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## **TESTIMONY OF NEW YORK STATE SENATOR BRAD HOYLMAN TO THE NEW YORK STATE DEPARTMENT OF LABOR REGARDING EMPLOYEE SCHEDULING**

**October 17, 2017**

Thank you to Governor Andrew M. Cuomo and New York State Department of Labor Commissioner Roberta Reardon for convening these hearings on employee scheduling. As you no doubt have heard from many individuals and stakeholders throughout these hearings, many workers in New York State struggle with unpredictable work schedules that take a toll on their lives, particularly low-wage employees and those in the retail industry. Now is the time to implement policies that support stability in workplace scheduling.

Unpredictable scheduling practices take many forms but share the common trait of wreaking havoc on employees' lives. This can entail constantly fluctuating weekly schedules, schedules posted without adequate notice, on-call shifts where workers must be available to work without a guarantee of hours, regular work shifts cancelled with insufficient notice, shift extensions or overtime announced the same day, or involuntary reduction of hours.

These practices can cause ripple effects. Unpredictable schedules without guaranteed hours mean unpredictable paychecks. For low-wage workers this can mean drastic actions like cutting back on groceries, medical care, and other essential items. Unstable schedules can also impact eligibility for government benefits, which may require individuals to work a certain number of hours each week. Part time employees might need to coordinate with a second or third job. Workers with children and those who care for elderly or disabled family members are significantly disadvantaged by needing to arrange for last-minute child care or home health aides. For some, transportation can also be difficult to arrange at the last minute. Parents and caregivers who require flexibility for doctor's appointments, school events, and other important activities are left in a lurch by their unstable work schedules. According to one study, three-fourths of low-wage workers report unpredictable scheduling causes them to spend an insufficient amount of time with their children.<sup>1</sup>

The impact of these scheduling practices on employees are reason enough to implement reforms, but they become even more striking when considering the scope of these practices. A survey of New York

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<sup>1</sup> Kenneth Matos and Ellen Galinsky: "When Work Works: Workplace Flexibility in the United States: A Status Report." Families and Work Institute and Society for Human Resource Management, 2011.  
<http://familiesandwork.org/downloads/WorkplaceFlexibilityinUS.pdf>

City retail workers found that only 17% of workers surveyed have a set schedule, while 70% of those surveyed get their schedules with less than one week notice.<sup>2</sup> One national study found that approximately 50% of low-wage workers reported having limited control over their work hours.<sup>3</sup> A study of one major U.S. retailer found that 59% of full-time hourly workers experienced fluctuations in either the days or hours of their shifts each week.<sup>4</sup> And a survey of 17 major U.S. corporations in select hospitality and retail industries found that only three gave more than one week of notice for schedules.<sup>5</sup>

Predictable schedules have been shown to benefit employers as well. According to several studies, schedules that accommodate work-life balance reduce turnover and enable talented employees to stay in place, increase productivity, and lower turnover costs for the business.<sup>6</sup>

New York already has some regulations in place that address these issues. N.Y.C.R.R. Title 12, Part 142-2.3 requires that any employee who reports for work at the request of their employer shall be paid for at least four hours, or the number of hours in a regularly scheduled shift, whichever is less. Unfortunately, these regulations appear to suffer from weak enforcement. A survey of large New York City retailers by the Retail Action Project found that only 15% of employees are always paid for a full four hours when they are sent home from work early.<sup>7</sup>

I sponsor legislation that would address the problems of involuntary shift reduction and on-call scheduling without pay. My bill, S.71/A.1518 (Rozic), would create more predictable and stable schedules for employees where the employer operates 30 or more establishments nationwide. Specifically, it codifies state regulations that require an employer to pay an employee for at least four hours at the basic minimum hourly wage for each day an employee reports for work as instructed but is given less than four hours of work. It also requires an employer to pay an employee for at least four hours at the basic minimum hourly wage for each day an employee is instructed to contact their employer, or wait to be contacted by their employer, less than 24 hours in advance of the start of a potential work shift to determine whether the employee must report to work for the shift.

Regardless of the situation, employees deserve protections that will allow them to maintain balance in their lives. Low-wage employees need protections so they are able to achieve this balance while building sustainable careers.

Thank you for your consideration.

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<sup>2</sup> Stephanie Luce, and Naoki Fujita, "Discounted Jobs: How Retailers Sell Workers Short." Murphy Institute, City University of New York, and Retail Action Project, 2012. [http://retailactionproject.org/wp-content/uploads/2012/03/7-75\\_RAP+cover\\_lowres.pdf](http://retailactionproject.org/wp-content/uploads/2012/03/7-75_RAP+cover_lowres.pdf)

<sup>3</sup> Liz Watson and Jennifer Swanberg, "Flexible Workplace Solutions for Low-Wage Hourly Workers: A Framework for a National Conversation." Workplace Flexibility 2010, University of Kentucky Institute for Workplace Flexibility, May 2011. <http://workplaceflexibility2010.org/images/uploads/whatsnew/Flexible%20Workplace%20Workplace%20Solutions%20for%20Low-Wage%20Hourly%20Workers.pdf>

<sup>4</sup> "Tackling Unstable and Unpredictable Work Schedules." Center for Law and Social Policy, Retail Action Project, and Women Employed, 2014. <http://retailactionproject.org/wp-content/uploads/2014/03/Tackling-Unstable-and-Unpredictable-Work-Schedules-3-7-2014-FINAL.pdf>

<sup>5</sup> *Id.*

<sup>6</sup> Jennifer E. Swanberg, Jacquelyn B. James, Sharon P. McKechnie, "Citisaes Study, Jobs That Work: Can Business Benefit By Providing Workplace Flexibility to Hourly Workers?" [http://www.uky.edu/Centers/iwin/citisaes/\\_pdfs/IB3-HourlyWorkers.pdf](http://www.uky.edu/Centers/iwin/citisaes/_pdfs/IB3-HourlyWorkers.pdf); Anna Danziger and Shelly Waters Boots, "The Business Case for Flexible Work Arrangements." Georgetown University Law Center, 2008. <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1001&context=legal>

<sup>7</sup> See *Supra* note 2.