



**Testimony of the Center for Popular Democracy (CPD)
Submitted to the Senate Finance Committee, Maryland General Assembly
Senator Pamela Beidle, Chair
March 12, 2024
Re: Senate Bill No. 994
An Act Concerning Predictable Scheduling**

Dear members of the Senate Finance Committee,

On behalf of the Center for Popular Democracy (CPD), I write in support of SB 994, the Maryland Predictable Scheduling Act, to protect hourly workers in Maryland's service sector.

CPD provides technical assistance to policymakers and enforcement staff on the development and enforcement of predictable scheduling policies, including laws in Seattle, WA; San Francisco, Los Angeles, Berkeley, Emeryville, and San Jose, CA; New York City, NY, Philadelphia, PA; Evanston and Chicago, IL; and the state of Oregon. We have deep expertise in the industries where unstable work hours are most prevalent, including the business models that have generated these practices and the impact on workers and their families.

Just-in-Time Scheduling Practices Bring Chaos to Service Sector Workers

Just-in-time scheduling is the practice of publishing work schedules just days in advance and tweaking those schedules until the last minute, in an attempt to precisely calibrate staffing to match expected demand. For those who work in the retail, food service, hospitality, and nursing home care, where just-in-time scheduling is pervasive, this practice means unstable hours that make it **impossible for workers to plan their lives**. A recent national study by the Harvard Shift Project on retail and food service workers found that:¹

- 64% receive their schedules with less than 2 weeks' notice; over 33% with less than a week's notice.
- Although employers portray work hours as flexible to meet the varying needs of parents, students, and workers with second jobs, academic survey data tells a different story:
 - 42% of the workers surveyed have no input into their work schedules, which are decided unilaterally by their employers.
 - 65% of workers want a more predictable schedule.

¹Elaine Zundl, Daniel Schneider, Kristen Harknett, and Evelyn Bellew. *Still Unstable: The Persistence of Schedule Uncertainty During the Pandemic*, Shift Project Research Brief. <https://shift.hks.harvard.edu/still-unstable>

Workers with unstable and inadequate hours are more likely to face **housing instability and hunger**. Researchers have also documented that **children suffer when their parents work unstable hours**.² Parents with last-minute schedules are much more likely to cobble together informal childcare or even leave their children unattended when the alternative is to risk termination. The children of parents facing last-minute changes to their work schedules are more likely to miss school. The stress of instability also causes psychological harm to kids, leading to a higher incidence of behavioral challenges. Moreover, these burdens do not fall equally on all workers. Due to discrimination by managers, people of color, especially **women of color, bear the brunt of schedule instability**.³

Predictable Scheduling Laws Work for Employers and Employees

The proposed SB 994 is a common-sense solution that preserves employers' flexibility and management discretion while incentivizing basic standards that allow workers, their families, and communities to thrive. When working people have schedules they can plan around, predictable hours and income to pay their bills, a voice in when they'll work, and healthy hours with time to rest, their families and communities – as well as the state's economy – benefit.

Consistently, the most robust academic and administrative evidence affirms that policies like these work for all involved.

The companies that would be covered by this bill are already complying with *and benefitting from* similar laws elsewhere. Workforce management company Deputy, which provides technology that supports compliance with these laws, reports positive impacts of fair workweek compliance for their clients:

- Fair workweek laws generally result in a 14% increase in hours for workers.
- Absences and tardiness have gone down by over 30%.
- **Covered employers in fair workweek jurisdictions have seen a 3% decrease in labor costs.**⁴

Similarly, Deputy's 2024 report included an analysis of Fair Workweek in Los Angeles that found consistent findings with their findings elsewhere. They noted a diminished discrepancy between rostered and actual hours by 13%. They also point out that "the enhanced reliability of work hours is expected to foster heightened participation rates in the labor market, particularly among individuals seeking employment stability in their schedules such as women with young children and young adults with caregiving responsibilities for adults."⁵

Evidence from two-years of study of Seattle's Secure Scheduling Ordinance showed significant changes in the lives of covered workers. It increased the share of workers knowing their schedules two weeks in advance, decreased the share reporting last minute shift changes without

² Daniel Schneider and Kristen Harknett, *It's About Time: How Work Schedule Instability Matters for Workers, Families, and Racial Inequality*, Institute for Research on Labor and Employment at the University of California, Berkeley, available at <https://shift.berkeley.edu/its-about-time-how-work-schedule-instability-matters-for-workers-families-and-racial-inequality/>.

³ *Ibid.*

⁴ Communication from Krista Hardwick, legal counsel, Deputy, Jan. 28, 2020.

⁵ Deputy. *The Big Shift: Evolving Landscapes of the US Labor Market*. 2024. <https://www.deputy.com/insights/the-big-shift-2024>

pay, increased worker satisfaction with their job, increased workers' overall happiness and sleep quality, and reduced their material hardship.⁶

For those companies that already practice advance scheduling with worker input, bills like these do not represent any inconvenience. They already lead on high-road employment practices that improve retention and productivity. With access to technology that allows for easy compliance, this bill ensures their good practices become the standard across the state and keep bad actors from hurting more communities.

Franchises Practice Just-in-Time Scheduling and Can Easily Implement Predictable Scheduling

Widespread evidence shows that franchises are no exceptions to implementing the chaos of just-in-time scheduling practices. They operate like highly standardized chains and reap the associated benefits. Fast food franchises are the most common type of franchise, representing a quarter of all U.S. franchises.⁷ McDonald's, the nation's largest fast food chain, operates more than 90% of its 36,000 restaurants as franchises.⁸ In 2021, McDonald's profits totaled \$7.5 billion.⁹

In exchange for access to a franchisor's brand, operational and technological systems, real estate, employee/manager training programs, and other core business tools, franchisees make payments to franchisors in the form of royalties, fees, and rental payments.¹⁰

Moreover, corporate franchisors often impose standardized policies that **control many major aspects of franchisees' daily operations, including unstable scheduling.** McDonald's Corporation's requirements heavily influence franchisees' personnel policies and practices, working conditions, labor budgets and scheduling.¹¹

Franchisees have access to franchisors' **workforce management technology** to manage point-of-sale systems, payroll, and labor utilization rates, and are often required or pressured to use these technologies. McDonald's Corporation strongly incentivizes franchisees to use all the features of its workforce management technology including its system for scheduling staff, timekeeping, tracking meals and break times, and rates of pay.¹² These systems often generate the **just-in-time work schedules**¹³ that negatively impact employees' lives – but can also be programmed to ensure compliance with predictable scheduling laws. Access to these technologies therefore makes compliance far more viable for franchisees than for small businesses that lack similar tools.

Franchisors are being held legally responsible for franchisees' employment practices. Evidence of the integrated relationship between franchisees and corporate franchisors has led

⁶ Daniel Schneider, Kristen Harknett, and Veronique Irwin. *Seattle's Secure Scheduling Ordinance: Year 2 Worker Impact Report*, Shift Project Research Brief. <https://shift.hks.harvard.edu/seattles-secure-scheduling-ordinance-year-2-worker-impact-report/>

⁷ Renee Bailey, "Food Franchise Report 2017," *Franchise Direct*, July 26, 2017, <https://www.franchisedirect.com/information/foodfranchisereport2017/>.

⁸ "Franchising Overview," *McDonald's*, <https://corporate.mcdonalds.com/corpmcd/franchising/overview.html>.

⁹ "Franchising Overview," *McDonald's*, <https://corporate.mcdonalds.com/corpmcd/franchising/overview.html>.

¹⁰ "FAQs about Franchising," *International Franchise Association*, <https://www.franchise.org/faqs-about-franchising>.

¹¹ 2022 Franchise Disclosure Document for McDonald's, https://www.franchimp.com/index.php?page=pdf&f=107211_2022.pdf.

¹² Testimony of Pacific Management Consulting Group (a restaurant analysis consultancy) Founder John. A. Gordon., page 3, *Ochoa v. McDonald's Corp.* (June 19, 2015).

¹³ Sean McElwee, "The Threat of Just – in – Time Scheduling," *HuffPost*, Dec 6, 2017, https://www.huffingtonpost.com/sean-mcelwee/the-threat-of-justin-time-scheduling-b_5682481.html.

courts and enforcement agencies to frequently recognize franchisors as **joint employers**. In 2016, McDonald's Corporation agreed to pay \$3.75 million to settle a lawsuit concerning overtime violations at various franchise locations in California.¹⁴ Following extensive investigation into wage and hour violations at Sonic Burger franchises by the U.S. Department of Labor (DOL), corporate owner Sonic Industries signed an agreement with DOL to promote compliance with labor standards at its franchise locations nationwide.¹⁵

In an ongoing enforcement action against McDonald's franchisees for violating workers' organizing rights, the General Counsel of the National Labor Relations Board determined that McDonald's Corporation could be named as a joint employer.¹⁶ Although the Trump Administration attempted to shield McDonald's from liability by settling these charges, a judge rejected the settlement because it minimized McDonald's obligations despite extensive evidence of McDonald's corporate control over franchise labor practices.¹⁷

As a national network of community organizations, we hear from our affiliates' members the impact that legislation like this has had on their lives as they have been able to study, take care of their children, work second jobs, and be protected from some forms of arbitrary retaliation.

For hourly workers with unstable schedules, that vision will only be realized when this Legislature enacts Predictable Scheduling.

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¹⁴ Daniel Wiessner, "McDonald's to pay \$3.75 million in first settlement with franchise workers," October 31, 2016, <https://www.reuters.com/article/us-mcdonalds-settlement-idUSKBN12V1NJ>.

¹⁵ Ben Penn, "Sonic Works with Labor Agency to Keep Wage Violations Off the Menu," Bloomberg BNA, July 27, 2017, <https://www.bna.com/sonic-works-labor-n73014462371/>; "U.S. Department of Labor, Sonic Sign Agreement to Promote Fair Labor Practices at Franchises Nationwide," July 27, 2017, <https://www.dol.gov/newsroom/releases/whd/whd20170727>.

¹⁶ "NLRB Office of the General Counsel Authorizes Complaints Against McDonald's Franchisees and Determines McDonald's, USA, LLC is a Joint Employer," *National Labor Relations Board*, July 29, 2014, <https://www.nlr.gov/news-outreach/news-story/nlr-office-general-counsel-authorizes-complaints-against-mcdonalds>.

¹⁷ McDonalds USA LLC, a Joint Employer, et al., 02-CA-093893 (NLRB Administrative Law Judge's Order, July 17, 2018) <http://apps.nlr.gov/link/document.aspx/09031d458288067b>.