'Fair Schedule' laws fail to deliver for full-time workers

BY AARON YELOWITZ

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Since the start of the pandemic, elected officials have required a lot of flexibility from restaurants and other small businesses.

From shutdowns and capacity limits to mask and vaccine requirements, officials changed policies at the drop of a hat, often leaving management little time to figure it all out. But they managed to make it work — in large part because of the flexibility and determination of their staff.

But in some states and municipalities, the very flexibility that allowed restaurants and other stores to ride the pandemic's waves is under attack by advocates for predictive scheduling mandates.

Sometimes referred to as "fair scheduling laws," predictive scheduling mandates forbid employers from adjusting an employee's schedule within a set time (often as early as two weeks) ahead of the assigned shift. If they do adjust the schedule, they must pay additional wages for canceled or reduced shifts or face other financial penalties.

Advocates for predictive scheduling claim the policy helps workers balance childcare, school, and other commitments while encouraging an increase in full-time employment from employers.

But data from my latest study at the University of Kentucky shows that predictive scheduling mandates on the books in San Francisco, New York City, Seattle, and Oregon failed to deliver on the promises of increased full-time employment leaving workers with fewer hours and less money in their pockets.

The main problem with predictive scheduling is that few businesses in the hospitality industry have predictable staffing needs. Demand can shift without advanced notice, especially during the days of COVID-19.

A sports bar can plan for a big crowd during the NFL game on Thursday night only for that game to be postponed until Tuesday due to an outbreak for one of the teams. Scheduled staff can also test positive and be unable to work their scheduled shifts.

Predictive scheduling laws do not allow for adjustments when these unexpected slowdowns or staff shortages occur.

In turn, employers must rely on gut instinct to schedule their staff. And, more often than not, their gut tells them not to risk over-staffing.

This reality leaves workers with fewer shifts and smaller paychecks. Advocates for predictive scheduling claimed that it would lead to more workers landing full-time schedules with regular shifts, but instead, it resulted in more workers losing shifts and falling from full-time employment to part-time.

My latest study found that workers under predictive scheduling mandates saw their likelihood of part-time work increase by 9.2 percentage points. The data show two-thirds of this shift is caused by an involuntary reduction to part-time work — not employees reducing their own hours due to external factors. They planned to work more hours; those hours just weren't scheduled.

Advocates promise better conditions, but workers are left with fewer shifts and more financial stress. One affected employee explained a statewide proposal in Washington based on Seattle's so-called "Secure Scheduling Ordinance" would actually reduce her chances at making extra money by limiting her ability to work events and parties outside her pre-set work hours. Employees in San Francisco decried the law's restriction on allowing them to change *their own* schedules by picking up last-minute shifts.

This new evidence supports a longer history of the adverse effects of predictive scheduling mandates. A joint study I conducted with researchers at Carnegie Mellon found San Francisco businesses affected by the scheduling law implemented restrictions on employees' ability to change their own schedules, offered fewer part-time jobs and jobs across the board, and scheduled fewer employees per shift. Conducting the same study for Washington, D.C. found a proposed scheduling law would force more than half of affected employers to offer fewer part-time jobs and fewer jobs across the board.

Predictive scheduling is not benefiting workers in regions where it is already law. Yet other states are considering similar mandates: a fair workweek bill died in the Connecticut state House last year. Other states including California and Illinois, as well as the cities of Los Angeles and Boston have weighed potential predictive scheduling laws.

Fair schedule laws fail workers. We cannot change the unpredictable nature of some industries by force of will — no matter how much predictive scheduling advocates pretend that is the case. Until policymakers realize this, workers will continue to face fewer shifts and less flexibility.

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