for growth (such as by acquiring additional McDonald's restaurant franchises) and rewrite (i.e., entering into a new franchise agreement when the terms of our existing McDonald's franchise agreements expired), and other aspects of the relationship between our restaurants and McDonald's. Through my professional interactions with McDonald's and with other franchisees, I have obtained substantial personal knowledge of McDonald's interactions in these respects with other franchisees.

7. McDonald's rewrote and entered into new franchise agreements with my husband and me for both the Serramonte Center and Serramonte Boulevard stores in the 1990s. At that time, the term of the new franchise agreement for the Serramonte Center restaurant was through June 2014, and the franchise agreement for the Serramonte Boulevard restaurant was rewritten to extend into 2016.

8. As described in further detail below, McDonald's determined in 2011 that my husband and I were no longer eligible for rewrite on either of our two restaurants based in part on purported deficiencies in "owner-operator" involvement. Mwaffak Kanjee, McDonald's Vice President and General Manager for the Pacific Sierra Region, highly recommended that we sell the franchise rights to the restaurants because of McDonald's decision that we were no longer eligible for rewrite. After the value of our respective franchise rights was destroyed by McDonald's failure to negotiate a new lease for the Serramonte Center restaurant and significantly reduced by McDonald's requirement that the Serramonte Boulevard restaurant be rebuilt soon after rewrite, we agreed to sell the franchise rights to our restaurants back to another operator approved by McDonald's. The sale of our franchise rights became final in March 2015. We no longer franchise, own, or operate any McDonald's restaurants.

McDonald's Control Over Franchisees

9. As a franchisee, owner, and operator of two McDonald's restaurants, I experienced firsthand the extensive influence and control that McDonald's exercises over all aspects of operations in franchisee restaurants. McDonald's is able to exercise that control by virtue of its contractual rights under the franchise agreement, its rights as the landlord and master lessee to the property on which franchisee-operated restaurants are located, and its ability to determine, based on highly discretionary considerations, which franchisees are eligible for growth and rewrite. Because of the power over franchisees created by these mechanisms, each instruction provided by McDonald's to its franchisees regarding the operation of their restaurants—from informal advice to the formal directives and action items included in Business Reviews—carries with it the threat that non-compliance will result in an adverse decision regarding eligibility for growth and rewrite, which in turn may lead to termination of the franchise, significant devaluation of the franchise, or both.

10. One important way in which McDonald's exercises its control over franchisees is through its contractual right to terminate the franchise agreement. The provisions of the franchise agreement defining the "material" breaches sufficient to justify termination are vague and subjective. Our agreement, for example, permitted McDonald's to terminate our franchise if we failed "to maintain and operate the Restaurant in a good, clean, wholesome manner and in compliance with the standards prescribed by the McDonald's System." Those standards included the National Restaurant Building & Equipment Standards ("NRBES") and the National Franchising Standards ("NFS"). During my time as a franchisee, McDonald's created and then continuously modified both the NRBES and the NFS multiple times.

11. McDonald's right to pursue termination of our franchise if it subjectively concluded that our restaurants were not operated in a "good" or "wholesome" manner or did not comply with the standards established by the NRBES and the NFS gave us a very strong incentive to comply with McDonald's instructions and remain in McDonald's good graces. We invested significant capital in the franchised restaurants (frequently at McDonald's requirement), and the profits generated by the continued operation of the restaurants were the only likely means by which we could recover

that investment.

12. While my husband and I were franchisees, we were aware of multiple other franchisees whose franchise agreements McDonald's had decided not to rewrite or had terminated. We understood that McDonald's can and would exercise its right to end the franchise agreement if it concluded that it no longer wished to do business with us.

13. McDonald's also exercises control over franchisees through its regular determination of franchisees' eligibility for growth and rewrite. During the time my husband and I were franchisees, McDonald's practice was to conduct regular Business Reviews of franchisees' businesses, a review process that resulted in a determination of franchisees' eligibility for growth and rewrite. These Business Reviews generally occurred every twelve to eighteen months.

14. A franchisee must be eligible for growth and rewrite in order to purchase new franchises from McDonald's or, subject to McDonald's consent, to purchase franchise rights from other franchisees.

15. McDonald's requires its franchisees to invest significant capital in their restaurants, and often to incur significant personal debt in order to invest in and maintain their restaurants. Remaining eligible for rewrite—i.e., remaining eligible for a new franchise agreement when the current agreement expires—is crucial to recovering these investments and repaying these debts, because the revenues generated by restaurant sales are franchisees' only source of profit from the business. If McDonald's determines that a franchisee is not eligible for rewrite, as it did with our franchises in 2011, the franchisee risks losing her sole source of income, and the sale price of the franchise is often not enough for the franchisee to recover her capital investment and repay her debts.

16. The standards McDonald's applies in determining whether franchisees are eligible for growth and rewrite are complicated, subjective, and difficult to discern. Our case provides a good example of the subjective nature of that determination. According to McDonald's, the primary reason we were declared ineligible for growth and rewrite in 2011 was a purported deficiency in "owner-operator involvement," particularly with regards to my husband's failure to attend meetings of the regional advertising cooperative. As McDonald's was aware, however, I had long

attended those meetings on behalf of our restaurants, and had even served as a director and treasurer of the cooperative. During that time, McDonald's raised no concerns regarding my participation in those meetings on behalf of our franchised restaurants.

17. The other issues cited by McDonald's in deciding that we were not eligible for growth and rewrite were similarly arbitrary. For example, McDonald's informed us that its decision was based in part on our failure to introduce a new product on the regional roll-out date, and instead to mistakenly release the product on the nationwide roll-out date McDonald's had separately announced. McDonald's also cited our inadvertent pricing of certain coffee five cents above the price recommended by the cooperative. None of the issues described to us by McDonald's seemed to us to involve the kinds of significant problems that would justify terminating a longstanding and productive business relationship. McDonald's, however, informed us in 2011 that it would not be rewriting the agreement for either the Serramonte Center restaurant, which was set to expire in June 2014, or the Serramonte Boulevard restaurant, which was set to expire in 2016.

18. McDonald's later restored our eligibility for growth and rewrite as to the Serramonte Boulevard restaurant. Because McDonald's had demonstrated that it could and would seek to end its business relationship with us on the basis of inaccurate claims about the restaurant's operations, and because we did not feel that we could trust McDonald's going forward, we chose to end our relationship with McDonald's by selling the rights to our restaurants, although the value of those rights was diminished by McDonald's actions—in particular its decision to require that any purchase agreement with another franchisee provide for an expensive rebuild of the Serramonte Boulevard restaurant soon thereafter.

19. Given the importance of remaining eligible for growth and rewrite to our business and the complicated, subjective, and difficult-to-discern standards used by McDonald's in making its determinations regarding such eligibility, every instruction that representatives of McDonald's gave us regarding the operation of our stores carried the implied threat that, if we disregarded McDonald's instructions, it would be held us against us when McDonald's reviewed our eligibility for growth and rewrite. This was particularly true as to the instructions and "action items" included in the Business Reviews and formal operations reviews, and as to directions coming from

McDonald's business consultants, field service managers, and vice presidents, who played a direct role in deciding whether our franchise relationship with McDonald's would continue.

McDonald's Control of Restaurant Operations

20. McDonald's exercised control over numerous aspects of our franchised restaurants' operations, including by requiring and pressuring us to use particular technologies, training curriculum, and job classifications and management structures.

21. At the start of our relationship with McDonald's, we exercised a fair amount of discretion in determining how to staff our restaurants and train our employees. In the last 10 years of that relationship, however, those aspects of our restaurants' operations were determined largely by McDonald's requirements, which were conveyed and applied to all franchisees in the Pacific Sierra Region.

22. For example, our franchised restaurants implemented the Restaurant Department Management ("RDM") system required by McDonald's. The RDM system is a system of organizing work in the stores into three specified departments, with the designation of Department Managers for each of the departments. We were pressured by McDonald's to go through its three-phase implementation program for RDM, and understood that we needed to identify three Department Managers, even though we previously had not organized our management structure in that way.

23. Similarly, McDonald's required our organization to meet staffing and scheduling targets in order to implement McDonald's proprietary Staffing, Scheduling and Positioning ("SSP") system. This was critical, because in our Business Reviews with McDonald's, we were directed to transition the stores to SSP and to use McDonald's scheduling and positioning tools.

24. We staffed the stores in accordance with McDonald's requirements in other ways as well. For example, McDonald's graded us on whether we had an adequate number of "shift certified managers," which meant that our shift managers needed to complete specific training classes that McDonald's identified as necessary to be "shift certified." We had previously conducted our own trainings for shift managers and other employees, but McDonald's informed us that our shift managers should be trained on the McDonald's curriculum, which it offered to shift managers at its

Walnut Creek regional office.

25. McDonald's likewise required that the general manager at each restaurant have completed training at Hamburger University, and told us that the H.U.-graduate requirement applied to our Serramonte Center restaurant even though mall stores were otherwise exempt from that requirement. We therefore had to pay for an employee to travel to Illinois for the one-week training. Because of this requirement, we also concluded that we needed to delay firing an H.U.-trained manager, despite good cause to do so, while we searched for a replacement who satisfied McDonald's requirements.

26. McDonald's also required us to use a computer-based crew member training system known as "McDonald's Connection," which we had to purchase from a McDonald's vendor. McDonald's also evaluated whether our crew members had completed McDonald's "station operation checklists" for the different stations within each restaurant as part of the Full Operations Review conducted by McDonald's business consultants.

27. In addition to defining the management positions within each restaurant and the McDonald's-provided training necessary to fill those positions, McDonald's representatives pressured us to adopt particular ratios of management to non-management employees. For example, in our 2012 Business Review (in which McDonald's confirmed its position that the Serramonte Center store was not eligible for rewrite), McDonald's instructed us to increase the number of shift managers and "crew trainers" whom we employed to the levels that McDonald's recommended. The 2012 Business Review recap letter is attached hereto as Exhibit 1.

28. In that 2012 Business Review, McDonald's also instructed us to change the ratio of full-time to part-time employees in our restaurants and to use an on-call system to cover unexpected absences. As a business, we believed that providing full-time employment lowered turnover, and that an "on-call" system would be inconvenient for employees and harmful to the employee relationship. McDonald's, however, pressured us to change those practices. The 2012 Business Review, for example, instructed us to increase our use of part-time employees because doing so would "provide restaurants the ability to properly staff the restaurants and assist in creating a better schedule built on the customer flow versus only focusing on needs of our crew." At other times,

McDonald's representatives told us that we employed too many full-time workers and that we needed to increase our use of part-time workers and schedule workers for shorter shifts in order to decrease our labor costs and thereby increase the funds available for reinvestment into the business.

29. McDonald's penalized us for failing to adhere to its preferred part-time to full-time ratios by raising the issue verbally during operations reviews and Business Reviews and then noting in the written review of those meetings that the Review had emphasized that we needed to bring our practices into "alignment" with McDonald's policies.

30. McDonald's staffing and scheduling requirements were evident in its In-Store Processor (ISP) system. Like every other franchisee, we were required to purchase, install, and use the ISP system so that McDonald's could track sales within each restaurant (which determined McDonald's rent payment). As a separate matter, McDonald's required all franchisees to use appropriate scheduling and timekeeping programs. We understood, however, that the only scheduling and timekeeping programs McDonald's had declared appropriate were the ISP's built-in scheduling and timekeeping programs. Accordingly, we were effectively required to use those ISP programs as well.

31. By default, the ISP's scheduling program created schedules in which workers were assigned to shifts shorter than the eight-hour shifts that employees typically worked in our stores. Because of this default setting, we had to revise the schedules manually so that, for example, one crew member would work an eight-hour shift rather than having two crew members work four-hour shifts. We asked McDonald's to change the settings in the ISP so that it would generate schedules consistent with our staffing preferences, but McDonald's refused to do so. Instead, McDonald's continually pressured us to assign crew members to shorter shifts and to increase our use of part-time employees, and noted our failure to do so in formal business and operations reviews.

32. McDonald's also required us to implement an anonymous employment commitment survey and pressured us to use its preferred vendor for that survey. When McDonald's instructed us to begin conducting such surveys, we hired a professional organization to conduct a survey comparable to that proposed by McDonald's. However, McDonald's was dissatisfied with our

decision to use a vendor other than the vendor McDonald's had chosen, and exerted pressure on us to begin using McDonald's preferred vendor—which reported the employee survey results to McDonald's. Out of concern that noncompliance with McDonald's instructions could lead McDonald's to terminate our franchise or deny rewrite, we eventually acquiesced and hired McDonald's preferred vendor to conduct those surveys.

33. McDonald's also required us to subscribe to the R2D2 data analytics service, which pulled data from the ISP and then analyzed it in various ways. Although that service was originally offered as a tool for franchisees to use if they so chose, McDonald's required that the system be installed as part of McDonald's corporate security policy for credit card purchases. Each of our business consultants asked us for access to R2D2 information, and we felt that we had to provide the consultants with the requested access lest our denial be cited as a reason to deem us ineligible for growth and rewrite.

34. McDonald's also pressured us to use its "Hiring To Win" tools to hire employees for our restaurants, and evaluated our participation in "Hiring To Win" as part of the Full Operations Review process. Our decision not to participate in "Hiring To Win" was another reason a McDonald's business consultant informed us that our practices were "not aligned" with McDonald's corporate policies.

35. My experience with McDonald's over the past decade shows that McDonald's has inserted itself into practically every aspect of a franchised restaurant's operations, and under the guise of ensuring efficient and profitable operations, has imposed staffing structures, staffing schedules, and training requirements that are not freely chosen by franchisees. McDonald's uses its regular operations reviews and Business Reviews, as well as visits and communications from McDonald's staff, to ensure that franchisees understand that complying with and implementing the McDonald's System is necessary if franchisees want to remain eligible for growth and rewrite and to be successful.

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I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

Executed this ~~10th~~ 16th of June, 2015, at ~~Detroit, Michigan~~ Caen, France.

/s/ Kathryn Slater-Carter
Kathryn Slater-Carter

EXHIBIT 1

McDonald's USA

2999 Oak Road, Suite 900
Walnut Creek, CA 94597
925.949.4000 Main
925.949.4100 Fax

May 29, 2012

Ed Carter
335 Waterford St. #1
Pacifica, CA 94044

Dear Ed:

This letter serves to summarize our Business Review meeting held with you on May 22, 2012. Attached is a copy of the Business Review Report that we discussed at that meeting. In attendance were myself, Lisa Fischer, Jason Sawyer, Kathryn Carter, Kacie Carter and Miles Lipton.

We informed you that you were eligible for growth and rewrite at this time. Please note that eligibility is not an assurance of future growth.

During the course of the Business Review, we discussed a number of action items which will be important to your organization moving forward.

Operations:

- We discussed the need for the organization to continue to focus on the fundamentals of shift management. These fundamentals, such as accurately completing the pre-shift checklist and travel paths, will assist the organization in addressing the other key opportunities including VCMS and detail cleanliness in the restaurant.
- Transition the restaurants to Staffing, Scheduling, and Positioning (SSP). These tools will ensure that you have restaurant properly staffed to capture sales and have enough shift managers to perform all necessary tasks in the restaurant while being able to manage the floor correctly. The last benefit is the ability to use the Dynamic Shift Positioning Guide. The positioning guide will ensure that you have the right people in the right place based on your restaurants configuration and sales volume. It also identifies where to properly place additional crew to continue to build sales.
- Building the Peak Hour Performance was another topic of conversation. Field Service will work with your team to complete a Building the Peak Hour workshop at your Serramonte Blvd restaurant. This workshop is designed to maximize the restaurants operations, proper positioning of equipment/crew, and build capacity during peak hours.

People:

- Use the crew staffing calculator when setting crew staffing targets to ensure that each of your restaurants has the proper number of crew on an ongoing basis. Part time employees provide restaurants the ability to properly staff the restaurants and assist in creating a better schedule built on the customer flow versus only focusing on needs of our crew. This will be key as you continue to focus on building your peak periods.
- With the information that was submitted for the Business Review, your organization needs an additional 3 managers to meet the staffing guidelines highlighted in SSP. In the plan that you submitted, you identified enough managers to meet and exceed this guideline. We recommend that you complete the submitted people plan by the dates that you listed.
- The target for the proper number of crew trainers in a restaurant is 15% of your total crew size. This provides a pipeline for future shift managers in the organization and will allow for better trained shift managers in your restaurants once the crew trainers completed their specific curriculum. Also, please ensure that each crew trainer is coded properly in the ISP.

Reinvestment:

- All NRBES items that were identified during the NRBES walkthrough must be completed by November 22, 2012.
- While the lobby at the Serramonte Mall location has been identified as not meeting NRBES, we have agreed that it does not have to be completed until additional lease tenure has been secured.
- Your Serramonte Blvd. restaurant is on the Regional Vision plan as a rebuild. This will be a condition of rewrite when the franchise expires in May 2016.

Customer Satisfaction:

- Extended and 24 hour operations are a growing day part in today's business environment and have proven to be profitable for many of our restaurants. We ask that you take a strong look at adding 24 hour operations to your Serramonte Blvd restaurant. This restaurant appears to meet the screens that have been identified for successful implementation of 24 hours.

During our discussion, you requested that you be kept up to date on the lease situation at the Serramonte Mall. We will work with our development team to ensure that you are provided an update on any progress. You may contact John D'Anna, the Regional Development Director, as your point of contact regarding this matter.

I reminded you that McDonald's has denied rewrite on your Serramonte Mall restaurant and the term expires on June 15, 2014. Should you have any questions or need any assistance please let us know.

It is critical that you maintain your eligibility for growth and rewrite in each of the 5 National Franchising Standards. Your Serramonte Blvd. restaurant is up for rewrite in May 2016, and the region will be making our recommendation to the rewrite committee in 2013.

If you have any additional questions, please feel free to call.

Sincerely,

Dan Gehret - Vice President of QSC
Pacific Sierra Region

Cc; Mwaffak Kanjee, Vice President and General Manager
Michelle Wherry, Director of Operations
Lisa Fischer, Field Service Manager
Jason Sawyer, Business Consultant

Note 27 Attachment

SCHEDULE 2

BURGER KING FRANCHISE BUSINESSES AS OF DECEMBER 31, 2012

State	City	Address	Zip	Rest. No.	Telephone Number	Franchise Group
CT	Waterbury	Brass Mill Mall	6710	11136	(203) 757-8172	Jan Co Central, Inc.
CT	Waterbury	198 Thomaston Avenue	06702-1018	205	(203) 757-7728	Northeast Foods, LLC
CT	Waterbury	464 Reidville Drive	06705-2650	4855	(203) 753-5127	Northeast Foods, LLC
CT	Waterford	Crystal Mall	6385	4607	(860) 444-1599	Jan Co Central, Inc.
CT	Watertown	1258 Main Street	06795-3128	3763	(860) 274-8708	Northeast Foods, LLC
CT	West Haven	644 Campbell Avenue	06516-4408	2752	(203) 932-6274	Northeast Foods, LLC
CT	Wethersfield	872 Silas Deane Highway	06109-3412	5586	(860) 721-1366	Muirhead/Palermo
CT	Willimantic	59 Columbia Avenue	06226-1905	3461	(860) 456-0694	Jan Co Central, Inc.
CT	Willington	327 Ruby Road	06279-2415	9628	(860) 684-0499	TA Operating Corp.
CT	Windsor Locks	84 Ella Grasso Turnpike	06096-1015	3299	(860) 627-5537	Pimentel/Paulauskas
DC	Washington	Bolling AFB-AAFES-BK	20332	6264	(202) 561-4447	Army Air Force Exchange Services
DC	Washington	4422 Connecticut Ave. , N. W.	20008-2301	2902	(202) 363-8218	Di Severia, Michael C.
DC	Washington	1771 Columbia Road NW	20009-2813	11921	(202) 986-0953	Henry/Henry
DC	Washington	501 G Street North West	20001-2615	6404	(202) 682-0497	Republic Foods, Inc.
DC	Washington	320 Florida Avenue NE	20002-3436	12863	(202) 546-7525	Republic Foods, Inc.
DC	Washington	50 Massachusetts Ave., NE	20002	18939	(202) 350-4667	Union Fast Food, LLC
DE	Bear	1170 Pulaski Highway	19701-1306	12163	(302) 838-1900	Suber/Suber/Gaus
DE	Claymont	2911 Philadelphia Pike	19703-2507	684	(302) 246-5667	Odyssey Foods of 684, LLC
DE	Dover	211 South Du Pont Highway	19901-4732	3213	(302) 734-4545	Suber/Suber/Gaus
DE	Dover	1600 South Dupont Highway	19901-5120	13866	(302) 734-7042	Suber/Suber/Gaus
DE	Dover Afb	Dover AFB	19902	7030	(302) 734-7464	Army Air Force Exchange Services
DE	Georgetown	Intersection Of Rts. #18 & 113	19947-2110	6089	(302) 856-1593	Di Severia, Michael C.
DE	Middletown	600 Ash Boulevard	19709-8878	11636	(302) 376-1979	Suber/Suber/Gaus
DE	Milford	943 N. Dupont Boulevard	19963-1072	14460	(302) 424-2272	Di Severia, Michael C.
DE	New Castle	101 North Dupont Parkway	19720-3101	2106	(302) 322-3666	Odyssey Foods of 2106, LLC
DE	New Castle	1530 North Du Pont Highway	19720-1902	3801	(302) 613-2573	Odyssey Foods of 3801, LLC
DE	Newark	30 South Chapel Avenue	19711-4627	1068	(302) 368-5346	D-M Del, Inc.
DE	Newark	2690 Kirkwood Highway	19711-7241	2663	(302) 731-0155	Harting/Harting
DE	Newark	530 JFK Memorial Hwy	19702-5427	17582	(410) 228-6386	HMS Host Tollroads, Inc.
DE	Newark	1300 Peoples Plaza	19702-5607	12351	(302) 838-9380	Suber/Suber/Gaus
DE	Newark	680 Four Seasons Parkway	19702	13751	(302) 738-2983	Suber/Suber/Gaus
DE	Rehoboth Beach	18784 Coastal Highway	19971-6156	3453	(302) 645-2707	Czerwinski/Czerwinski
DE	Seaford	24456 Sussex Highway	19973-8469	2841	(302) 629-2649	Czerwinski/Czerwinski
DE	Wilmington	300 South Maryland Avenue	19804-1345	5190	(302) 995-1070	3H Del, Inc.

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Website Directions

Burger King
4422 Connecticut Ave NW
(202) 363-8218
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Burger King
Bolling Afb-aafes-bk 195, Chappie ...
(202) 561-4447
Open until 9:00 PM
Website Directions

Burger King
Open until 10:00 PM
Website Directions

Burger King
2208 University Blvd E
(301) 439-7418
Open until 12:00 AM
Website Directions

Burger King
3627 Columbia Pike
(703) 553-9455
Open until 12:00 AM
Website Directions

Burger King
10625 Baltimore Ave
(301) 937-5497
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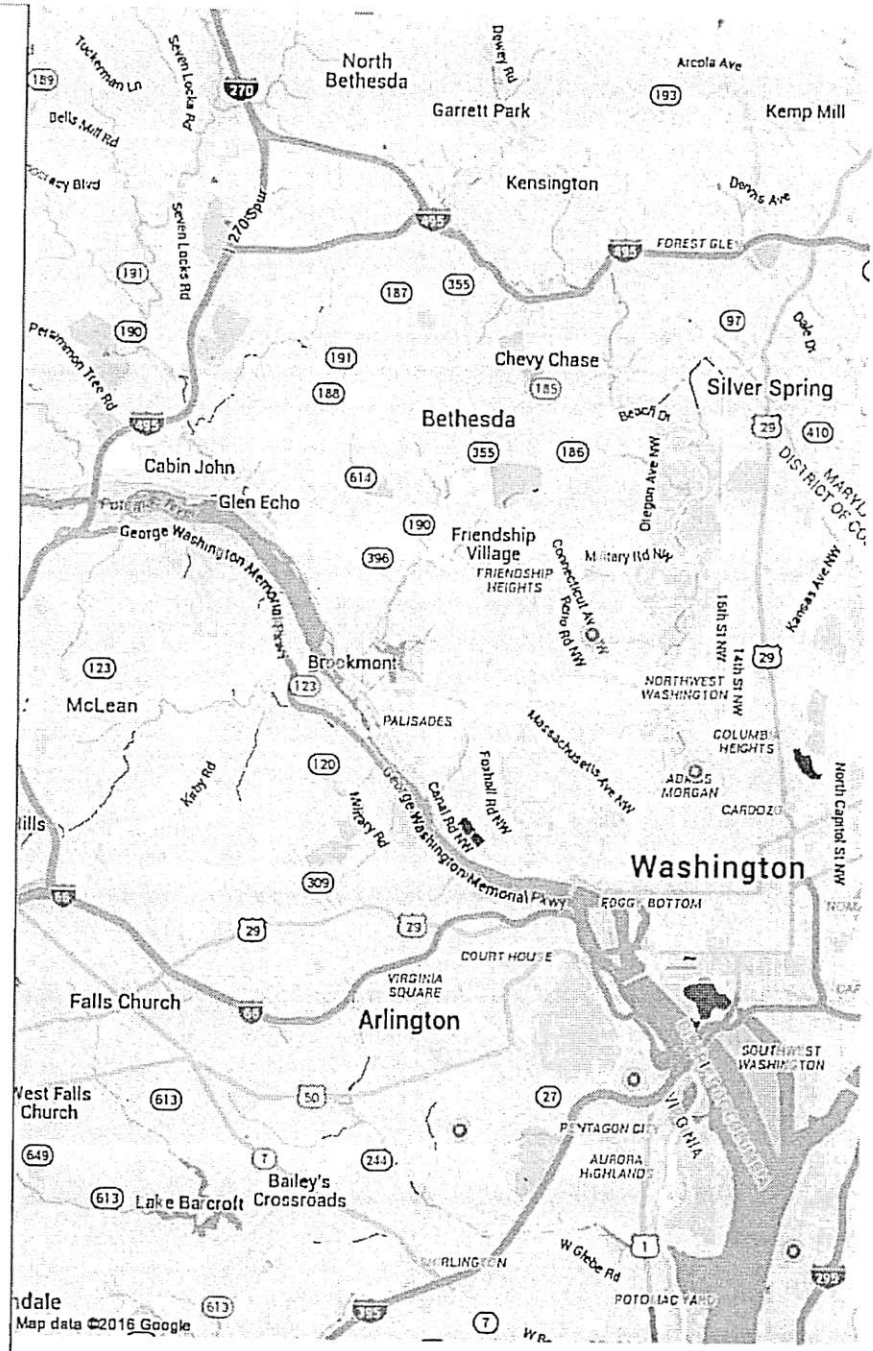

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Note 28 Attachment

EXHIBIT R – LIST OF FRANCHISED RESTAURANTS (Continued)

MICHAEL A MEOLI	24943 JOHN J. WILLIAMS HWY., MILLSBORO, DE 19966	302-947-2602
CHARLES F EHLERS	101 SOUTH DUPONT HIGHWAY, NEW CASTLE, DE 19720	302-322-3798
CHARLES F EHLERS	3010 NEW CASTLE AVE, NEW CASTLE, DE 19720	302-656-9717
CHARLES T EHLERS	700 N. DUPONT HIGHWAY, NEW CASTLE, DE 19720	302-328-8804
ALAN DUKART	815 SOUTH COLLEGE AVENUE, NEWARK, DE 19713-4001	302-738-7857
LESLIE DUKART	374 EAST MAIN STREET, NEWARK, DE 19711-7149	302-737-0502
CHARLES F EHLERS	4160 OGLETOWN/STANTON ROAD, NEWARK, DE 19713	302-737-4424
MANISH SHAH	CHRISTIANA MALL, NEWARK, DE 19702	302-454-1400
MICHAEL A MEOLI	18878 COASTAL HWY, REHOBOTH BEACH, DE 19971	302-645-4885
KENNETH D HOFF ESTATE	300 N DUAL HWY, SEAFORD, DE 19973	302-629-3666
MICHAEL A MEOLI	38215 DUPONT BLVD, SELBYVILLE, DE 19975	302-436-6036
LANIE SALEBRA	333 N DUPONT HWY, SMYRNA, DE 19977	302-653-6330
CHARLES F EHLERS	1790 W NEWPORT, STANTON, DE 19804	302-994-0162
LESLIE DUKART	2507 CONCORD PIKE, WILMINGTON, DE 19803-5002	302-478-5685
CHARLES F EHLERS	4625 KIRKWOOD HIGHWAY, WILMINGTON, DE 19808-5005	302-999-8170
RAOUL GREGORY ALVAREZ	4950 S DAKOTA NE, WASHINGTON, DC 20017	202-529-5126
RAOUL GREGORY ALVAREZ	1901 9TH ST NE, WASHINGTON, DC 20018	202-832-9225
MARK W FURR	2228 NEW YORK AVE NE, WASHINGTON, DC 20002	202-526-2835
MARK W FURR	424 RHODE ISLAND AVE NE, WASHINGTON, DC 20002	202-526-3138
RONALD J GANTT	911 EAST ST NW, WASHINGTON, DC 20004	202-347-1940
RONALD J GANTT	2529 GOOD HOPE RD SE, WASHINGTON, DC 20020	202-582-5220
LUIS E GAVIGNANO	5948 GEORGIA AVE NW, WASHINGTON, DC 20011	202-291-5043
LUIS E GAVIGNANO	14TH & U ST NW, WASHINGTON, DC 20009	202-462-6140
LUIS E GAVIGNANO	450 5TH ST NW, WASHINGTON, DC 20001	202-628-5903
LUIS E GAVIGNANO	601 F ST NW, WASHINGTON, DC 20004	202-737-0119
LUIS E GAVIGNANO	75 NEW YORK AVE NE, WASHINGTON, DC 20002	202-789-0276
LUIS C MATEOS	1235 NEW YORK AVE NW, WASHINGTON, DC 20005	202-347-9497
LUIS C MATEOS	3901 MINN AVE / DIX ST N, WASHINGTON, DC 20019	202-399-0686
LUIS C MATEOS	4301 NH BURRGHS AVE NE, WASHINGTON, DC 20019	202-399-1396
LUIS C MATEOS	2 I ST SE, WASHINGTON, DC 20003	202-479-0518
LUIS C MATEOS	400 C ST SW, WASHINGTON, DC 20024	202-484-0803
LUIS C MATEOS	750 17TH ST NW, WASHINGTON, DC 20006	202-828-8311
JOSEPH E MONTOYA	2481-83 18TH ST NW, WASHINGTON, DC 20009	202-332-1805
JOSEPH E MONTOYA, JR.	2616 CONEECTICUT AVE NW, WASHINGTON, DC 20008	202-462-8773
DAVID W RARDIN	555 13TH ST NW, WASHINGTON, DC 20004	202-638-5933
KYUNG B RHEE	1619 17TH ST NW, WASHINGTON, DC 20009	202-234-9327
KYUNG B RHEE	1916 M ST NW, WASHINGTON, DC 20036	202-296-8839
BHUPENDRA SHAH	1635 BENNING RD, WASHINGTON, DC 20002	202-397-1190
BHUPENDRA SHAH	839 8TH & H ST NE, WASHINGTON, DC 20002	202-546-4640
BHUPENDRA SHAH	1539 PENNSYLVANIA AVE SE, WASHINGTON, DC 20003	202-547-4851
NEVA VAN VALKENBURG	5300 WISCONSIN AVE, WASHINGTON, DC 20015	202-244-1122
NEVA VAN VALKENBURG	4130 WISCONSIN AVE NW, WASHINGTON, DC 20016	202-363-3955
NEVA VAN VALKENBURG	955 LENFANT PLAZA NORTH SW, WASHINGTON, DC 20024	202-484-0525
CRAIG T WELBURN	2328 GEORGIA AVE NW, WASHINGTON, DC 20001	202-387-2111
CRAIG T WELBURN	UNION STA/50 MASS AVE, WASHINGTON, DC 20002	202-408-5014
CRAIG T WELBURN	7425 GEORGIA AVE NW, WASHINGTON, DC 20011	202-882-6372
MICHAEL STREICHER	16018 NW USHY 441, ALACHUA, FL 32615	386-462-1187
ROBERT J ALLEGROE	3141 E SEMORAN BLVD, APOPKA, FL 32703	407-869-8076
ROBERT J ALLEGROE	1681 ROCK SPRINGS RD, APOPKA, FL 32712	407-880-4434
ROBERT J ALLEGROE	233 E MAIN ST, APOPKA, FL 32703	407-886-0822
EDD G VOWELS	1203 OAK ST, ARCADIA, FL 34266	863-494-1312
JACQUES GUSKE	435 ATLANTIC BLVD, ATLANTIC BEACH, FL 32233	904-246-9577
ALISON ZAYAS-BAZAN	1003 US HWY 301 S, BALDWIN, FL 32234-3601	904-266-4808
ROBERT J BATEMAN	1470 N BROADWAY, BARTOW, FL 33830	863-533-4003
STEVEN NISBET	833 S MAIN ST, BELLE GLADE, FL 33430	561-996-7122
JUAN C PRADO	5515 SE ABSHIER BLVD, BELLEVIEW, FL 34420	352-307-5726
DAVID MICHAEL COSTA	20495 W CENTRAL AVE, BLOUNTSTOWN, FL 32424-2147	850-674-2977
JAMES R UPCHURCH, JR.	21150 S MILITARY TRAIL, BOCA RATON, FL 33486	561-391-5185
JAMES R UPCHURCH, JR.	2140 N FEDERAL HWY, BOCA RATON, FL 33431	561-392-7776
CARLTON R WADE	7030 PALMETTO PARK RD, BOCA RATON, FL 33433	561-392-6768
CARLTON R WADE	20594 STATE RD #7, BOCA RATON, FL 33498	561-482-6110
CARLTON R WADE	23073 SANDALFOOT PLAZA DR, BOCA RATON, FL 33428	561-483-9876
MARK WATSON	710 YAMATO ROAD, BOCA RATON, FL 33431	561-549-0174
MARK WATSON	2911 CLINTMOORE RD, BOCA RATON, FL 33496	561-994-3502
DENNIS W LAREAU	2010 S. WAUKESHA ST., BONIFAY, FL 32425	850-547-3334
MICHAEL LEE ADAMS	27998 OAKLAND DR, BONITA SPRINGS, FL 34135	239-498-8838
MICHAEL LEE ADAMS	28215 TAMIAMI TRL, BONITA SPRINGS, FL 33923	239-947-3300
MICHELE K HEISNER	1610 S CONGRESS AVE, BOYNTON BEACH, FL 33436	561-732-3331
PAUL G RAFFA	1799 N CONGRESS BLVD, BOYNTON BEACH, FL 33435	561-369-1550
JAMES R UPCHURCH, JR.	1810 S FEDERAL HWY, BOYNTON BEACH, FL 33435	561-737-4848
MARK WATSON	9915 JOG RD, BOYNTON BEACH, FL 33437	561-732-7999
MARK WATSON	9858 MILITARY TRL, BOYNTON BEACH, FL 33436	561-738-0961
CYNTHIA KENNEDY	11150 SR #64, BRADENTON, FL 34212	941-749-7909
CYNTHIA KENNEDY	7300 CORTEZ RD, BRADENTON, FL 34210	941-795-7863
SAMUEL G KENNEDY	6708 MANATEE AVE W, BRADENTON, FL 34209	941-794-8227
BLAKE J CASPER	502 W BRANDON BLVD, BRANDON, FL 33511	813-685-1355
BLAKE J CASPER	985 E BLOOMINGDALE AVE, BRANDON, FL 33511	813-685-9163
BLAKE J CASPER	11212 CAUSWAY BLVD, BRANDON, FL 33511	813-689-7931

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Website Directions

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2328 Georgia Ave NW
(202) 387-2111
Open 24 hours
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McDonald's
1944 14th St NW
(202) 462-6140
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McDonald's
1235 New York Ave NW
(202) 347-9496
Open 24 hours
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McDonald's
2481 18th St NW
(202) 332-1805
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McDonald's
750 17th St NW
(202) 828-8311
Open until 11:00 PM
Website Directions

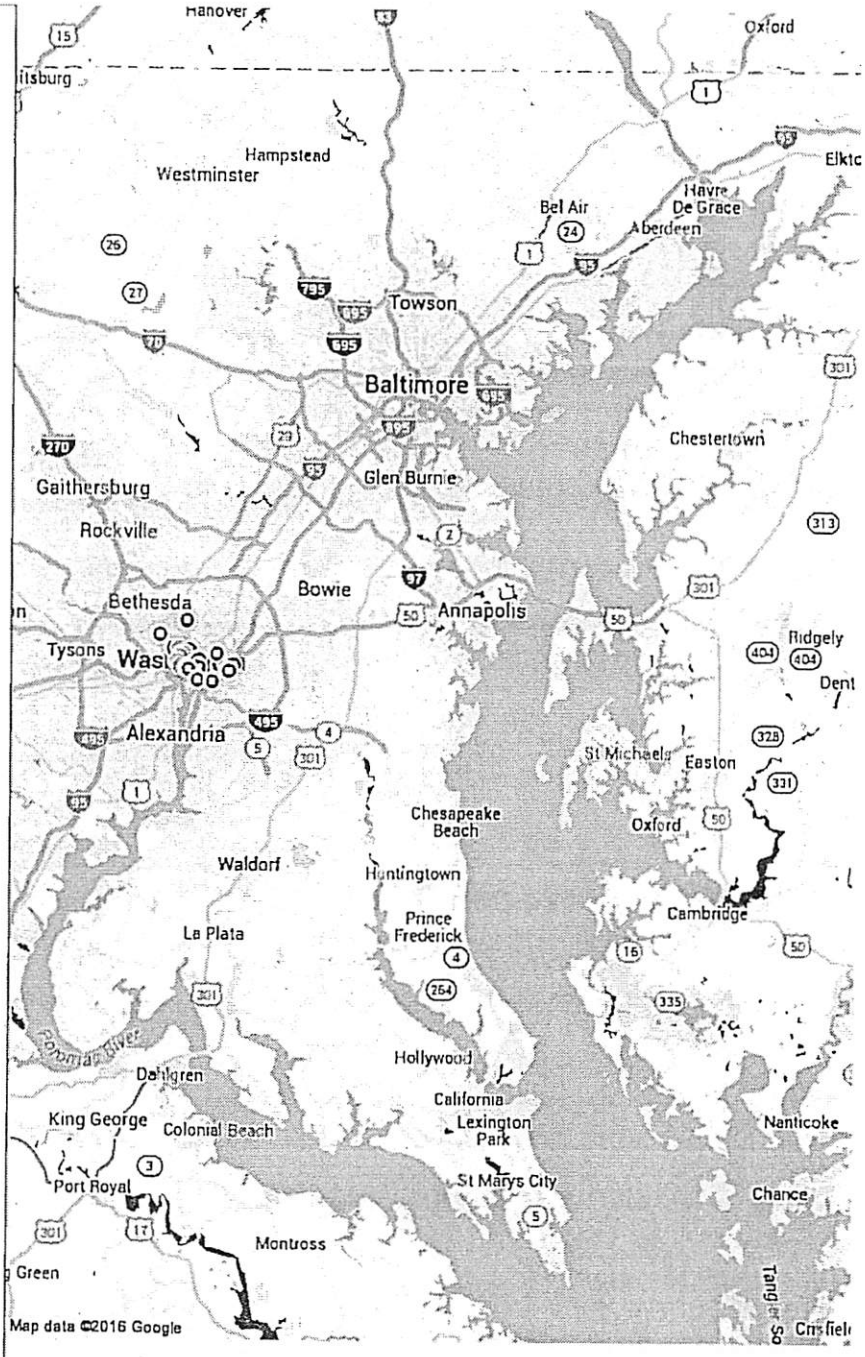
McDonald's
555 13th St NW
(202) 638-5933
Open until 11:00 PM
Website Directions

McDonald's
Verizon Center
601 F Street Northwest
(800) 244-6227
Open 24 hours
Website Directions

McDonald's
2616 Connecticut Ave NW
(202) 462-8773
Website Directions

McDonald's
3901 Minnesota Ave NE
(202) 399-0686
Open 24 hours
Website Directions

McDonald's
4130 Wisconsin Ave NW
(202) 363-3955
Open 24 hours
Website Directions



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(202) 526-3138
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(202) 397-1190
Open until 11:00 PM
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(202) 529-5126
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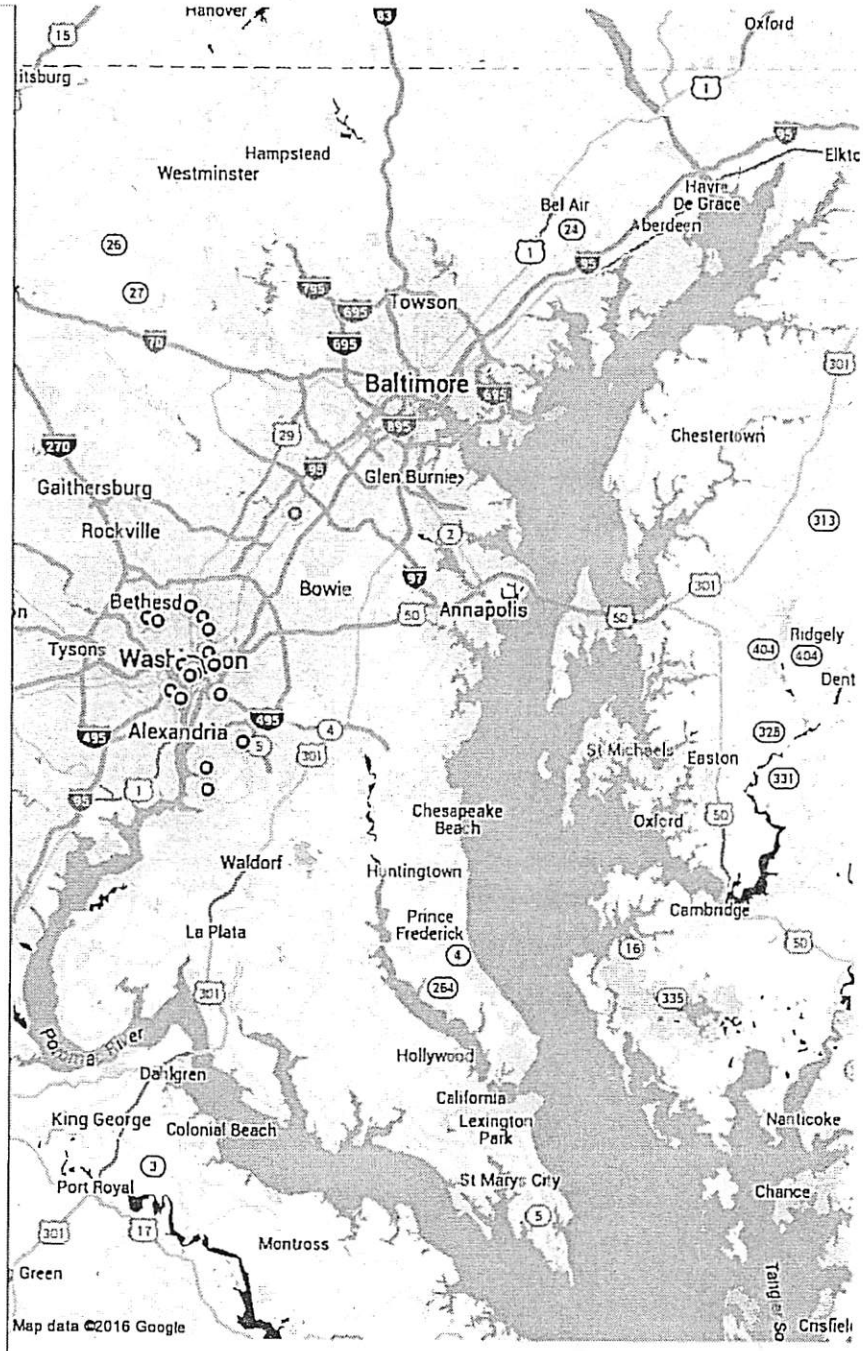

So Others Might Eat

71 "O" Street, NW
Washington, DC 20001
Tel: (202) 797-8806
Fax: (202) 265-3849
Web: www.some.org

Testimony of Samantha Davis, Senior Advocacy Specialist
BCRA Public Hearing on B21-331 & B21-512
1/13/15

Good morning, Councilmember Orange and Committee members. Thank you for introducing this legislation and holding this hearing today.

I am Samantha Davis, the Senior Advocacy and Community Engagement Specialist at SOME (So Other's Might Eat). I am happy to be here today to show SOME's support for the "Hours and Scheduling Stability Act of 2015".

SOME is an interfaith nonprofit that has served homeless and low-income individuals in the District of Columbia for 44 years. We offer comprehensive social-services providing transitional and long-term housing, emergency services, medical care, addiction treatment, and employment training. Throughout all of our programs we are serving 11,000 homeless and low income DC residents a year.

We are all too aware of the multiple barriers that low income district residents face when striving to uphold a high quality life for their families: trauma, lack of affordable housing, limited access to and availability of education services, careers, health care, food, transportation...etc. We are in a city where an individual must earn $49,200 annually in order to afford a 1 bedroom apartment at market price. However, according to DC JWJ's latest report; "Unpredictable, Unsustainable: The Impact of Employers' Scheduling Practices in D.C; the median hourly pay in early 2015 was just $10.00. The typical employee worked 32 hours per week, making the annual income just about $16,000. In recent years, both the Mayor and members of the Council have expressed commitments to tackling various social ills that continue to torment and oppress D.C low-income communities and communities of color; homelessness, affordable housing, TANF, public safety...etc. The one underlining issue with all of these examples is economic security. The one consistent thing that I hear when speaking with community members about rising out of poverty is not solely "I need a job", but I need a job that pays well and allows me to support my family. While the task of job creation is daunting and long-term, we have the ability to work within the jobs that are already available to ensure that they are providing their workers with the means to support themselves and their families.

Our own employment data from our housing programs highlights many of the similar concerns that this bill will address.

Among our single adult residents:

- 93 were employed FT and 71 employed PT.
- Salaries ranged from minimum wage upwards to $18 per hour.
- Food service, cashier/clerk, and construction are among the top positions held.
- Among even our highest earning adult residents ($17,500- $31,500), common reasons reported for being unsatisfied with their current employers were cut hours, low wage, limited flexibility and no/few benefits.

For one of our family housing programs:

- 14% of our residents work full time, with the majority, 42% working part time.
- The wage range for was $9.14 - $15 per hour.
- The common fields of work are retail (supermarket) and child care.

- Among all family housing programs, the common reported reasons for being unsatisfied with their current employer were not enough hours, schedule changes impacting child care, low pay and inability to go back to school for higher education.

The lack of hours and flexible schedules, poses an additional barrier to currently homeless individuals and families who we tell to solve their crisis, by simply getting a job. The past Point in Time survey showed that at least 39% of families experiencing homelessness and 20% of single adults experiencing homelessness were working at the time of the survey. These persons often choose work over necessary doctor's appointments, securing a home and other supportive services, just to maintain their job. Those that do not, like the women/men who choose to spend all day at the Family Resource Center in order to obtain housing for their family or the person who chooses to seek proper care for a chronic health issue, often lose the jobs they had or prolong their job search in the first place. The inability for low-wage workers, particularly those experiencing homelessness, to maintain jobs causes a reliance on emergency services, placing an undue burden on the individual and the city in the long –run.

A formerly homeless SOME advocate, Lawrence, often shares his story. For two years I stayed at New York Ave shelter and worked in food services. I worked seasonally, from September- May. During that season, I would leave the shelter 6-7am every morning, go to SOME for breakfast, run my errands and get to work. Not all the shifts were bad, I might have to skip breakfast, but at least I was able to get a bed. I often had to work the 2pm shift however. On those days I didn't get off until 9:30pm. People start lining up at NY Ave. around 3:30pm for a bed; I always knew on those days that I'd have a long night ahead of me. I would get to work, leave and walk the streets until morning, finding an occasional bench to rest on, but I never slept. It wasn't safe sleeping outside. I prayed that God would see me through the night and he did. The next morning I would go to SOME, shower, eat and start over again. For two years I did that, until a unit became available at one of SOME's SRO programs. My schedule wasn't flexible, my hours were cut one week and jumped up the next, but I was paid a good wage, $15.50 per hour. Even still, when my hours were cut, I had to sacrifice food. I'm young, most people cannot do what I did and they should not have to, especially for a min. wage job, like most others have.

Lawrence is just one example of the hard working people I work with every day. Individuals and families who have made sacrifices (many of us could not imagine making), hoping that it would benefit them in the long run.

We believe that fully enforced laws that; a.) give workers sufficient advance notice of their schedules b.) encourages stable work schedules; c.) the opportunity to have increased hours, and d.) an continued commitment to increase the min. wage to a living wage will assist in ensuring all District residents are stable and secure: not only in their jobs, but in their housing, within their families and throughout their lives.

Thank you for listening.

Samantha P. Davis, MPP
e: sdavis@some.org
ph: 202.797.8806 ext. 2112

Testimony of Shawniece Green

In support of DC Council B21-0512, the Hours and Scheduling Stability Act of 2015
Before the Committee on Business, Consumer, and Regulatory Affairs

January 13, 2016

Hello Council members:

My name is Shawniece Green and I currently work at one of the Starbucks locations inside of Union Station. I have worked for Starbucks for over two years and I currently make $11.50 an hour. As a loyal and dedicated employee I have full time status at Starbucks. I put in anywhere between 35-40 hours a week at Starbucks.

The schedule is posted one week in advance and it is sometimes subject to change without prior notice which can be frustrating. I have a set availability but my hours are not always consistent due to business.

Thank you for the chance to testify today.

Testimony of Neil Washington

In support of DC Council B21-0512, the Hours and Scheduling Stability Act of 2015
Before the Committee on Business, Consumer, and Regulatory Affairs

January 13, 2016

Hello council members:

My name is Neil Washington and I work at a French eatery inside of Union station called Pret A Manger. I have been a Full time employee there for several years and I currently make $12.00 an hour. In order to provide a living for myself I have to work 40 hours a week at my job. However, with such inconsistent scheduling it's sometimes hard to get 40 hours each week. I have been told by management it's due to business. The schedule is posted one week in advance but it can be subject to change. I have been reminded by management on several occasions that I should be flexible with my schedule to accommodate new employees.

Thank you for the chance to testify today.

Testimony of Bruce Banks
BCRA Public Hearing on B21-331 & B21-512

1/13/15

Good morning Councilmember Orange and members of the Committee. My name is Bruce Banks and I am here to testify in support of the "Hours and Scheduling Stability Act of 2015".

I worked for 25 years at Popeyes as a cook. Everyone loved my cooking and I've always had a strong work ethic. The food industry and other service jobs see their employees as expendable. It doesn't matter how much you do or how hard you work, the supervisors don't value you and the company doesn't value you. They have gotten away with cutting hours, changing schedules and treating people poorly. Without a union or laws to protect workers, we don't really have any rights.

I worked hard for Popeyes for 25 years and I was never valued. I never got a promotion. I've been asked to train people and to do things that were not in my job description, without ever getting paid for it. They would never give anyone over 7 hours a day. They kept us all right under 40 hours, intentionally, just so that we couldn't get benefits. I worked 8-4p. I never took breaks, but they still took an hour out. It wasn't enough money, but I was too exhausted after a day of cooking, taking out trash and cleaning to even get a second job.

I support this legislation, because every worker deserves to be protected.

Having advanced notice allows workers to be able to prioritize. If you don't know how your schedule is going to change, you are not going to be able to make any plans for your life. We all have responsibilities outside of work. I shouldn't have to choose between going to a doctor's appointment and losing my job.

If I am a good worker, I should have the opportunity to receive more hours or get promoted before the company brings someone else on part-time.

If I am called in last minute or sent home early, I should be compensated. I had to pay for gas, transportation, child care maybe, and arrange everything at the drop of a dime to do so.

There is no job security, and no protection for workers. Workers need some sort of security and this legislation gives them that.

Thank you for listening.

Bruce Banks

Testimony of George Worsley

In support of DC Council B21-0512, the Hours and Scheduling Stability Act of 2015
Before the Committee on Business, Consumer, and Regulatory Affairs

January 13, 2016

My name is George Worsley and I'm here to support the Hours and Scheduling Stability Act. I want to thank Council Member Orange and the other Council members who introduced and co-sponsored this bill. I also want to thank all of the committee members for discussing the real problem D.C. workers have with hours and scheduling. I live in D.C. and I've worked here since I was 14. Right now I live on Minnesota ave and go between different Starbuck's locations. I didn't know if I'd be able to make it today until Sunday. Luckily I had an early shift this morning.

Right now, life isn't easy. I have a daughter and a family that I have to provide for and physically be there for, but with the hours I'm working making plans is hard. It's hard to go to appointments and going to the doctor is basically risking my job and putting me in the middle, making me choose sides. Looking for a second job is my only choice, however it's nearly impossible juggling personal business and family matters, going to a job interview is so far out of reach

We don't really have a weekly schedule. Sometimes I know my schedule, other times I have to wait for a text to find out if I'm working. They may post a schedule a day or two before the week starts, but it can change at any time and it usually does. I don't even always know which location I'm working at on different days.

It makes it difficult for me to help my family and to take care of myself. I was in school when I first started working but the hours were so conflicting that I had to drop out because I was failing and missing classes. I have my own career plans and dreams. I've been working since I was 14 because I want to have something in the future for me and my daughter, but my job just keeps where I am when I'm not falling behind.

If you pass this bill I could to pursue my goals. I would be able to have my own place and not have to rely on metro. I could help out my mom and take care of my daughter. This bill becoming law would help so I won't have to choose between taking my daughter to the doctor or putting food on the table for her. It would make life a lot easier.

I strongly support the Hours and Scheduling Stability Act and I'm asking for your support as well. We talk about this issue every single day at work and we'll be talking about what happens here. I just want to thank Council Member Orange again for introducing this bill and all of you who have sponsored and supported the bill. Finally I want to thank all of the committee members for having this hearing. This is a real problem and we need this.

Testimony of Assanatou Boureima

In support of DC Council B21-0512, the Hours and Scheduling Stability Act of 2015
Before the Committee on Business, Consumer, and Regulatory Affairs

January 13, 2016

My name is Assanatou Boureima and I'm here to support the Hours and Scheduling Stability Act. I want to thank Council Member Orange and the committee members for talking about this important problem. I've worked at Macy's in Washington, D.C. for 5 years. I live in Ward 1.

I am here today because I need a change. Even though I usually get my 35 hours, I don't get my schedule until Thursday or Friday and they can change my schedule whenever they want. I have to plan everything around my work schedule and when it changes, sometimes I am not able to do important things I have planned.

My daughter and I both have health issues and we need to see doctors regularly. My manager knows that I have to take my daughter to a specialist every Wednesday. Usually I have Wednesdays off like today. Even though my manger knows I need to take my daughter to the doctor, they still schedule me sometimes on Wednesdays. If I can't reschedule my daughter's appointment, I may have to use my paid time off or sick leave. Even if I use my paid leave, I still get disciplined with points. If I don't have PTO or DC Paid Sick, I may lose a day of work and also receive discipline points.

If you make this change, I won't have to worry about taking care of my health and my daughter. I will be able to take my daughter to see her specialist without having to lose hours or my paid leave and I will be able to take care of my daughter without worrying about getting disciplined and losing my job.

During the holiday season, my manager always scheduled me for Wednesdays making every week stressful. I had to use my paid time off that I want to use to spend with my family just to take care of my daughter. This isn't right and I think you should change it. I like my job at Macy's. I should be able to do my job and take care of my family.

That is why I'm very happy about the Hours and Scheduling Stability act. I hope you will all support it. I'm going to tell all of my coworkers about this important law. Again I want to thank Council Member Orange and all of the committee members for helping to bring this change that we need.

Testimony of Keyona Dandridge

In support of DC Council B21-0512, the Hours and Scheduling Stability Act of 2015
Before the Committee on Business, Consumer, and Regulatory Affairs

January 13, 2016

Hello Council Members,

My name is Keyona Dandridge and I currently work at one of the Chipotle locations inside of Union Station. I have been working there for the last five months and I currently make $10.75 an hour. I previously worked for Potbelly sandwich shop inside of Union Station where I also received minimum wage for the work I was doing. I left there in hopes of getting a better pay plus benefits at Chipotle, unfortunately that was not the case. Working in the food service industry is very tasking and very tiring and it can be frustrating to schedule personal affairs such as doctors' appointments because the schedule is made only a week in advance. As a working mother of a young son, I find that sometime I have to schedule his needs and mine around work and my schedule. I am a full time employee at chipotle and I normally work anywhere between 35 and 40 hours a week. I sometimes have to stay past my scheduled work time because my work load is so much. Even though I stay past my time, I still have to clock out as scheduled which results in me not receiving overtime. It is not fair for me to have to work beyond my shift and not get paid for it.

Testimony of Hugh F. Kelly, PhD, CRE

January 13, 2016

Distinguished Council Members: My name is Hugh Kelly, and I thank you for the opportunity to testify before you today in support of the Full Time Jobs Act.

I am a Clinical Professor of Real Estate at the New York University Schack Institute of Real Estate, the world's largest Masters Degree program in real estate finance and investment, development, and construction management. I have been a consultant in the real estate industry since 1978, working with some of the largest developers, corporations, institutional investors, and service firms in the business. In 2014, I was the Chairman of the Board of the Counselors of Real Estate, an international professional association for high-level real estate advisors. For the past two years I have been the principal author of *Emerging Trends in Real Estate*, the industry's most widely recognized annual national review and outlook, published by Pricewaterhouse Coopers and the Urban Land Institute, a 36,000 member trade association based here in Washington DC.

I would like to make just a few major points in my prepared statement, and then will be happy to respond to your questions.

First, there is significant evidence that urban real estate markets where building service workers hold full-time, well-paid jobs are among the markets most sought-after by investors, having the highest values, greatest investment volumes, and highest long-term returns on investment. Real estate owners do not depend upon low-wage, low-benefit labor conditions to earn competitive returns on capital invested. Washington DC saw $4.1 billion in office investment over the first three quarters of 2015, at an average price of $604 per square foot,

versus a national average $373 per square foot for all downtown office districts. The capitalization rate for Washington (net operating income divided by price) was 5.8%, virtually identical to the U.S. average for CBDs of 5.7%. This indicates substantially higher net income (pre-debt profit margin) for Washington DC compared with other cities.

Second, labor costs run a distant third to real estate taxes and utility costs as the key operating expense variables in net-operating-income performance in the office sector. Providing full-time wages and benefits undoubtedly increases the labor cost in building operations at the first order of consequences, but this needs to be considered in the context of overall factor productivity, including the increased downtime associated with absenteeism in part-time labor, greater turnover in the workforce with associated need for training, and greater level of management supervision required to maintain the quality of tenant services.

Third, the use of low-wage, low-benefit part-time workers exacerbates the level of income inequality in this market, which already ranks near the bottom of U.S. cities as measured by the Gini Coefficient. Such labor practices not only contribute to increased social tensions and unrest, as seen over our urban history and in the aftermath of the Great Recession, but they impose fiscal costs as poorly paid workers often require higher levels of public social services: food stamps, housing subsidy, emergency room healthcare, and similarly costly programs. In effect, the practice of electing to use multiple part-time workers as a cost saving measure allows the private office building owner to enjoy "free-rider" benefits at the expense of the public sector – otherwise known as the taxpayer.

Lastly, while the issue of income inequality may be a large and intractable problem, income mobility is more malleable and offers greater hope for Washington DC. Joint studies performed by Harvard and U.C. Berkeley researchers credit this city with one of the best records in the

nation in "equality of opportunity." But still, there is only an 11% chance that a child born into the lowest quartile of household incomes will ascend above the 75th percentile of income as an adult. The key to improving that record is to assure that entry-level jobs are not dead-end jobs. The real estate industry can be a major contributor to such an effort, as many entry-level jobs do not require college degrees, yet can provide upward career paths. Full-time work enhances the probability such a path can be pursued. Part-time, low-wage, low-benefit work, on the other hand, puts workers in survival mode, living paycheck-to-paycheck, diminishing their opportunity to invest in their future by on-the-job training or outside education. This city, and indeed the nation, cannot afford to institutionalize such a system of disincentives to upward income mobility.

Thank you again for the chance to provide this testimony.

ATTACHMENT

F

Government of the District of Columbia
Office of the Chief Financial Officer

Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO:	**The Honorable Phil Mendelson** **Chairman, Council of the District of Columbia**
FROM:	**Jeffrey S. DeWitt** **Chief Financial Officer**
DATE:	**June 23, 2016**
SUBJECT:	**Fiscal Impact Statement – "Hours and Scheduling Stability Act of 2016"**
REFERENCE:	**Bill 21-512, Draft Committee Print provided to the Office of Revenue Analysis on June 20, 2016**

Conclusion

Funds are not sufficient in the fiscal year 2017 through fiscal year 2020 budget and financial plan to implement the bill. The bill will cost $513,345 in fiscal year 2017 and $2,097,588 in the four-year budget and financial plan.

Background

The bill requires certain retail and food service employers to comply with new rules regarding scheduling the shifts of their employees. These rules, which we discuss below, will apply only to retail and food service employers that are part of chain or a franchising corporation of at least 40 establishments nationwide.

Applicable employers must provide individual work schedules in writing to employees at least 14 days in advance, and post a schedule of the shifts of all employees at the worksite. The employee must consent to the schedule and any changes to the schedule in writing or electronically,[1] and may decline to work any hours not included in a work schedule.

If an employer changes an employee's schedule fewer than 14 days before the start of the first shift for which the employee is scheduled, the employer must notify the employee of any change and pay the employee a penalty - called "predictability pay" - equal to one hour's wage for each shift that is changed or canceled. If the change is made less than 24 hours before a shift of four or more hours begins, the employer must pay the employee four hours of wages. If the change is made less than 24 hours before a shift begins, and the shift is scheduled for less than four hours, the employer must

[1] Part-time employees may also offer an affirmative response to work additional hours in person.

pay the employee two hours of wages. The penalty applies regardless of the actual hours worked. If an employee is scheduled as "on-call" and not called into work, he or she will be compensated two hours of wages for a shift scheduled for four hours or less and compensated four hours for a shift scheduled for four hours or more. An employer cannot be penalized if the changes to a schedule is made at the request of the employee, if the employer requires mandatory overtime, or if an employee trades shifts. Additionally, penalties do not apply if the establishment closes due to an emergency.[2]

The bill requires that part time employees performing similar duties under similar working conditions to be paid the same wage as full time employees. Wage differentials not based on part-time status are allowed. At least five days before hiring a new employee or a contractor, the covered employer must first offer additional hours (being paid at same rate, not overtime rate) to current part-time employees.[3]

Employers must maintain for three years records of hours worked by all employees, initial and revised schedules, wages, predictability pay, and minimum pay provided to employees. The employer must make these records available for inspection by the Department of Employment Services upon request.

DOES will be required to provide summaries of the bill to covered employers.

Employees affected by violations of this act are entitled to civil or administrative action. An administrative law judge will hear the allegations of violations, and if the judge finds the employer in violation, the employer will be responsible for paying any lost wages, plus interest, and damages of double the lost pay, any damages suffered, and reasonable attorney fees and cost of enforcement.

Financial Plan Impact

Funds are not sufficient in the fiscal year 2017 through fiscal year 2020 budget and financial plan to implement the bill.

The Department of Employment Services will require five FTEs to implement the investigative, enforcement and education requirements of the bill. It is expected that approximately 100 claims will be adjudicated annually.[4] An estimated 9,000 employees work for large retailers (over 50 employees) and 15,000 employees work in large restaurants in the District. DOES will have to investigate claims from this base, even if some complaints are filed by employees that might be working for an employer not covered by the bill. DOES will not be able to determine this until it investigates the complaint.

The Office of Administrative Hearings will require additional hours from administrative law judges, attorneys and legal assistants to adjudicate these estimated 100 cases. This workload will not fall on any one individual but the total hours come to approximately 1 FTE.

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[2] The bill lists several allowable exceptions, including closure due to threats to employees or property, electricity or water failure, force majeure such as severe weather, and failure of local transit systems.
[3] The bill does not specify how additional hours are calculated. It also does not provide any threshold.
[4] Claims involving minimum wage are tracking at approximately 200 cases annually in the Department of Employment Services, and wage investigations are tracking at 120 cases annually.

Fiscal Impact of Bill 21-512, Hours and Scheduling Stability Act of 2016 FY 2017 – FY 2020					
	FY 2017	FY 2018	FY 2019	FY 2020	FY 2017-FY 2020
DOES Personnel[a]	$412,549	$422,214	$432,188	$453,534	$1,720,485
DOES Public Education	$25,000	$25,000	$5,000	$5,000	$60,000
OAH Personnel [b]	$75,796	$78,070	$80,412	$82,825	$317,104
TOTAL	**$513,345**	**$525,284**	**$517,601**	**$541,358**	**$2,097,588**

(a) Assumes 4 Compliance Specialists/Auditors at Grade 11, step 1, and one Manager at MSS 13.
(b) Assumes one Attorney at Grade 11, step 1.

ATTACHMENT G

OFFICE OF THE GENERAL COUNSEL
Council of the District of Columbia
1350 Pennsylvania Avenue NW, Suite 4
Washington, DC 20004
(202) 724-8026

MEMORANDUM

TO: **Councilmember Vincent B. Orange**

FROM: **Ellen A. Efros, General Counsel**

DATE: **June 22, 2016**

RE: **Legal sufficiency determination for Bill 21-512, the Hours and Scheduling Stability Act of 2016**

The measure is legally and technically sufficient for Council consideration.

Bill 21-512[1] establishes business practice standards for certain employers.[2] It requires an employer to provide written notice of an employee's work schedule at least 14 days before the scheduled work is to begin and written notice of any change in a work schedule. It establishes the right of an employee to decline any hours not in the employee's work schedule and to not be required to find a replacement when the employee is unable to work a scheduled shift.

The legislation provides guarantees in pay in specified circumstances where the employee had an expectation of work hours or spent mandatory time on-call to work. It provides for predictability pay,[3] pay for reporting to work but not being put to work at all or for less than four hours,[4] and pay for being on-call but not called in.[5] The legislation provides for exceptions and enumerates the circumstances where such pay shall not apply.

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[1] Bill 21-512 shall apply upon the date that its fiscal effect is included in an approved budget and financial plan.

[2] An employer is a person or entity that employs people in a food services or retail establishment. A food service establishment is a restaurant that is part of a chain or franchise of 40 or more such establishments nationwide. A retail establishment is an establishment that sells good at retail and is part of a chain of 40 or more such establishments nationwide.

[3] Payment for a change made by an employer to the employee's work schedule.

[4] Payment pursuant to 7 DCMR 907.1.

[5] Payment for each on-call period of 4 hours or less: 2 hours and for each on-call period of more than 4 hours: 4 hours.

Bill 21-512 requires an employer to offer additional hours of work that arise to part-time employees before hiring additional employees or using a subcontractor, temporary service, or staffing agency.

The legislation establishes that it shall be unlawful to interfere with an employee right established by this act or to take retaliatory personnel action because an employee has exercised such a right.

Finally, it provides that an employee may seek redress for an alleged violation in an administrative action before an administrative law judge on in a civil action.

I am available if you have any questions.

/s/_____
Ellen A. Efros

ATTACHMENT H

Committee Print-B21-512
Committee on Business, Consumer, and Regulatory Affairs
June 23, 2016

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To establish business practice standards for an employer of a retail establishment or a food services establishment, to require an employer to provide an employee with advance notice of the employee's work schedule, to require in specified circumstances an employee to pay predictability pay to an employee whose shift has been changed by the employer, to require in a specified circumstance an employer to pay on-call pay, to mandate equal treatment of employees regardless of the number of hours worked, to require that additional hours of work be first offered to part-time employees, to prohibit retaliation by an employer against an employee for the exercise of a right provided by this act, to require an employer to maintain employee records for a specified period, to establish employer posting requirements, to provide that an employee make seek redress for an alleged violation of this act through a civil action or an administration action, to establish an administrative fine for a violation of this act, to provide in an administrative action the opportunity for an employer to have an informal hearing, and to making conforming amendments.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Hours and Scheduling Stability Act of 2016".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Chain" means a set of food services establishments or retail establishments that share a common brand or are characterized by standardized options of décor, marketing, packaging, products, and services.

(2) "Department" means the Department of Employment Services.

(3) "Employee" means an individual who work for wages for an employer. The term "employee" excludes an individual employed under the Marion S. Barry Summer Youth Program.

(4) "Employer" means a person or an entity in the District that employs people in a food services establishment or a retail establishment. The term "employer" excludes: (A) a hotel, bank, credit union, educational institution, savings institution, and a health care facility licensed under the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501 *et seq.*), notwithstanding the existence of a food or retail sales service in such an establishment; provided, that the food or retail sales service is not a chain; and (B) a convention site and a trade show site, notwithstanding the existence of a food or retail sales service, including a chain; provided, that the food or retail sales service is in existence at the site for the duration of the convention or trade show only.

(5) "Food services establishment" means an entity in the District that is a full service or limited service restaurant, as defined under the North American Industry Classification System ("NAICS"), NAICS 7221 and NAICS 7222, where that restaurant is:

(A) Part of a chain of at least 40 restaurant establishments nationwide; or

(B) A franchise of 40 or more establishments nationwide, including:

(i) An integrated enterprise that owns or operates 40 or more such establishments in the aggregate nationally; or

(ii) An establishment operated pursuant to a franchise where the franchisor and franchisee owns or operate 40 or more such establishments in the aggregate nationally.

(6) "Franchise" means a written agreement by which:

(A) A person is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan prescribed or suggested in substantial part by the grantor of the franchise or its affiliate;

(B) The operation of the business is substantially associated with a trademark, service mark, tradename, advertising, or other commercial symbol designating that the business is owned or licensed by the grantor of the franchise or its affiliate; and

(C) The person agrees to pay, directly or indirectly, a franchise fee.

(7) "On-call" means, for the purpose of determining whether the employee must report to work, the time that an employer requires an employee to:

(A) Be available to work;

(B) Contact the employer or the employer's designee; or

(C) Wait to be contacted by the employer or the employer's designee.

(8) "On-call shift" means hours of work performed by an employee called in to work as a result of being on-call.

(9) "Part-time" means fewer than 35 hours of work in a work schedule.

(10) "Predictability pay" means a payment made to an employee, calculated on an

hourly basis at the employee's regular rate, as compensation for a change made by an employer to the employee's work schedule and is in addition to any wages earned for work performed by the employee.

(11) "Regular rate" has the same meaning as it has in section 3(7) of the District of Columbia Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-248; D.C. Official Code § 32-1002(7)).

(12) "Retail establishment" means a business in the District where goods are sold on the premises at retail and which is part of a chain of at least 40 retail establishments nationwide.

(13) "Retaliatory personnel action" means any form of intimidation, threat, reprisal, harassment, discrimination, or adverse employment action or interference with an investigation, proceeding, or hearing conducted pursuant to this act.

(14) "Shift" means the consecutive hours an employer requires an employee to work, including an on-call shift; provided, that breaks of one hour or less shall not be considered an interruption of consecutive hours.

(15) "Work schedule" means an employee's regular and on-call shifts, including specific start and end times for each shift, during a consecutive 7-day period.

Sec. 3. Employer duty to provide advance notice of work schedule; employee rights.

(a) An employer shall:

(1) Upon hiring an employee, provide the employee with a good faith estimate of the number of hours, days, and times that the employee will be expected to work each week; provided, that the estimate shall not constitute a contractual offer and the employer shall not be bound by the estimate;

(2) Provide to each employee the employee's work schedule in writing or by electronic means at least 14 days before the first day of performing work pursuant to that work schedule; provided, that this requirement shall not apply to the first work schedule of a newly hired employee.

(3) Contact the employee to notify the employee of any change initiated by the employer to the employee's work schedule before the change takes effect. Notice shall be provided by an in-person consultation, telephone call, email, text message, or other electronic communication.

(4) Provide the employee whose work schedule has been changed pursuant to paragraph (3) of this subsection with a revised work schedule in writing or by electronic means reflecting the changes initiated by the employer within 24 hours of making the change.

(5) Post a work schedule 14 days before the first day of performing work pursuant to that work schedule; that includes the shifts of all employees at that worksite, whether or not they are scheduled to work or be on call that week. The work schedule shall be posted in a place that is readily accessible and visible to all employees.

(b) An employee may decline to work any hours not included in a work schedule.

(c) If an employee consents to work hours not included in the work schedule, the employee's consent shall be in writing, which written consent may be transmitted via electronic means on or before the start of the hours for which consent is being given.

(d) An employee shall not be required to search for or find a replacement employee to cover any hours during which the employee is unable to work a scheduled shift.

Sec. 4. Predictability pay for changed shifts.

(a) An employer may change a shift, such as by adding or reducing hours, adjusting start or end times, or canceling a shift, with notice of fewer than 14 days before the shift is to start; provided, that, subject to the exceptions set forth in section 6, the employer shall pay the following predictability pay to the employee whose shift, or on-call shift, has been changed:

(1) With notice of 24 hours or more to the employee: one hour; and

(2) With notice of less than 24 hours to the employee:

(A) For each shift of 4 hours or less: 2 hours; and

(B) For each shift of more than 4 hours: 4 hours.

(b) The predictability pay requirements provided under this section shall not apply if an employee reports to duty and is given no work or is given less than four hours of work, but shall be compensated pursuant to section 907.1 of Title 7 of the District of Columbia Municipal Regulations (7 DCMR 907.1).

Sec. 5. Pay for on-call.

(a) An employer shall provide an employee with the following compensation for each on-call shift for which the employee is required to be available but is not called in to work:

(1) For each on-call period of 4 hours or less: 2 hours; and

(2) For each on-call period of more than 4 hours: 4 hours.

(b) This section shall not apply when the employee is called in to work an on-call shift.

Sec. 6. Exceptions.

The requirements of sections 3, 4, and 5 shall not apply if:

(1) Operations cannot begin or continue:

(A) Due to threats to employees or property, or when civil authorities recommend that work not begin or continue;

(B) Because electricity, water, or gas is unavailable or there is a failure of the sewer system;

(C) Due to an Act of God or other cause not within the employer's control, such as:

(i) Severe weather;

(ii) A natural disaster; or

(iii) A state of emergency declared by the Mayor or the federal government; or

(D) Due to a failure, delay, or closure of a local transit system.

(2) The employer requires the employee to work mandatory overtime;

(3) The employee trades shifts with another employee; or

(4) The employee requests a change in a work schedule, including in shifts or hours.

(5)(A) A food service establishment set staffing in anticipation of an event that is subsequently cancelled and the event was planned to occur within one half mile of the food service establishment.

(B) For the purposes of this paragraph, the term "event" means a planned happening, including a:

(i) Concert;

(ii) Festival;

(iii) Sporting event; or

(iv) Conference.

Sec. 7. Equal treatment for part-time employees.

(a) Except as provided in subsection (b) of this section, an employer shall provide to a part-time employee the same hourly wage as provided to a full-time employee where each has a job or positon that:

(1) Requires equal skill, effort, and responsibility, and

(2) Is performed under similar working conditions.

(b) An hourly pay differential between a part-time employee and a full-time employee shall be permissible if the differential is based on reasons other than the part-time status of one of the employees, such as a:

(1) Seniority system;

(2) Merit system; or

(3) System that measures earnings by:

(A) Quantity or quality of production;

(B) Performance; or

(C) Responsibilities.

(c) This section shall not affect the minimum hourly wage requirements for receipt of benefits, including health-care benefits.

Sec. 8. First offer of additional hours to part-time employees.

(a) An employer shall offer additional hours of work to a part-time employee before hiring an additional employee or subcontractor, including before hiring through the use of a temporary service or staffing agency.

(b)(1) The employer shall post a notice of the additional hours of work available, including the:

(A) Total hours of work being offered;

(B) Schedule of available shifts;

(C) Length of time the employer anticipates needing the additional hours; and

(D) Description and title of the position.

(2) The notice shall be posted in a place that is ready accessible and visible to all employees for a minimum of 5 days before an employer may hire additional employees or subcontractors, or retain a temporary service or staffing agency.

(c)(1) The employer shall assign additional hours of work to a part-time employee who has notified the employer of the desire to work the additional hours, and who, in the employer's good faith and reasonable judgment, has the skill and experience to perform the work.

(2) A part-time employee's affirmative response to an offer to work additional hours by in-person consultation or telephone call, as well as an email, text message, or other electronic communication shall serve as consent.

(3)(A) If more than one part-time employee responds to the offer of work, the employer shall distribute the work among responding part-time employees according to the employer's posted process.

(B) If no qualified part-time employee responds to the offer of work, the employer may hire new employees or retain a temporary service or staffing agency as necessary to perform the work described in the notice posted pursuant to subsection (b) of this section.

(d) Employers shall make reasonable efforts to offer employees training opportunities to gain the skills and experience to perform work for which the employer typically has additional needs.

(e) This section shall not be construed to require an employer to pay a premium rate of 1 and ½ times the regular rate as described in section 4(c) of the Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-248; D.C. Official Code § 32-1003(c)), or to prohibit an employer from offering such a premium rate.

Sec. 9. Exercise of rights protected; prohibition against retaliation.

(a) It shall be unlawful for an employer or any other person to interfere with, restrict, or deny, or attempt to interfere with, restrict, or deny, the exercise of any right protected under this act or to take retaliatory personnel action against an employee because the employee has exercised a right protected under this act.

(b) There shall be a rebuttable presumption of retaliatory personnel action when an employer takes adverse action against an employee within 90 days of the employee:

(1) Filing a complaint with the Department or a court alleging a violation;

(2) Cooperating with the Department or other persons in the investigation or prosecution of an alleged violation;

(3) Opposing any policy, practice, or act that is unlawful under this act;

(4) Informing a person of that person's rights under this act; or

(5) Requesting or making an inquiry regarding a proposed change to the employee's work schedule.

(c) An employee shall not willfully make a false statement or misrepresentation regarding a material fact in support of an alleged violation of this act.

(d) The protections provided under this section shall apply to any person who mistakenly, but in good faith, alleges a violation of this act.

Sec. 10. Recordkeeping requirements and posting of law and regulation.

(a) (1) An employer subject to a provision of this act or a regulation issued pursuant to this act shall maintain for at least 3 years records that show the:

(A) Hours worked daily by each employee;

(B) Wages and predictability pay paid to all employees;

(C) Initial work schedule and all subsequent revisions to the work schedule for each employee; and

(D) Documentation of the time and method used each time that additional hours of work were offered to:

(i) Current staff;

(ii) Part-time employees;

(iii) Staff obtained through a temporary service or staffing agency; or

(iv) Hired subcontractors.

(2) Failure to maintain the records required by this section shall give rise to a rebuttable presumption that the employer has violated this act.

(3)(A) All the records required to be maintained pursuant to this section shall be made available for inspection or transcription by the Department.

(B) Upon demand by the Department, an employer shall furnish a sworn statement of records and information upon forms prescribed or approved by the Department.

(b)(1) An employer shall post a copy or summary of this act and applicable regulations issued pursuant to this act in a form prescribed or approved by the Department in a conspicuous and accessible place in or about the premises where an employee works; provided, that an employer shall not be liable for the failure to post if the Department has failed to provide a copy or summary of the act, as required by paragraph (2) of this subsection.

(2) The Department shall provide a copy or summary of this act without charge to each employer within 60 days of the effective date of this act.

Sec. 11. Administrative fine.

(a) An employer who has been found to have violated a provision of this act shall be subject to a fine of not more than $500.

(b)(1) No administrative penalty shall be collected unless the Department has provided an employer alleged to have violated a provision of this act:

(A) Notification of the violation;

(B) Notification of the amount of the administrative penalty that may be imposed; and

(C) An opportunity to request a hearing.

(2) If a hearing is requested, the Department shall issue a final order following the formal hearing containing a finding that a violation has or has not occurred.

(3) If a hearing is not requested, the employer shall transmit to the Department the amount of the fine assessed within 15 days following receipt of the notification required by paragraph (1) of this subsection.

Sec. 12. Administrative and civil actions.

(a)(1) An employee or similarly situated employee injured by a violation of this act shall be entitled to maintain a civil action or an administrative action.

(2) When an administrative complaint is filed against an employer alleged to have violated this act, a hearing by an administrative law judge shall be scheduled following the same procedure set forth in section 8a of An Act To provide for the payment and collection of wages in the District of Columbia, effective February 26, 2015 (D.C. Law 20-157; D.C. Official Code § 32-1308.01).

(b) If the administrative law judge determines that an employer has violated a provision of this act, the administrative law judge shall order affirmative remedies, including requiring:

(1) The employer to pay the full amount of wages that the employee would have

been earned had the employer not violated the act, including interest, and liquidated damages, if any, of 2 times the amount of pay;

(2) The employer to pay any actual damages suffered as the result of the employer's violation;

(3) Reinstatement or other injunctive relief; and

(4) The employer pay reasonable attorney's fees and costs.

(c) An action may be brought against an employer alleged to have violated this act in a court of competent jurisdiction by any one or more employees. An employer who has been found to have violated this act shall be liable for:

(1) The full amount of pay that would have been earned had the employer not violated the act, including interest, and liquidated damages, if any, of 2 times the amount of pay;

(2) Any actual damages suffered as the result of the employer's violation;

(3) Reinstatement or other injunctive relief; and

(4) Reasonable attorney's fees and costs.

(d) Where compliance with this act, or regulations issued pursuant to this act, is not forthcoming, the Department shall take any appropriate enforcement action to secure compliance, including initiating a civil action and, except where prohibited by another law, revoking or suspending or denying any registration certificate, permit, or license held or requested by the noncompliant employer or person until compliance is secured.

(e) In any administrative or civil action brought under this act, the administrative law judge t or court shall award interest at the rate of interest specified in D.C. Official Code § 28-3302(c).

(f) A money judgment awarded to an employee under this act shall be enforceable by the employee to whom the debt is owed or by the District on behalf of the employee; provided, that any action commenced in a court of competent jurisdiction to enforce an action for unpaid wages or liquidated damages shall be time limited in accordance with section 8 of An Act To provide for the payment and collection of wages in the District of Columbia, approved August 3, 1956 (70 Stat. 978; D.C. Official Code § 32-1308(c)(1)).

Sec. 13. Interpretation of act.

(a) This act provides for minimum requirements that an employer must adhere to in regard to employees and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides an employee covered by this act with additional rights, remedies, or other protections.

(b) Nothing in this act shall be construed to discourage or prohibit an employer from the adoption or retention of policies that are more beneficial to employees.

(c) Nothing in this act shall be construed as diminishing the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan, or other agreement to which it is a signatory that provides for policies that are more beneficial to an employee.

Sec. 14. Rules.

Within 180 days of the effective date of this act, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), the Department shall issue rules to implement this act.

Sec. 15. Applicability.

(a) This act shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of this act.

Sec. 16. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 17. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.