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**Testimony of the National Women's Law Center
In SUPPORT of H.B. 1226—Maryland Predictable Scheduling Act**

Submitted to the Committee on Economic Matters, Maryland House of Delegates

March 6, 2024

Dear Members of the Committee on Economic Matters:

Thank you for holding this hearing and for the opportunity to submit this testimony on behalf of the National Women's Law Center (NWLC). Since 1972, NWLC has fought for gender justice—in the courts, in public policy, and in our society—working across the issues that are central to the lives of women and girls. NWLC advocates for improvement and enforcement of our nation's employment and civil rights laws, with a particular focus on the needs of LGBTQI+ people, women of color, and women with low incomes and their families. NWLC is part of a national coalition helping to lead the movement to secure a fair workweek for working people, because unstable and unpredictable work schedules disproportionately impact women and are particularly detrimental to women with caregiving responsibilities. **We strongly support H.B. 1226, the Maryland Predictable Scheduling Act, as an important step to combat unfair scheduling practices and build a more equitable economy.**

Unstable, unpredictable, and inadequate work hours impose high costs on working people, their families, and our broader economy. Even before the COVID-19 pandemic, people across Maryland—disproportionately women and people of color—working in essential but low-paying jobs often had little notice of their work schedules, experienced last-minute shift cancellations that deprived them of vital income, and were given part-time hours when they needed full-time work to support their families.

“Just-in-time” scheduling practices, enabled by modern workforce management systems, use algorithms to base workers' schedules on perceived consumer demand and maximize flexibility for the employer at the expense of the employee, making it extremely challenging for workers to meet their responsibilities outside of their jobs.¹ Even as high demand for labor in the wake of the pandemic has driven modest wage gains in service sector jobs,² many employers continue to use unpredictable scheduling practices that contribute to high turnover rates³—producing volatility for employers, workers, and consumers alike. Across industries, more than one-third of wage and salary workers have employers who decide schedules without their input,⁴ and in surveys of hourly workers in retail and food service jobs—two industries where unpredictable scheduling practices are common—close to half of workers report having little to no input into their work schedules.⁵ Variable and unpredictable hours are also an acute problem, particularly in the service sector: In a 2021 survey of workers at large retail and food service chains, close to two-thirds of workers reported receiving their work schedules with less than two weeks' notice, and more than one-third said they received their schedule with less than one week's notice.⁶

These volatile work hours—and the volatile incomes that result—undercut workers' efforts to budget for expenses and increase economic hardship, including hunger and housing insecurity.⁷ Just-in-time scheduling practices can also disrupt family routines and harm children's and families' well-being. Research shows that low wages and other working conditions that increase parents' stress—including

unstable and unpredictable work hours—can undermine children’s emotional and physical health.⁸ For example, children whose parents have unstable work schedules experience higher rates of emotional distress, increased school absences, worse sleep, and negative health outcomes for conditions like asthma.⁹ At the same time, volatile scheduling practices make it hard for families to arrange and afford high-quality child care,¹⁰ or to secure the care they need to manage a health condition or disability.

Women—particularly women of color—often bear the brunt of just-in-time scheduling practices that undermine their best efforts to support and care for themselves and their families.

The low-paid, hourly service sector jobs in which just-in-time scheduling practices are particularly concentrated are jobs that women, disproportionately women of color, are especially likely to hold.¹¹ In Maryland, nearly two in three workers in the state’s lowest-paying jobs are women.¹² Women also still shoulder the majority of caregiving responsibilities in families.¹³ Black women and Latinas are especially likely to be breadwinners for their families,¹⁴ and are also more likely to experience scheduling instability than their white counterparts, even within the same company.¹⁵ With little to no control over their work schedules, being able to plan for or respond to the exigencies of daily life—for example, ending a shift on time to pick up a child from school or scheduling time to take an elderly parent to a doctor’s appointment—is simply not an option for too many workers.

When women’s jobs pay low wages and don’t allow them to balance their responsibilities at work with their caregiving obligations; when they can’t secure child care that allows them to work knowing their children are getting the care they need to thrive; when they can’t get the rest or the medical treatment they need to keep themselves and their families healthy and productive; when they can’t commit to classes to advance in their careers or even a second job that can help them make ends meet—it is hard, and sometimes impossible, for women to get and keep good jobs and advance in the workplace. These barriers are among the factors reflected in the persistent gender wage gaps that we see across the country and in Maryland, which are especially substantial for women of color and women who are mothers—and for mothers who are women of color most of all.¹⁶ For example, while women of all races working full time in Maryland typically make 85 cents for every dollar paid to a man,¹⁷ mothers make just 78 cents compared to fathers.¹⁸ Among full-time, year-round workers, Asian American and Pacific Islander moms in Maryland make 86 cents, white moms make 75 cents, Black moms make 56 cents, and Latina moms make just 41 cents compared to white, non-Hispanic fathers.¹⁹ And all of these gaps grow even wider if women’s earnings are compared to men’s without restriction to full-time wage earners,²⁰ since women are far more likely than men to work in part-time jobs that, relative to full-time jobs, typically pay less per hour, lack benefits, and are more likely to feature just-in-time scheduling practices.²¹

H.B. 1226 can grant working people more stable and predictable work schedules and help create an economy that works for everyone.

Maryland has already taken steps to advance equal pay for women and ensure that workers are able to manage both their work and caregiving responsibilities. In 2022, Maryland became the eleventh state, including the District of Columbia, to pass a comprehensive paid family and medical leave law. The state has also been a leader in providing paid sick time. Together, these policies provide support to help workers care for themselves and their families without jeopardizing their economic security. But to build a better economy—one that works for everyone—Maryland must do more.

Enacting H.B. 1226 would help ensure that hundreds of thousands of retail, food service, and hospitality workers in Maryland have the stability, predictability, and input in their work schedules that they need to

meet their obligations on the job and in the rest of their lives. This bill is informed by laws already enacted across the country,²² and contains several important features:

- **H.B. 1226 would give workers advance notice of their work schedules.** Advance notice provisions, like the one in H.B. 1226, require covered employers to give employees at least 14 days of advance notice of their seven-day work schedule. Giving employees sufficient notice of when they will be required to work makes it easier for employees to plan transportation, child care, doctor's appointments, and other obligations so that they can consistently be and stay at work—in turn creating a more stable, reliable workforce for businesses.
- **H.B. 1226 recognizes the costs that working people and their families bear when they face last-minute schedule changes—and would compensate them accordingly.** Predictable scheduling laws address just-in-time scheduling practices where they are particularly pervasive: among large employers in service sector industries. By guaranteeing half time pay for any unworked hours when shifts are canceled or reduced with less than the required notice (or an extra hour of pay for other kinds of changes), H.B. 1226 would help compensate employees for the costs associated with changed shifts. These costs can include rearranging child care or not being able to pay a bill as expected—costs that so many working people are not in a position to absorb. Predictability pay policies like the one in H.B. 1226 discourage unnecessary last-minute changes while allowing employers to make such changes when they are in fact necessary, so long as they provide the requisite pay to affected employees.
- **H.B. 1226 grants employees the right to request a schedule that works for them.** The "right to request" ensures that employees have input into their work schedules by providing them with the right to identify and request, without fear of retaliation, limitations or changes in their availability and preferences for certain work schedules or arrangements. This protection is vital to combat retaliation against employees who place some limits on their availability or request schedule modifications. Unfortunately, this kind of retaliation—for example reducing an employee's work hours, assigning them less favorable shifts, or even termination—is all too common.
- **H.B. 1226 would discourage the unhealthy and unnecessary practice of “clopening.”** Like last-minute schedule changes, the practice of “clopening”—i.e., requiring an employee to work the closing shift one night and the opening shift the next morning—is particularly disruptive to family routines and can harm workers' health and productivity on the job.²³ H.B. 1226 would help ensure that workers in covered establishments have adequate time to travel and rest between shifts by prohibiting employers from requiring employees to work with less than 11 hours between shifts; if an employee consents to work such a shift, the bill requires the employer to pay the employee at 1.5 times their rate of pay for the hours they work in a shift that begins less than 11 hours after their previous shift ended.

H.B. 5353 would benefit employees and employers alike—because good scheduling practices are good for business.

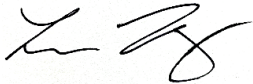
Many of the companies that would be covered by H.B. 1226 are already complying with similar laws in cities like Seattle, New York City, Philadelphia, Chicago, and Los Angeles, as well as the state of Oregon.²⁴ Workforce management company Deputy, which provides technology that supports compliance with these laws, reports positive impacts among their clients, including increased hours for workers; substantial reductions in absences and tardiness; and a modest decrease in labor costs for covered

employers.²⁵ Employers that offer their employees stable and predictable schedules also report reduced turnover and improved employee loyalty.²⁶ More consistent hours and advance notice of schedules also make it easier for employees to secure stable child care and arrange transportation so that they can consistently be and stay at work—in turn creating stability, predictability, and cost savings for businesses.²⁷ For example, a study in Emeryville, California, found that after the city’s fair workweek policy went into effect, covered workers reported a significant decrease in work schedule instability, along with improvements in family well-being.²⁸ In Seattle, researchers similarly found that workers covered by the Secure Scheduling Ordinance experienced more predictable schedules, improved sleep and well-being, and increased financial security.²⁹

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Working families in Maryland deserve to have jobs that respect their time and give them a chance to thrive and prosper. NWLC appreciates the efforts of the bill sponsors and this Committee to address the negative impact of just-in-time scheduling on the lives of women and families in Maryland. We thank you for your consideration of H.B. 1226 and respectfully request a favorable report.

Sincerely,



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¹ See generally, e.g., *Collateral Damage: Scheduling Challenges for Workers in Low-Wage Jobs and Their Consequences*, NAT'L WOMEN'S LAW CTR. (NWLC) (Sept. 2023), <https://nwlc.org/resource/collateral-damage-scheduling-challenges-workers-low-wage-jobs-and-their-consequences>; Daniel Schneider & Kristen Harknett, *Consequences of Routine Work-Schedule Instability for Worker Health and Well-Being*, 84 AM. SOC. REV. 82 (Feb. 2019).

² See, e.g., Elise Gould & Katherine deCourcy, *Low-Wage Workers Have Seen Historically Fast Real Wage Growth in the Pandemic Business Cycle*, ECON. POL'Y INST. (EPI), March 2023, <https://files.epi.org/uploads/263265.pdf>; Brooke LePage, *Women's Jobs Are Being Added Back to the Economy—But Many Need Improving*, NWLC (June 2022), <https://nwlc.org/wp-content/uploads/2022/06/Leisure-and-Hospitality-2022-v2.pdf>.

³ See Elaine Zundl et al., *Still Unstable: The Persistence of Schedule Uncertainty During the Pandemic*, SHIFT PROJECT 3 (Jan. 2022), https://shift.hks.harvard.edu/wp-content/uploads/2022/01/COVIDUpdate_Brief_3.29.23.pdf.

⁴ Bureau of Labor Statistics, *Job Flexibilities and Work Schedules Summary*, U.S. DEP'T OF LABOR (Sept. 2019), <https://www.bls.gov/news.release/pdf/flex2.pdf> (Table 6).

⁵ See Zundl et al., *supra* note 3 (42% of service sector workers surveyed report no input at all into their work schedules). See also, e.g., Daniel Schneider & Kristen Harknett, *It's About Time: How Work Schedule Instability Matters for Workers, Families, and Racial Inequality*, SHIFT PROJECT 1 (Oct. 2019), <https://shift.berkeley.edu/files/2019/10/Its-About-Time-How-Work-Schedule-Instability-Matters-for-Workers-Families-and-Racial-Inequality.pdf> [hereinafter *It's About Time*]; Lonnie Golden, *Irregular Work Scheduling and Its Consequences*, EPI (Apr. 9, 2015), <https://www.epi.org/publication/irregular-work-scheduling-and-its-consequences/> (finding that 45% of workers surveyed said “their employer decides” their work schedule; only 15% reporting they were “free to decide” their schedule, and 40% reporting they could “decide within limits”); Susan J. Lambert, Peter J. Fugiel, & Julia R. Henly, *Precarious Work Schedules Among Early-Career Employees in the US: A National Snapshot*, EMP. INSTABILITY, FAM. WELL-BEING, & SOC. POL'Y NETWORK, U. CHICAGO (Aug. 2014), https://ssa.uchicago.edu/sites/default/files/uploads/lambert.fugiel.henly_precarious_work_schedules.august2014_0.pdf (finding that “about 44 percent of workers overall and half of hourly workers say that they do not have any input into when they start and finish work”).

⁶ See Zundl et al., *supra* note 3.

⁷ See generally, e.g., *Responses to and Repercussions from Income Volatility in Low- and Moderate-Income Households: Results from a National Survey*, ASPEN INST. (Dec. 2017), <http://www.aspenepic.org/responses-repercussions-income-volatility-low-moderate-income-households-results-national-survey>; Daniel Schneider & Kristen Harknett, *Hard Times: Routine Schedule Unpredictability and Material Hardship Among Service Sector Workers*, WASH. CTR. FOR EQUITABLE GROWTH (Oct. 2019), <https://equitablegrowth.org/working-papers/hard-times-routine-schedule-unpredictability-and-material-hardship-among-service-sector-workers>.

⁸ See generally *Collateral Damage*, *supra* note 1; Daniel Schneider & Kristen Harknett, *Parental Exposure to Routine Work Schedule Uncertainty and Child Behavior*, WASH. CTR. FOR EQUITABLE GROWTH (Oct. 2019), <https://equitablegrowth.org/working-papers/parental-exposure-to-routine-work-schedule-uncertainty-and-child-behavior>; Julie Vogtman & Karen Schulman, *Set Up to Fail: When Low-Wage Work Jeopardizes Parents' and Children's Success*, NWLC (Jan. 2016), <https://nwlc-civ49tixgw5lbab.stackpathdns.com/wp-content/uploads/2016/01/FINAL-Set-Up-To-Fail-When-Low-Wage-Work-Jeopardizes-Parents%E2%80%99-and-Children%E2%80%99s-Success.pdf>.

⁹ See generally Zundl et al., *supra* note 3.

¹⁰ See, e.g., Vogtman & Schulman, *supra* note 8, at 18; Dani Carillo et al., *On-call Job, On-Call Family: The Necessity of Family Support Among Retail Workers with Unstable Work Schedules* (Wash. Ctr. for Equitable Growth Working Paper 110116, Nov. 2016), <http://equitablegrowth.org/wp-content/uploads/2016/10/110116-WP-retail-workers-with-unstable-schedules.pdf>; Kristen Harknett, Daniel Schneider & Kristen Luhr, *Who Cares If Parents Have Unpredictable Work Schedules?: Just-in-Time Work Schedules and Child Care Arrangements*, SOC. PROBLEMS (Sept. 2020), <https://doi.org/10.1093/socpro/spaa020>.

¹¹ See generally Jasmine Tucker & Julie Vogtman, *When Hard Work Is Not Enough: Women in Low-Paid Jobs* (July 2023), <https://nwlc.org/resource/when-hard-work-is-not-enough-women-in-low-paid-jobs>.

¹² *Id.*

¹³ See Bureau of Labor Statistics, *American Time Use Survey, Table A-1: Time spent in detailed primary activities and percent of the civilian population engaging in each activity, averages per day by sex, 2022 annual averages*, U.S. DEP'T OF LABOR (2023), <https://www.bls.gov/news.release/atus.t01.htm>.

¹⁴ See Sarah Jane Glynn, *Breadwinning Mothers Are Critical to Families' Economic Security*, CTR. FOR AM. PROGRESS (Mar. 2021), <https://www.americanprogress.org/article/breadwinning-mothers-critical-families-economic-security>.

¹⁵ See Adam Storer, Daniel Schneider & Kristen Harknett, *What Explains Race/Ethnic Inequality in Job Quality in the Service Sector?*, 85 AM. SOC. REV. 537 (2020), <https://journals.sagepub.com/doi/pdf/10.1177/0003122420930018>.

¹⁶ See Valentin Bolotnyy and Natalia Emanuel, *How Unpredictable Schedules Widen the Gender Pay Gap*, HARV. BUS. REV. (July 1, 2022), <https://hbr.org/2022/07/how-unpredictable-schedules-widen-the-gender-pay-gap>.

¹⁷ See *The Wage Gap, State by State*, NWLC (Oct. 2023), <https://nwlc.org/resource/wage-gap-state-state/>.

¹⁸ See *The Wage Gap for Mothers by Race, State by State Tables*, NWLC (Aug. 2023), <https://nwlc.org/resource/wage-gap-for-mothers-by-race-state-by-state>.

¹⁹ *Id.*

²⁰ See, e.g., Sarah Javaid, *A Window Into the Wage Gap: What's Behind It and How to Close It*, NWLC (Jan. 2024), <https://nwlc.org/wp-content/uploads/2023/01/2023-Wage-Gap-Factsheet.pdf>

²¹ See, e.g., Brooke LePage, *Part-Time Workers Are Facing Heightened Uncertainty During COVID—And Most Are Women*, NWLC (Feb. 2022), <https://nwlc.org/resource/part-time-workers-factsheet>; Lonnie Golden, *Part-Time Workers Pay a Big-Time Penalty*, ECON. POLICY INST. (Feb. 2020), <https://files.epi.org/pdf/179038.pdf>.

²² See *State & Local Laws Advancing Fair Work Schedules*, NWLC (Sept. 2023), <https://nwlc.org/resource/state-and-local-laws-advancing-fair-work-schedules>.

²³ See *Scheduling Away Our Health: How Unpredictable Work Hours Affect Health and Well-Being*, HUMAN IMPACT PARTNERS 7-8 (2016), https://humanimpact.org/wp-content/uploads/Scheduling-Away-Our-Health_rev3.pdf.

²⁴ See *State & Local Laws Advancing Fair Work Schedules*, *supra* note 22.

²⁵ Communication from Krista Hardwick, legal counsel, Deputy (Jan. 28, 2020). Ms. Hardwick reports that fair workweek laws generally result in a 14 percent increase in hours for workers; absences and tardiness have gone down by over 30 percent; and covered employers in fair workweek jurisdictions have seen a 3 percent decrease in labor costs.

²⁶ See, e.g., Joshua Choper, Daniel Schneider & Kristen Harknett, *Uncertain Time: Precarious Schedules and Job Turnover in the U.S. Service Sector*, 75 ILR REV. 1088 (Oct. 2022), <https://doi.org/10.1177/00197939211048484>; David Fuller et al., *How Retailers Can Attract and Retain Frontline Talent Amid the Great Attrition*, MCKINSEY & CO. (Aug. 17, 2022), <https://www.mckinsey.com/industries/retail/our-insights/how-retailers-can-attract-and-retain-frontline-talent-amid-the-great-attrition> (reporting that front-line retail employees most frequently named lack of control over their workplace schedules—including unpredictable hours and rigid start/stop times—as the reason for leaving their jobs); Sarah Kalloch, Amanda Silver & Zeynep Ton, *Give Service Workers Stable Schedules*, HARV. BUS. REV. (March 29, 2022), <https://hbr.org/2022/03/give-service-workers-stable-schedules>; Liz Ben-Ishai, *Job Schedules that Work for Businesses*, CTR. FOR LAW & SOCIAL POL'Y 1 (Nov. 2014), <http://www.clasp.org/resources-and-publications/publication-1/Job-Schedules-that-Work-for-Businesses.pdf>

²⁷ See, e.g., Joan C. Williams et al., *The Stable Scheduling Study: Stable Scheduling Increases Productivity and Sales*, CTR. FOR WORKLIFE LAW 38 (Mar. 2018), <https://worklifelaw.org/wp-content/uploads/2019/02/Stable-Scheduling-Health-Outcomes-Report.pdf>; Katherine Guyot & Richard V. Reeves, *Unpredictable Work Hours and Volatile Incomes Are Long-Term Risks for American Workers*, BROOKINGS INST. (Aug. 2020), <https://www.brookings.edu/blog/up-front/2020/08/18/unpredictablework-hours-and-volatile-incomes-are-long-term-risks-for-american-workers>.

²⁸ Elizabeth O. Ananat, Anna Gassman-Pines & John A. Fitz-Henley II, *The Effects of the Emeryville Fair Workweek Ordinance on the Daily Lives of Low-Wage Workers and Their Families*, 8 RUSSELL SAGE FOUND. J. SOC. SCIENCES 45 (2022), <https://doi.org/10.7758/RSF.2022.8.5.03>.

²⁹ Kristen Harknett, Daniel Schneider & Veronique Irwin, *Seattle's Secure Scheduling Ordinance: Year 2 Impact Report*, SHIFT PROJECT (Feb. 2021), <https://shift.hks.harvard.edu/seattles-secure-scheduling-ordinance-year-2-worker-impact-report/>.