

House bill would allow workers to change their schedules without fear of retaliation

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A group of House Democrats on Feb. 9 introduced legislation, [H.R. 6670](#), designed to ensure that employees have more certainty about their work schedules and income. The bill, known as the Schedules That Work Act, has been introduced several times over the past few years, but supporters hope the measure can gain new momentum as lawmakers seek to address workplace issues exacerbated by the pandemic, such as unpredictable hours and pay.

The bill would add legal protections for workers who ask for schedule changes or rest between shifts, and would require advanced scheduling notice for workers in certain industries. The new rules would apply to employers with 15 or more employees.

“Workers and their families deserve stability and security, not schedules left to the whims of their employer,” Rep. [Rosa DeLauro](#) (D-Conn.), who introduced the bill, [said in a statement](#). “Workers in vital service sector jobs are not only underpaid but also often subjected to unfair practices like little notice of their work schedule and last-minute shift changes and cancellations. The detriment of these practices was only compounded by the COVID-19 pandemic which put workers’ health and safety at higher risk and prompted quarantines and school and childcare closures.”

Sen. [Elizabeth Warren](#) (D-Mass.) introduced the Senate version of the bill, [S. 3642](#), in mid-February with Senate HELP Chair [Patty Murray](#) (D-Wash.) among the original 22 co-sponsors.

WHAT'S IN THE BILL?

This Pro Bill Analysis is based on [the text of the bill](#) as introduced on Feb. 9.

H.R. 6670 would allow employees to request to change “the terms and conditions of employment” as they relate to:

- The number of hours an employee is required to work or be on call for work
- The times an employee is required to work or be on call for work
- The location where the employee is required to work
- The amount of notice an employee receives of work schedule assignments
- Minimizing fluctuations in the number of hours an employee is scheduled to work on a daily, weekly or monthly basis

Employers would be required to engage in a “timely, good-faith interactive process” with each employee that would include a discussion of potential schedule changes that would meet the employee’s needs. If a request is denied, the employer would need to tell the employee why the request was denied and consider alternatives that might meet the employee’s needs.

The bill would require an employer to grant an employee’s request (unless the employer has a bona fide business reason, as defined in the legislation, not to do so) if the request is based on:

- A serious health condition
- The employee’s responsibilities as a caregiver
- The employee’s enrollment in a career-related educational or training program

— A reason related to a second job

If an employee makes a request based on reasons not included on the list above, the employer could deny the request “for any reason that is not unlawful,” but would need to provide a reason for the denial (Sec. 3).

In the retail, food service, cleaning, hospitality and warehouse industries (as well as other occupations designated by the Labor Department), employers would need to provide employees with their work schedule at least 14 days before the first day of the schedule or on or before the first day of work for a new employee.

Employers would need to pay \$75 to each affected employee for every day a schedule is not provided. Employers could still make changes to work schedules in these industries as long as the change is made at least 14 days in advance or the employer provides “predictability pay” for the change.

Predictability pay would be defined as:

— The employee’s regular hourly rate of pay for the hours the employee works plus one additional hour at that rate per work schedule change if the employer adds any hours to the hours the employee is scheduled to work or changes the date, time or location of the work shift the employee is scheduled to work with no loss of hours

— At least one-half “times the employee’s regular rate of pay per hour for any hour that the employee is scheduled to work” and does not work due to the employer reducing or canceling the scheduled hours

The legislation would lay out exceptions to the predictability pay requirement, including for the failure of a public utility; the shutdown of public transportation; a fire, flood or other natural disaster; a declared state of emergency; or a severe weather condition that poses a threat to employee safety.

The measure would require employers in the specified industries to inform employees within 90 days of the bill’s enactment (and at least once per year) of the minimum number of expected hours the employee will be assigned to work in each month for the 12-month period that follows. New employees would need to be given the estimate for the coming year before their first day of work.

Schedules would need to be provided to employees in writing and posted in an accessible place in every establishment. Employees could decline to work any hours not included in the posted work schedule but could agree in writing to voluntarily consent to work extra hours.

Employees in the specified industries who work a split shift would need to be paid for an additional hour of work at the employee’s regular pay rate for each day the employee works a split shift (Sec. 4).

In an attempt to allow employees to rest between shifts, the legislation would allow employees to decline to work a regular or on-call shift if the shift occurs less than 11 hours after the end of an employee’s previous shift or during the 11 hours following the end of a shift that lasted two days. Employees would need to provide written consent in order for an employer to assign an employee a shift that would violate these rest requirements. For each extra shift an employee works, the employer would need to pay the employee at 1.5 times the employee’s scheduled rate of pay for shifts less than 11 hours apart (Sec. 5).

The bill includes a section on “prohibited acts,” which would make it illegal for an employer to “interfere with, restrain, or deny the exercise or the attempt to exercise” rights laid out by sections 3 through 5. It would also prohibit retaliation by the employer against any employee trying to exercise the rights laid out in the legislation (Sec. 6).

The measure would grant the Labor secretary investigative authority under the Fair Labor Standards Act of 1938 to enforce the bill’s provisions. Employers would be required to “make, keep, and preserve” records concerning compliance with the bill, but could not be required to submit records to the Labor Department more than once in a 12-month period unless the secretary “has reasonable cause to believe there may exist a violation of this Act or any regulation or order issued pursuant to this Act, or is investigating a charge.” The secretary would have subpoena authority under the Fair Labor Standards Act.

The legislation would allow employees to sue employers who violate the bill’s provisions for various damages, including lost wages, interest, reinstatement and promotion. The court could waive some of the required damages if an employer proves to the satisfaction of the court that a violation was “in good faith and that the employer had reasonable grounds for believing that the act of omission was not a violation of a covered provision.”

The Labor Department would “receive, investigate, and attempt to resolve complaints of violations” in the same way the department currently does for potential violations of the Fair Labor Standards Act. The department could also impose civil penalties on employers who repeatedly violate the act and would be able to bring civil actions on behalf of “aggrieved employees” (Sec. 7).

Employers would be required to post a notice prepared or approved by the Labor Department summarizing the bill’s requirements and how to file complaints, with employers who violate this requirement subject to a civil penalty up to \$100 per offense (Sec. 8).

Regulations would be required within 180 days to implement the legislation, including information on additional industries to be included under Section 4 (Sec. 9).

The bill would require the Labor Department to “provide information and technical assistance to employers, labor organizations and the general public concerning compliance” with the bill (Sec. 10).

It would stipulate that the legislation represents “minimum requirements” and would not “preempt, limit, or otherwise affect” any other law, requirement, policy or standard that provides greater rights for employees (Sec. 11).

It would not apply to employees covered by collective bargaining agreements if the terms of the agreement govern work scheduling practices and the provisions of the bill are “expressly waived” in the agreement (Sec. 12).

The measure would also stipulate that none of its provisions should supersede any federal, state or local regulation, and that nothing in the bill should “diminish or impair the rights of an employee under any valid collective bargaining agreement” (Sec. 13).

WHO ARE THE POWER PLAYERS?

DeLauro, who chairs the House Appropriations Committee, introduced H.R. 6670 on Feb. 9. The bill had [29 co-sponsors](#) as of mid-March.

Warren introduced the Senate version, [S. 3642](#), on Feb. 14, with **Murray**, Senate Majority Leader [Chuck Schumer](#) and Senate Appropriations Chair [Patrick Leahy](#) (D-Vt.) among its co-sponsors. The bill had [23 co-sponsors](#) as of mid-March.

[DeLauro and Warren released](#) a list of dozens of organizations they said support the bill, including the **AFL-CIO**, United Food and Commercial Workers International Union, Coalition of Labor Union Women and many others.

“Unpredictable and inadequate work hours have long been a problem for part-time and hourly workers in low-paid jobs, which means they have been a problem for women, and especially for women of color,” **National Women's Law Center** Vice President for Education and Workplace Justice Emily Martin [said in the press release](#).

Business groups, including the **U.S. Chamber of Commerce**, [have warned that previous versions of the legislation](#) could cause employers to reduce the number of part-time and other non-full-time employees they carry. The Chamber of Commerce has not weighed in on the most-recent version of the Schedules That Work Act.

WHAT'S HAPPENED SO FAR?

DeLauro introduced H.R. 6670 on Feb. 9 and Warren introduced S. 3642 on Feb. 14. Earlier versions of the Schedules That Work Act were introduced during the 113th ([H.R. 5159](#) and [S. 2642](#)), 114th ([H.R. 3071](#) and [S. 1772](#)), 115th ([H.R. 2942](#) and [S. 1386](#)) and 116th ([H.R. 5004](#) and [S. 3256](#)) Congresses. DeLauro and Warren sponsored each of their chamber’s versions of those bills, with the exception of the 113th Congress measures, which they co-sponsored.

“Far too many hourly workers receive their work schedules with less than a week's notice,” [Warren said in a release](#). “I’m proud to partner with Congresswoman DeLauro on the Schedules That Work Act because it empowers workers to regain control over their work schedules and build economic security for themselves and their families,” Warren said.

Rep. [Jan Schakowsky](#) (D-Ill.) and DeLauro introduced another bill, [H.R. 6699](#), on Feb. 9 known as the Part-Time Worker Bill of Rights Act, which would remove the requirement that employees work a minimum number of hours during the preceding 12-month period before becoming eligible for family and medical leave, among other benefits for part-time workers. Warren introduced the Senate version, [S. 3641](#), on Feb. 14.

WHAT'S NEXT?

Neither the House Education and Labor Committee nor the Senate HELP Committee have announced plans to mark up the Schedules That Work Act.

The list of Democratic co-sponsors indicates that the House might pass the bill if brought to a vote, but it's unlikely the broad Democratic support in the Senate would be enough to garner the 10 GOP votes needed to overcome a filibuster in the evenly split chamber.