PERSISTENT UNPREDICTABILITY: ANALYZING EXPERIENCES WITH THE FIRST STATEWIDE SCHEDULING LEGISLATION IN OREGON

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Based on 98 in-depth interviews with workers and managers, the authors analyze the effectiveness of Oregon's Fair Workweek Act, the first statewide scheduling legislation. Overall, findings show limited evidence of the law's efficacy to improve workers' schedules. The authors discuss three factors that are likely to explain this shortcoming: lack of adequate funding for education about the law and for enforcement, the inclusion of provisions that undermine the intent of fair scheduling legislation, and the ability of employers to interpret the law with substantial leeway. In this context, the authors consider the persistence of unpredictable scheduling practices a form of "flexible discipline," even under Fair Workweek legislation. This article contributes to the literature on unpredictable scheduling by showing that in order to address this problem, legislation must include robust funding for education, implementation, and enforcement and must avoid options for workers to waive their rights to predictability pay, which as part of the act is intended to compensate employees for last-minute schedule changes.

Unpredictable scheduling practices remain widespread in the United States, particularly in the service sector. Scheduling practices such as call-ins, on-call shifts, and extended shifts are regularly imposed in industries such as retail, food services, and hospitality, and such practices

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disproportionately impact workers of color. Managers can deploy scheduling practices in a manner that rewards and disciplines workers, constituting what scholars have called "flexible discipline" (Wood 2018: 1062).

Precarious schedules limit workers' abilities to obtain financial stability, pursue education, and retain a second job. Last-minute scheduling severely impacts workers' ability to provide care for their families (Harknett, Schneider, and Luhr 2019), and recent studies have found a strong connection between unstable schedules and workers' health and well-being. As a result, scholars advocate for public policies that mitigate the impacts of these practices on workers' lives. These policies include increased advance notice, workers' right to input on their schedule, and mitigation of instability through "predictability pay," which would compensate employees for last-minute schedule changes.

To date, seven cities have passed ordinances to regulate scheduling, and several additional jurisdictions are considering similar legislation. In 2017, Oregon became the first state to pass statewide legislation seeking to restrict unpredictable scheduling, affecting approximately 171,582 workers (Wolfe, Jones, and Cooper 2018). Under Oregon Senate Bill 828 (SB828), workers have a right to advance notice, 10 hours of rest between shifts, extra compensation for unexpected shifts, and input on their schedules. Scholars have examined the efficacy of some company-wide scheduling regulations through experiments with willing employers, and with the use of survey data, scholars have produced an evaluation of Seattle's scheduling ordinance. The present study contributes to the literature on unpredictable scheduling practices and the impacts of scheduling regulation by focusing on the initial impacts of Oregon SB828, the first state-level scheduling legislation. By uniquely using qualitative in-depth interviews previously underutilized in the study of scheduling regulations, we capture the complexity of the law's implementation in practice.

Findings come from 98 in-depth interviews with workers and managers in affected industries in both urban and rural areas and in unionized and non-unionized establishments. Our main focus here is on workers' and managers' experiences of the Oregon law and what they reveal about the influence of some of the law's unique provisions on scheduling practices. Because SB828 is the first statewide scheduling law, it is imperative that we understand the effects of these provisions, as they may be considered for future scheduling legislation in other jurisdictions.

Background

The Rise of Unpredictable Scheduling and Its Impacts for Workers

Unpredictable scheduling is one of the most prevalent characteristics of contemporary precarious work arrangements, which can also include temporary employment contracts, low pay, lack of representation, few or no benefits, and an overall contingent employment arrangement (Kalleberg

2009). Increased demand for around-the-clock services has meant irregular and unpredictable workweeks for employees (Presser 2003). Transformations in communications and managerial technologies have allowed for the rise of "just-in-time" practices (Golden 2015). Employers' systematic efforts to cut labor costs through practices of understaffing and giving workers fewer hours (Lambert 2008) result in pressure for managers and schedulers to keep workers' time flexible so they can fill schedule holes (Kossek et al. 2016). It has also resulted in a significant increase in involuntary part-time workers (Golden 2016). Irregular scheduling includes a constellation of managerial practices (Fugiel and Lambert 2019), such as last-minute scheduling, frequent changes, unexpected call-ins, and requirements for open availability, among others (Grzywacz, Carlson, and Shulkin 2008; Bond and Galinsky 2011; Henly and Lambert 2014; Golden 2015; McCrate 2018). These practices are concentrated in the retail, food services, hospitality, and health care sectors, disproportionately affecting women, non-white, and low-wage workers (Luce, Hammad, and Sipe 2014; Golden 2015; Michel and Ben-Ishai 2016; Storer, Schneider, and Harknett 2020).

Flexible work arrangements refer to both those in which workers have some degree of control over their schedule and those in which they have little or no control (Kelly and Moen 2007; McCrate 2012; Gerstel and Clawson 2018). The latter are particularly relevant to unstable scheduling and involve two distinct and interrelated phenomena: hour variability and hour inadequacy. Workers often experience a combination of the two, which creates financial instability and disrupts workers' ability to plan their non-work time (Alexander and Haley-Lock 2015).

Inadequate hours result in workers being willing to sacrifice their personal time to obtain more hours (Dickson, Golden, and Bruno 2018). This temporal aspect of precarious work arrangements (Schneider, Harknett, and Collins 2019) has been shown to seriously impact workers' lives, limiting their ability to arrange care for their dependents, attend medical appointments, work multiple jobs, participate in family events, pursue further education, and sometimes even get enough sleep (Kelly, Moen, and Tranby 2011; Henly and Lambert 2014; Golden and Kim 2017; Schneider et al. 2019). Alvarez, Loustaunau, Petrucci, and Scott (2019) highlighted the impossible choices that workers with unstable schedules face when trying to balance making ends meet, keeping their jobs, and taking care of themselves and their families. Precarious scheduling is also associated with job dissatisfaction and high turnover, leading to "a process of cumulative disadvantage" and downward mobility (Choper, Schneider, and Harknett 2019: 1). Stable work schedules have been shown to be more important than hourly wages to predict workers' well-being and stress levels, primarily because of the effect they have in reducing work–life conflict (Golden, Henly, and Lambert 2013; Henly and Lambert 2014; Schneider et al. 2019).

Flexible Discipline and Discretionary Power

Unpredictable scheduling constitutes what scholars have called "flexible discipline" (Wood 2018: 1062). Manager-controlled flexible scheduling, in which managers make last-minute schedule changes or create inconsistent schedules for workers, operates as a form of despotic control over workers' lives (Henly, Shaefer, and Waxman 2006; Wood 2018). The need for tight control over low-wage workers derives, in part, from the limited hours that managers have at their disposal when writing schedules (Lambert 2008; Lambert and Henly 2010) and from the incentive structures that link the maintenance of certain ratios between actual sales and staffing hours with managers' compensation and promotion decisions (Lambert, Henly, Schoeny, and Jarpe 2019). In response to understaffing, combined with variable business demands and last-minute call-outs by workers, managers make last-minute schedule changes. In turn, workers are expected to maintain open availability, particularly because most are employed as involuntary part-time workers who desire more hours.

In the context of constraints over the allocation of labor hours, scheduling managers typically wield extensive discretionary power in order to meet business demands. The discretionary power of managers functions as a form of workplace control, as managers use scheduling practices to reward or discipline workers by gifting or refusing desired hours and shifts. Halpin (2015: 422) argued that the manager-controlled and constantly changing work "mock calendar" "mystifies a consistent level of uncertainty and capriciousness in the workplace and aids in workers' buy-in to the labor process." When managers offer workers a desirable schedule, managers' discretionary power functions as both a form of discipline and a mechanism to obscure sources of domination, as workers feel grateful (Wood 2018).

Policy Solutions

As of 2020, Seattle, San Francisco, Emeryville, San Jose, New York City, Chicago, and Philadelphia had passed scheduling regulations, and Los Angeles had introduced one. Oregon is the first state to pass statewide regulations, and statewide legislation has been introduced in New Jersey, Connecticut, and Washington (Miggo 2019). A statewide attempt at a Fair Workweek law in California failed in 2017, and federal attempts failed in 2015 and 2017. The regulations vary widely, with different provisions, scope of included businesses, and exceptions.

These legislative efforts are, in part, a result of policy recommendations from scholarship on unpredictable scheduling. Policy recommendations focus overwhelmingly on increasing workers' control over scheduling, limiting manager-controlled scheduling flexibility, minimizing managerial discretion, and offering workers a guarantee of a certain minimum number of hours (e.g., Lambert and Henly 2009; Dickson et al. 2018; Miggo 2019). While policy recommendations target important components of precarity,

outcomes can be limited by employees having little knowledge of the laws (Milkman and Appelbaum 2013; Clawson and Gerstel 2014; Gupta and Goldman 2019) and by general lack of enforcement of labor laws (Defilippis, Martin, Bernhardt, and McGrath 2008; Milkman, González, and Ikeler 2012; Alexander and Haley-Lock 2015), particularly in precarious workplaces (Bernhardt, Spiller, and Theodore 2013).

Evaluations of the effectiveness of legislation in reducing unpredictable practices and improving workers' schedules are limited.[1] Seattle's secure scheduling ordinance notably included funding for evaluation of the law (Haley-Lock et al. 2019): Evaluations for year 1 and 2 of implementation have now been published (Haley-Lock et al. 2019; Harknett, Schneider, and Irwin 2021). In the year 1 evaluation, Haley-Lock et al. (2019) found some limited improvements in advance notice and compensation for changes, which were improved further in the year 2 follow-up, though changes in clopening (back-to-back closing and opening shifts), on-call, or canceled shift practices were not statistically significant in either study (Harknett et al. 2021). In the year 1 evaluation, their survey of managers revealed that the alignment of internal company practices with the legislation was weak or partial regarding provisions of access to hours and right to request preferred schedules. Both managers and workers reported insufficient knowledge of the law, reducing their ability to enforce it. Finally, the evaluation found little evidence that managers reduced their practice of adding hours or shifts after the schedule had been posted, and instead used strategies to avoid having to pay the schedule change premium to employees (Haley-Lock et al. 2019). The authors found inconsistencies between the survey results and the in-depth interviews for the manager portion of the study and explained these differences as equivalent to differences in "policy 'on paper' versus policy 'in practice'" (2019: 9), asserting the importance of interviews to understand the implementation of the law. Unfortunately, the worker evaluation of the Seattle law relies on surveys and not interviews with workers; therefore it is not able to capture workers' experiences in more detail.

Our study allows for examination of the first statewide scheduling law, and by using in-depth interviews with managers and workers we capture nuance and complexity in understandings, interpretations, and implementation of the law. Our findings show similar limitations to those described in the Seattle evaluation, provide analysis of characteristics unique to the Oregon law, and add qualitative dimensions to analysis of workers' experiences.

Oregon's Fair Scheduling Law

In 2017, Oregon passed OR SB828 (the Oregon Fair Workweek law) to regulate unpredictable scheduling in retail, food services, and hospitality establishments that employ more than 500 workers worldwide. SB828 was

[1]See Williams, Lambert, and Kesavan (2018) and Lambert et al. (2019) for experiments with willing employers.

implemented in July 2018. The law affects rural and urban businesses, as well as union and non-union places of employment, and Oregon is the first site to include the hospitality industry in the regulated industries.

The Oregon Fair Workweek law includes many policy recommendations that have been called for by workers and scholars (e.g., Lambert and Henly 2009; Dickson et al. 2018; Miggo 2019). The law includes provisions for seven days advance notice of work schedules (expanded to 14 days as of July 2020), a minimum of 10 hours of rest between shifts, right to input on work schedules, and compensation—called predictability pay—for accepting last-minute schedule changes, such as being called in for an unscheduled shift, coming in early for a shift, or extending a shift more than 30 minutes beyond what had been scheduled. SB828 also includes a provision that information about the law must be conspicuously posted so that workers are aware of these new protections. However, business groups were able to secure numerous concessions in the Oregon statewide law that effectively exclude large groups of workers based on employer size and industry.[2] SB828 also includes exemptions to predictability pay, including the use of a voluntary standby list for those willing to accept changes without compensation.

The law has received considerable attention at the national level. City, state, and federal policymakers are watching, eager to have a sense of the impact of this statewide law. Our analysis contributes to literature on the effectiveness of scheduling legislation, by critically examining how particular constellations of Fair Workweek provisions are interpreted by employers and experienced by workers.

Methods

In our examination of the impact of Oregon's SB828, we wanted to place at the center of our inquiry those whose concerns were the focus of the new law: the workers affected by unpredictable scheduling and the managers who do the scheduling. Starting with in-depth data makes sense both because the nuanced processes and mechanisms of the law's early impacts are best understood using qualitative data, and because no studies of scheduling regulations have included in-depth interview data from workers. Instead, prior studies of scheduling regulations have relied on survey data from managers and workers, and in some instances additional interviews with managers but not with workers. The authors of these prior studies acknowledge that it is therefore difficult to explain findings, such as inconsistent adherence to the new laws, or why workers say in surveys that their schedule predictability has not improved with the implementation of fair

[2]SB828 as originally introduced would have covered all businesses for certain provisions in the law and food services, retail, and hospitality businesses with 100+ employees globally and 25+ employees in Oregon. As implemented, SB828 applies only to food services, retail, and hospitality employers with 500+ employees globally. The original text also did not include the voluntary standby list.

scheduling legislation (Haley-Lock et al. 2019; Lambert et al. 2019; Harknett et al. 2021; Lambert and Haley 2021).

In the summer of 2019, we conducted 98 open-ended, qualitative interviews with 71 workers and 27 managers and supervisors in more than 80 establishments across the state affected by the requirements of the new law. Additionally, to learn more about challenges with implementation and enforcement, we interviewed 12 stakeholders including union staff, representatives of the state enforcement agency, the Bureau of Labor and Industries (BOLI), and policy advocates.[3]

To ensure that we would target workplaces affected by SB828, we used confidential employment data from the Oregon Employment Department Workforce Economic Research Division to create a list of businesses most clearly affected by the law based on the sector and the number of employees in Oregon; we excluded any businesses about which we were uncertain.[4] We then identified a smaller list of businesses from that universe that we would target for interviews. We used the following criteria for inclusion: locations in both rural and urban areas of Oregon; distribution across subsectors of the industry (for example, fast food versus full restaurant establishments); distribution across price points; and the inclusion of both union and non-union stores within each industry included in the law.

From these criteria, we created a universe of potential businesses across Oregon and recruited interview respondents through the standard technique of walking into establishments and describing our study to available workers and/or managers in a wide range of departments. If they were interested in participating, we collected contact information and called them outside of work hours to schedule a convenient time to conduct an interview by telephone, though some interviews were conducted in person. We paid our participants $25 in cash for their time.

Our sample of 98 interviewees included 72% workers, 28% managers and other frontline supervisors with scheduling responsibilities; approximately 52% in retail businesses,[5] 24% in food services, and 24% in hospitality; 46% were unionized, 54% were not; 49% worked in rural areas, 51% in urban and semi-urban areas; 60% self-identified as women; 79% of the sample self-identified as white, 8% as Latinx, 8% as mixed race, 3% as Native American,

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[3]Interviews were conducted with the support of a small grant from the United Food and Commercial Workers (UFCW) Local 555 and a Robert Wood Johnson grant to the Urban Institute, with whom we partially collaborated on data collection. Our research was fully independent and neither funder was involved with the design, data collection, or analysis at any point in the project.

[4]SB828 covers food services, hospitality, and retail workers with more than 500 employees worldwide and gives authority to the BOLI Commissioner to adopt rules determining when separate entities form an integrated enterprise. The language defining the universe of included employers states that several factors could determine this, but not all need to be present. When we contacted key stakeholders to identify affected companies, there was considerable uncertainty.

[5]Subsectors in retail include department store (5% of sample), general merchandise store (6%), pharmacies and drug stores (5%), supermarkets and grocery (20%), warehouse clubs and supercenters (12%), and other (3%).

Table 1. Managers/Assistant Managers/Supervisors with Scheduling Responsibilities

	Non-Union		*Union*		
Sector	*Rural*	*Urban*	*Rural*	*Urban*	*Totals*
Food	4	1	2	0	**7**
Hospitality	2	1	0	1	4
Retail	4	4	3	5	16
Totals	10	6	5	6	27

Table 2. Workers

	Non-Union		*Union*		
Sector	*Rural*	*Urban*	*Rural*	*Urban*	*Totals*
Food	4	9	2	2	17
Hospitality	5	5	0	9	19
Retail	7	7	15	6	35
Totals	16	21	17	17	71

and 2% Asian and Pacific Islander (see Tables 1 and 2). As retail comprises the majority of impacted businesses and skews slightly more white and male, we slightly oversampled respondents from food services and hospitality workers, women, and workers of color to ensure adequate representation. We include a range of participant markers in our presentation of respondent quotes; however, the reader should note that we did not find significant differences in workers' experiences of the law across racial/ethnic, gender, or age groups.

In interviews that took approximately an hour, we discussed workers' experiences in their current jobs. Using a semi-standardized protocol of open-ended questions, we asked about workers' job responsibilities, pay and other benefits, hours and schedules and whether and how these vary, notice and flexibility of schedules, availability for unexpected shifts, the use of a voluntary sign-up list, shift swapping, consequences if schedules cannot be accommodated, pressure to take last-minute shifts or schedule changes, predictability pay, coercion and retaliation, consequences when something comes up and the worker cannot manage a shift, accommodations for illness or family needs or emergencies, and knowledge about SB828, among other questions. All interviews were transcribed verbatim using Otter.ai software and then corrected by our team.

After conducting each interview, the interviewer wrote analytic summaries that included the responses to all the major provisions of the law. We developed a code list based on prior literature, the Oregon law, and themes that emerged from the interviews. Using Dedoose, our team coded fully the

64 interviews we had identified using the analytic summaries as most rich in their description and elaboration of the issues workers and managers faced, and we compared our work to establish inter-coder reliability. We then made a list of the key themes and produced the relevant reports of data from Dedoose for analysis. After careful analysis of these 64 interviews, we cross-checked our claims with the remaining 34 interviews for consistency and accuracy of findings in order to develop an analysis that reflects the experiences of all 98 worker and manager participants. We also wrote summaries of the 12 additional stakeholder interviews to inform our analysis of implementation and enforcement. Finally, we conducted a focus group with workers from each of the affected industries and discussed our preliminary analyses and the workers' policy recommendations. The findings presented here represent the most common sentiments about the impact of the law expressed across all interviews and the focus group we conducted.

Below, we assess the extent to which workers and managers were familiar with the provisions of the legislation. We then consider how certain provisions of the law are undermined through the language of the legislation and the constellation of provisions that limit the law's potential protective effects. Finally, we analyze the mechanisms through which employers use the new legislation to sustain and even increase the use of unpredictable scheduling practices as flexible discipline.

Findings

Sources of Education and Training on SB828

Interviews with workers and managers indicated that the process of informing employees about SB828 was largely left to the discretion of employers. We found substantial variation in the methods companies used to inform and train managers. Similarly, we found variation in how managers informed frontline employees about the law.

Training Managers

A third (33%) of managers reported to us that they did not know about the law. For those who were informed, managers reported variations in training, from packets of information, conference calls, online video training, and in-person meetings with HR. With few exceptions, schedulers reported that training was not thorough. For example, when asked about what training she received, a general manager in a non-unionized hospitality firm stated, "I don't really remember because it was last year, but I do remember that . . . I think it was just a piece of paper that told you how the law works. And then, after that point, you just had to know." An assistant manager at a unionized retail location reported that after the training she was still unclear about how to implement the law, and her employees voiced confusion as well. Similarly, a Latino man employed as a food services manager at a non-unionized firm told us that his training consisted of "a document that's what

the law change was. [That was] the extent of our training." When asked if he would have liked to receive more training, the respondent stated, "I would have actually liked to have gone through it a little bit more. And I think that was a miss on the company's part, to be honest."

Other managers noted that their training emphasized how to continue the practice of just-in-time scheduling while still complying with the law. We found that employer training on the law often reinforced the strategies through which managers would be able to maintain flexible discipline within the provisions of the new law. For example, a white man employed as a unionized retail store manager reported that their training was focused on "how to get around the new system," and that upper management made sure we "had everything done as far as preventative maintenance on this whole new law, for ways that we could combat the whole thing." Similarly, a white, non-unionized retail manager told us that they participated in a conference call to learn about the new law: "[Employers] went through the requirements, and then they also showed us how to enter the additional pay in our payroll system, there's another way to do it, so it doesn't count against our budget."

Virtually all managers spoke of training as either brief and insubstantial, or specifically directing them to seek ways to mitigate the law's effects on their scheduling practices. The law contained no explicit language directing the process of employer or employee education; the variation we found made clear that in the absence of a clear directive, employers were left to devise their own approaches to informing their employees.

Informing Workers

SB828 included a requirement to post the law in a conspicuous location in the workplace. When workers were asked if they had seen a poster about the Fair Workweek Legislation, they repeatedly echoed what a unionized food services worker told us: "I think there might be something, there's a lot of things posted. I don't usually read them." Similarly, when we asked a white, non-unionized hospitality worker if they had seen a poster at work with information about SB828 on it, they responded, "I don't really recall, because I don't look at posters very often." When the same question was asked of a non-unionized retail worker, they responded similarly: "I haven't noticed. There's an entire wall of bulletin boards with posters on it, so nobody really pays attention." While posters can offer sources of information for workers to refer to, no worker reported being required to read posters. We found no evidence that workers' knowledge from the law was derived from posters.

Our data show that more than half the frontline workers we interviewed (55%) had not heard of the legislation. When workers did receive some training or information about the law, they typically had only partial knowledge of the law and were unable to confirm that they were aware of each

protection. For example, when asked if their manager had ever talked to them about the Fair Workweek law, a Filipina woman working at a unionized food services location stated, "I think I've heard of it before." When asked to recall the training she received about the law, she responded, "Um, not much. I think they [management] were very vague about it, just mentioned [it]." Similarly, a woman working at a non-unionized retail store explained that her managers "don't tell you a lot" when it comes to workers' rights and protections in the workplace. She stated that "a lot of [management] communication is usually on what they feel is a need-to-know-basis kind of thing."

A few workers told us that they knew about the law only through their own personal research. For example, when asked about how she heard about SB828, a mixed-race woman working at a unionized retail store responded, "I actually read an article online about it, which actually helped me when I was presented with the paperwork. I knew what they were talking about before I filled it out." Similarly, a woman working at a non-unionized hospitality location stated that she learned about the law "last month. And I've just kind of done my own little research on it. So I have a bit more knowledge about it. But I mean, I don't know too much about it either."

There were another few cases in which workers attempted to clarify aspects of the law with their employer, their union if they had one, or BOLI. Interpretations varied, however, and workers struggled to get a response from the state agency. Funding and staffing for the state labor enforcement agency have been cut repeatedly in recent decades (McIntosh 2020), and BOLI staff whom we interviewed emphasized that BOLI lacks sufficient existing resources for comprehensive, proactive enforcement that could adequately address workers' concerns. They also stressed that contrary to scheduling ordinances passed in municipalities in other jurisdictions, such as Seattle, and other Oregon labor laws such as paid sick leave, SB828 provided no resources for BOLI to conduct education and enforcement. A staff member of the agency with whom we spoke noted that the support BOLI was able to provide for this law was limited relative to earlier labor laws, such as the state paid sick leave law, which included funding for additional staff at BOLI to develop training materials. He explained that "the scheduling didn't come with any additional dollars, so we've tried the best we can to get that out but there was not extra support to do outreach activities or create something at the scale." Subsequently, the governor's budget allocated funding for 2.5 FTE to BOLI for education and enforcement on SB828, though agency officials and other stakeholders maintained that this was insufficient, as BOLI was still dramatically underfunded. This situation has meant that the vast majority of the technical assistance BOLI provided on SB828 has been by request from employers or in the form of fee-for-service training and publications. After publishing our findings as research briefs, BOLI subsequently agreed to conduct proactive site visits to discuss SB828 and has sent letters to some employers about SB828.

Impacts of Fair Workweek Provisions on Workers' Schedules

SB828 includes provisions intended to increase predictability in workers' schedules, including the right to rest between shifts (thus reducing the practice of clopening); worker right to request particular schedules; advance notice of schedules (7 days initially, increasing to 14 days after July 2020); predictability pay intended to discourage employer-initiated, last-minute schedule changes; and good faith estimates of anticipated hours upon hiring. When we conducted the interviews, results were mixed, with workers expressing that some provisions had the positive impact hoped for by supporters of the law, whereas other provisions did not.

Right to Rest

The right to rest between shifts, which requires that employers schedule workers with at least 10 hours between their shifts to ensure plenty of rest, was widely implemented, and constitutes a significant success of the law. Unlike some other provisions, the language regarding right to rest, in effect a protection against clopening practices, is unambiguous and strict. While employers can request workers' consent to work during the rest hours, these hours need to be compensated at time and a half, without exception. Almost all the workers we interviewed, at least 90%, were knowledgeable about their right to rest, even if they were unclear that this resulted from SB828 rather than a new workplace policy independently initiated by their employer. Those who had worked clopening shifts before were grateful for this change.

Managers noted that with the new legislation, scheduling technology was then built to prevent scheduling without the required 10 hours of rest. One white manager noted his computer "will prompt us and say this person doesn't have 10 hours." Further, this manager expressed that they had already been reluctant to schedule back-to-back shifts, saying: "I would not want to put any person in any kind of situation that I've been through, and I know it's uncomfortable." The unambiguous language of the law's requirement, the changes to scheduling technology, and the potential reluctance of some managers to schedule clopening shifts together suggest that this part of SB828 has been successful.

Right to Request Schedules

We found the provision that requires the right to request schedules, though celebrated by scholars as having the potential to provide workers more control over their schedules (e.g., Lambert and Henly 2009; Dickson et al. 2018; Miggo 2019), had mixed results for workers in Oregon. Because Oregon's law contains language that states: "Employees may identify any limitations or changes in the employee's work schedule availability . . . [but] an employer is under no obligation to grant an employee's request" (OR SB828), the intent of this provision is effectively undermined. In addition,

we found most workers, approximately 75%, were unaware of this right. A few told us they were asked about their availability when they were hired, but that their preferences were disregarded after a short period of employment. As the law is written, managers neither have to ask for preferences nor grant them, and we did not find any managers who had changed their practices around schedule input as a result of the law.

Advance Notice

Scheduling legislation intends to diminish the practice of last-minute schedule changes by requiring advance notice of schedules, a provision included in SB828. Before the law, employers were able to schedule workers without any notice, at times telling workers only the night before, or the morning of, that they needed to be at work for a shift. Our interviews revealed mixed experiences of the impact of this provision. Some workers and managers, fewer than 50%, reported that a minimum of seven days advance notice was practiced prior to SB828, so our data are unable to confirm the extent to which the law affected seven day advance notice. In particular, unionized retail workers commented that they had not experienced much change in the notice they received with SB828. Other workers commented that they did appreciate more notice, which they experienced only after the scheduling law was passed. Non-union hospitality workers noted they did not receive advance notice either before or after SB828. At least in the initial phases of the implementation of SB828, our data show that workers had inconsistent experiences of the advance notice requirement. Some employers implemented changes right away, whereas other stores took longer to implement the law; and some, especially in hospitality, had not implemented advance notice when we conducted our fieldwork one year after the law was in effect.

Despite the intention to diminish last-minute schedule changes, managers noted that doing so is often unavoidable because of what one manager called "the human factor." Workers get sick, experience family emergencies, call out at the last minute, or quit. Systematic understaffing, a common practice in the businesses affected by SB828 that results from pressures on managers to keep labor costs low, complicates managers' ability to deal with unanticipated staff shortages. Thus, they continue to rely on last-minute schedule changes. Managers must fill shifts the day before or the same day, and many request that workers come in early or leave later than expected. A young, non-union food services worker told us: "If I had the day off, 90% of the time I would get called in at another store. When somebody quit, [workers] ended up working 10-hour shifts, two days in a row." A mixed-race, non-union retail worker said:

> A couple of days ago, I was scheduled from 8:30 to 1:30. Someone had to go home. I ended up staying till 4:30. I didn't have much of a heads up about that. She just kind of asked me on the spot, "Can you stay?"

Another retail unionized worker, when asked how often he had to stay later than he had been scheduled to work, said: "Pretty much every day . . . from like 10 minutes to like an hour. We're short staffed and the closers don't get there until 2:15, so I usually just wait for the closers to get there." Last-minute schedule changes persisted due to the sometimes unavoidable "human factor," and the widespread practice of understaffing.

Predictability Pay

Following recommendations in the scholarship on unpredictable scheduling and ordinances in other states, Oregon's law includes a provision for predictability pay. This stipulation requires that workers receive additional pay when their schedule is changed after the window of advance notice in order to compensate them for the inconvenience and the financial costs of having to respond quickly to these last-minute work requests. Predictability pay can also work as a disincentive for employers to impose last-minute schedule changes. However, specific components and interpretations of the law allow employers in Oregon to avoid predictability pay. Of our interviewees, 16% knew for certain that predictability pay was available in their workplace, which may demonstrate the infrequency of predictability pay being available. At times, workers expressed confusion about whether a paycheck might have contained additional pay due to this compensation, making it difficult to track who actually received predictability pay.

Voluntary Standby List

The voluntary standby list provision is the primary means by which the obligation to pay for the inconvenience of last-minute schedule changes is undermined in SB828. Unique to the Oregon law, this provision allows employers to ask workers to "voluntarily"[6] sign a list indicating their willingness to work additional hours without advance notice. By signing this list, workers ostensibly indicate their understanding that they are not entitled to be compensated for last-minute work schedule changes. Under SB828, employers are also exempt from the obligation to issue predictability pay for various reasons, including the claim that they are responding to unanticipated changes in customer demand. This factor is frequently cited by employers as the reason behind scheduling changes, although it was not found to be a main predictor of unstable scheduling (Williams et al. 2018). At a unionized food services company, management interpreted this provision such that they do not need to provide predictability pay. Management at this company produced and circulated its own flowchart describing how they first call workers on the standby list and then other workers to fill what they identify as "an unexpected increase in business," which they state

[6]We discuss later the problems with construing the signing of such lists as entirely voluntary.

exempts them from the extra compensation. While the goal of predictability pay is to provide a disincentive for employer-initiated, last-minute scheduling changes, and to compensate workers for unpredictable schedules, the voluntary standby list and the exemptions work directly against that goal. Slightly more than half (55%) of all those we interviewed said their businesses used a standby list to fill schedule openings. Fewer than half of the workers we interviewed (45%) were aware of predictability pay and also knew that they relinquished their right to compensation by signing on to the voluntary standby list.

Most workers we interviewed, at least 75%, said they felt they had no choice about whether to sign the voluntary standby list, as they understood that signing the list was the only way to be scheduled for more hours. A 25-year-old, non-unionized retail worker told us, "They call you to come in—they actually make you sign a form that they're supposed to pay you an hour extra, but they make you sign the form so they don't have to. . . . We had to do it." When asked if this worker considered not signing the form, she said she had not. Her manager informally pressured her to sign, suggesting that otherwise she would not be assigned additional hours if they became available. Another worker at a unionized retail store similarly told us, "I felt like we were pressured to sign, to be on the standby list, so that they can call us without paying us."

Other Strategies to Avoid Predictability Pay: Waivers and Manager Overtime

We found that many companies, including approximately 75% of large retailers, developed standardized waivers, which they collect as proof of employee consent to last-minute schedule changes. Workers are asked to sign the waivers, though managers do not clearly explain the implications of the waiver for predictability pay. A white, male, non-union food services worker explained: "Sometimes they will ask you to voluntarily pick up hours here and there. They kind of nonchalantly put out the paper to waive predictability pay. They do slightly mention it, but they don't . . . really explain it to you." Crucially, managers generally do not explain that employers consider the waiver as proof that the last-minute schedule change is voluntary on the part of the worker and *not* employer-initiated, which would require the payment of predictability pay. One woman who has scheduling responsibilities and processes the exceptions to predictability pay for a unionized retail store told us that she processes 250 waivers for predictability pay per week, while last week "I paid one hour of [predictability pay] time." Another unionized retail worker responsible for scheduling reported that, as a result of the law, workers need to fill out waivers when working extended shifts so that the firm "does not get fined $1,000, or whatever it is."

Across industries, we found that paying predictability pay is a practice that managers have been instructed to avoid. One strategy managers employed

was to personally work longer hours (as salaried employees ineligible for overtime) to cover shifts that they cannot fill with workers from the voluntary standby list, rather than pay the predictability pay required when they call workers who are not on the list. Managers also said they are particularly careful to avoid asking workers to stay later than 30 extra minutes in order to avoid triggering the additional compensation.

Varying Interpretations of the Law

Both workers and managers discussed employers' varying interpretations of the law, which we argue mitigate the ability to provide more stable schedules for workers. Ambiguity of the concept of voluntariness and what is required in the advance notice provision of the law, provide salient examples. Our study confirms much of what Lambert and Haley (2021: 1252) noted about managerial resistance and application of scheduling legislation: that businesses are at "different distances from compliance, business incentives to maintain labor flexibility are strong, and the potential for manager confusion is high."

Defining Voluntary

Our data show that managers routinely fill staffing needs by asking workers to "voluntarily" agree to small, last-minute schedule changes. Workers and managers report that managers make requests of workers in a manner such that workers appear to volunteer to stay late, come in early, or leave earlier than they had originally been scheduled to work. As long as the changes can be framed as the worker's choice, or employee-requested, then employers believe they are exempt from paying predictability pay.

A 34-year-old scheduler in a unionized retail store explained that management explicitly told her to reframe her requests as "voluntary asks":

> I was told we know it's going to be very expensive. We should never ask people to come to work. Right? We should never send people home early. We have to ask them: "Does anybody want to go home early?" But we can't say "go home early." So therefore we're forcing them to make the choice. We're not actually asking.

Employers interpret the notion of voluntary in such a way that schedule changes appear to be worker-initiated, and thereby not eligible for predictability pay. A white, male unionized worker in hospitality told us:

> On the phone they'll ask them, "Is that cool, if you come in a couple of hours later?" As an employee, they're like—"yeah, sure, I'll come in later." And because they said, "Sure" on the phone, now they're into the voluntary . . . they'll sign the voluntary shift change when, in reality, it's the manager that asked them.

Being asked to volunteer to stay late also presents a conflict between the desire to be good workers and help out their co-workers versus their desire to be compensated for the last-minute change. A unionized retail worker explained:

> And it conflicts with your own work ethic, like you're not going to just be a worse worker, just because they're not doing what they should be doing, which is ask you so then you get compensated properly for staying. . . . So that's kind of like a bit of a loophole like, well, they didn't ask, but you couldn't leave, you know, if you're closing the store, and you have all this work left to do. You kind of get in trouble if you don't get the work done.

Much like the confusion and coercion involved in managerial use of the standby list, ambiguity and misuse of the concept of "voluntary" allows firms to avoid compensating workers for predictability pay, while still having them work during unscheduled shift hours within the window of the advance notice requirement.

Although these workers know that they legally have the right to decline these requests, their need for more hours, and their loyalty to co-workers and sometimes to their managers, mean that, in practice, they rarely say no to last-minute schedule changes. When departments are allotted insufficient labor hours, workers are, in turn, scheduled with insufficient hours, which increases their dependence on unexpected shifts.

Advance Notice

The requirement to give workers advance notice of their schedules is a key provision in SB828, yet interpretations of the law by management, as well as the "human factor," allow schedulers to continue to make last-minute schedule changes, undermining the predictability that advance notice is meant to secure. Further, advance notice requirements are sometimes interpreted in a way that reduces worker control over schedules by mobilizing the law as a reason to: 1) demand that workers request time off with increased advance notice to managers; 2) deny last-minute changes due to work-life conflicts; and 3) deny or reduce the practice of shift swapping between co-workers. Some managers claimed that the advance notice requirements in the law impose these increased restrictions on workers' scheduling requests, though that is not the case.

Workers reported that their managers now expect them to provide requests for schedule changes further in advance (sometimes four weeks out), managers are less inclined to consider requests for time off or shift changes that interfere with the company's advance notice requirements (even if the request is more than 7 days in advance), and some managers told workers that shift trades are no longer allowed under the new law. A white, male unionized worker in the hospitality sector explained:

> We used to be able to get someone to cover our shift. But now they're saying that's not something we do anymore; we're not allowing it because of the law. Which is . . . It's not in there anywhere. It's just something for control that they're trying to implement.

In this case, the employer's interpretation of the advance notice requirement is deployed in ways that cause workers to lose an important tool to accommodate short-notice scheduling needs, although SB828 has no language limiting employee-initiated schedule changes.

In another case of restricted flexibility for workers, a unionized retail worker reported that after the passage of SB828, his manager required workers to make requests for time off at least three weeks in advance. He said, "the three-week window to request days off has increased to a seven-week window for no apparent reason; no info has been given on that." Though advance notice was intended to improve scheduling predictability for workers, many managers used the law to place limitations on requests for time off.

Last-minute, employer-initiated changes to schedules are still frequent, attributable to understaffing and "the human factor." Employees are not compensated for these changes because of managers' use of provisions in the law, such as the voluntary standby list, and waivers of predictability pay for last-minute schedule changes. Employers have reduced employee input and control of their schedules through interpretations of the law and arguments that the law restricts employee-initiated schedule changes, though this is not the case.

Discussion

SB828: Oregon's Fair Scheduling Law

Our in-depth data from interviews with both workers and managers show that one year after being implemented, SB828 had not impacted workers' overall schedule predictability in the manner hoped for by proponents of the law. While SB828 increased the advance notice and the right to rest for some workers, other aspects of the law were not as successful. At the time we conducted our interviews, workers reported that they still experienced last-minute schedule changes. The combination of provisions in SB828 interacted to undermine the overall effectiveness, as well as the intent of the law, and allowed for considerable managerial discretion that led to evasion of some of the critical components, particularly predictability pay. As a result, workers continued to experience unpredictable scheduling without compensation.

For example, employer-initiated, last-minute schedule changes persisted after the passage of SB828. The voluntary standby list and waivers allow managers to continue to change workers' schedules without compensating them. Contrary to the ordinance in Seattle where evaluations have found some increase in the use of predictability pay (Haley-Lock et al. 2019; Harknett et al. 2021), in Oregon we found few workers had actually

received compensation for schedule changes and only 16% of those we interviewed knew definitively that predictability pay was provided in their workplace.

Relations in the workplace are not egalitarian, and when workers need more hours to pay their bills, employers assert disciplinary power by asking workers to voluntarily waive their rights to extra compensation. Provisions, such as predictability pay as an incentive for diminishing schedule changes combined with broad exemptions and the voluntary standby list, result in high unpredictability and no compensation for workers, thus undermining the main intent of the law.

Moreover, we found that employers used their discretionary power to frame and mobilize the law to increase flexible discipline through expansive interpretations of the language, including broad interpretations of "voluntary" employee requests for changes and directives for advance notice of schedules. As in the evaluation of Seattle's ordinance, we found that the provision for advance notice provided some improvement to the notice some workers received. Employers in Oregon, however, also used it to reduce worker flexibility in requesting days off. While SB828 does not limit any employee-initiated schedule changes, such as shift swapping, some managers have used the law as an excuse to restrict worker input and control over their schedules, functioning as a form of flexible discipline.

Just as the mock calendar mystifies the power relations between employers and workers (Halpin 2015), workers' limited knowledge about legislative changes contributes to the obfuscation of the ways in which employers implement the law to maintain flexible discipline. The absence of specific language directing implementation of the law allows employer discretion in communicating about, as well as enacting, the new requirements to regulate unpredictable scheduling. This employer discretion and the limited knowledge of workers allow employers to maintain flexible discipline and limit worker control. Workers have little recourse to reject unpredictable schedules.

Finally, the law's effectiveness was diminished by an absence of funding for public agency education and enforcement, despite the inclusion of such mechanisms in scheduling laws in other jurisdictions and in other labor laws in Oregon. Workers were unaware of the origin of the new policies and had limited information about the law's protections. Some workers believed changes in scheduling practices were initiated independently by their employers or as a result of a new collective bargaining agreement, rather than a statewide law. These misunderstandings are particularly problematic in the regulatory context of the United States, where governmental agencies in charge of implementation and enforcement have long been systematically underfunded and rely on workers' complaints to drive inspections and penalties to employers. Such an enforcement model rests on assumptions that research has already shown to be problematic: that workers will know their rights, will be able to advocate for themselves, and will know what

remedy to demand (Defilippis et al. 2008; Milkman et al. 2012; Alexander and Haley-Lock 2015). When employers are the main educators about the law, workers can be left unaware of the protections due to them.

Comparing SB828 with Other Scheduling Ordinances

In many ways, the challenges and limitations we found in Oregon's law to reduce unpredictable scheduling exist in the very letter of the law. As we have argued, the strength of the language and the constellation of provisions have an impact on the law's ability to regulate, mitigate, or provide compensation for unpredictable scheduling practices. Below we compare variations in the law coverage, provisions, and exemptions in every location with scheduling legislation: Emeryville, San Francisco, Seattle, New York City, Chicago, Philadelphia, and San Jose.

Law Coverage

First, we found considerable variation in the scope and breadth of scheduling legislation, sometimes passed in a single law and other times in multiple laws. The ordinances target various industries and sectors. While all ordinances cover retail workers, some additionally cover workers in fast food (Emeryville and New York City), food industries more broadly (Seattle), and food and hospitality (Philadelphia and Oregon).[7] Chicago has the most expansive provisions, covering workers in health care, hospitality, manufacturing, restaurants, retail, and warehouses. Notably, San Jose covers all businesses with 36 or more employees; however, the ordinance includes a provision only to redistribute hours among existing workers before hiring new ones, excluding all of the other provisions to target unpredictable scheduling that we have seen in other laws.

Included Provisions

With the exception of San Jose, all ordinances include a provision for advance notice for schedules. While some provisions initially began with only 10 days advance notice, all regulations to improve scheduling (except in New York City) require two weeks advance notice after some adjustment period. New York City includes two weeks' advance notice for fast food workers, but retail workers are guaranteed only 72 hours of advance notice of their schedules.

Based on our findings in Oregon, advance notice does little to improve schedule predictability when inadequate hours compel workers to sign voluntary standby lists and/or waivers in order to be assigned more hours to

[7]Variations in coverage also exist as a result of differing definitions of covered workers within a given industry. For example, though all laws target retail workers, definitions of covered retail workers range from requiring retail businesses to have at least 40 establishments worldwide to be eligible (Seattle), to 56 or more establishments (Emeryville), to establishments that employ 250 workers in 30 or more locations worldwide (Philadelphia).

make ends meet. To address the problem of inadequate hours, every scheduling ordinance except Oregon's requires employers to offer new hours to existing employees before hiring new workers. By addressing underemployment, all regulations except Oregon's may affect the frequency with which workers take on last-minute shifts.

Oregon, Emeryville, Chicago, New York City, Philadelphia, and Seattle each include a right to rest provision, identifying specific minimum hours workers must have off between shifts (see Table 3). All legislation also requires payment of predictability pay even if workers consent to back-to-back shifts.

The strength and clarity of the language for regulatory provisions vary and may have dissimilar effects. While all the ordinances except San Jose include the right for workers to request a preferred schedule, they all specify the employer has sole discretion on whether to honor the request (with the exception of San Francisco and Seattle.) Emeryville and Seattle do not use the language of "voluntary," using instead "employer-initiated" and "employee-requested" in reference to schedule changes or scheduling requests. Compared to "voluntary" language used in SB828, the language in the Seattle Ordinance regarding workers' input to schedules and workers' right to request schedule changes is stronger and more detailed, requiring employers to enter an interactive process with workers and to grant requests that are related to a "major life event" (Seattle Secure Scheduling Ordinance 2017, Section 14.22.010).

Exemptions

Each law contains numerous exemptions to compensation for schedule changes, which we have found reduce the efficacy of predictability pay as a disincentive for last-minute schedule changes. Oregon is unique in its use of a voluntary standby list. All ordinances include exemptions addressing disruptions to work that are out of the employers' control, including strikes, natural disasters, or an "Act of God." Ordinances also provide a grace period in which predictability pay is waived if changes are below a certain threshold of minutes, with Oregon having the longest grace period at 30 minutes. Employers can also be exempt from paying predictability pay to workers who work a shift in which they are already being paid overtime (Emeryville); are working a Ticketed Event that was canceled, scheduled, rescheduled, postponed, delayed, or had an increase in expected attendance by 20% (Chicago); or are tip workers who have to continue working a shift to close out a customer (Emeryville). San Francisco included language stating that employers are exempt from paying predictability pay to workers who have to cover a shift for an employee unable to work within a seven-day-notice window. Since research shows that this fairly routine practice is one of the leading causes of scheduling unpredictability, waiving

Table 3. Comparison of Main Provisions of Existing Fair Scheduling Legislation in the United States

Provision	*San Francisco*	*Emeryville*	*Seattle*	*New York City*	*Chicago*	*Philadelphia*	*San Jose*	*Oregon*
Covered employees	Retail	Retail, fast food	Retail, food	Retail, fast food	Health care, hospitality, manufacturing, restaurants, retail, warehouse	Retail, hospitality, food	36+ employees	Retail, food, hospitality
Advance notice	2 weeks	2 weeks	2 weeks	2 weeks fast food, 72 hours retail	10 days to 2 weeks	10 days to 2 weeks	No	2 weeks
Predictability pay	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Predictability pay grace period (in minutes)	N/A	10	15	15	15	20	N/A	30
Right to rest (in hours)	No	11	10	11	10	9	No	10
Offer of hours to existing workers	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Right to request schedule	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Good faith estimate	Yes	Yes	Yes	No[a]	Yes	Yes	No	Yes
Exemptions / Consent	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

[a]New York City had a good faith estimate provision but amended its ordinance to have a "stable scheduling requirement," effective July 2021.

predictability pay may seriously undermine the effectiveness of San Francisco's provision to mitigate precarious work.

In all laws, "volunteering" for or consenting to unexpected shifts, or to extra or fewer hours, constitutes an exemption for predictability pay. In some cases, however, the legislation has more definitive language, potentially reducing discretionary interpretation of practices such as volunteering. While Oregon's law allows managers to avoid predictability pay by asking for volunteers to "leave early," the city of Emeryville's ordinance directly says that "if a covered employer asks for any volunteers to leave a shift early, or otherwise states that volunteers may leave a shift early, predictability pay shall be owed" (Emeryville Fair Workweek Ordinance 17-013 2017). Emeryville's ordinance also states that changes induced by customer demand are considered employer-initiated and therefore subject to predictability pay. San Francisco importantly includes language that identifies the power relations between employers and workers, acknowledging that coercion can be present in regard to requirements and volunteering for extra shifts. The law states,

> Even if the Employer categorizes, labels or describes the shift change as a "request" rather than a "requirement," if the Employer pressures or coerces the Employee in a manner that would discourage a reasonable Employee from declining the shift change, it is deemed a "requirement" rather than a voluntary, employee-requested change.

Emeryville also includes exemptions to predictability pay when an online system is being used, making it harder to identify whether a shift was employer or employee initiated. As companies continue to use digital platforms to schedule employees, legislation should identify the impact of these platforms on predictability pay.

In Oregon we found that many employers had developed the use of waivers to avoid compensation for changes, which workers felt pressured to sign. We found that other legislation includes limitations prohibiting the use of general waivers, as in the case of New York City and Seattle, where Harknett et al.'s (2021) year 2 evaluation found statistical evidence of improvement in workers' compensation for last-minute schedule changes. Nonetheless, all locations allow workers to give written consent to waive their rights on a case-by-case basis. In Oregon, written consent to waive rights was routinely used to avoid predictability pay and to preserve unpredictable scheduling. Overall, we maintain that legislation should minimize or exclude exemption provisions and voluntary language.

Note that without performing an analysis of how various scheduling laws are implemented, we are not able to provide a definitive statement regarding the strength of other laws' ability to regulate scheduling. Our findings show, however, that some ordinances include language that could result in improved efficacy, appearing to resolve some of the issues that concern us in Oregon, and in others, perhaps to reproduce similar problems.

Conclusion

Addressing unpredictable scheduling is a critical policy directive, and the findings here will contribute to future efforts to design policy at the city, state, and federal level such that it is even more effective at stabilizing the lives of low-wage workers. Statewide legislation offers an important opportunity to regulate unpredictable scheduling. However, in examining the initial impact of SB828, we found a lack of directive language and insufficient funding for regulation and enforcement, as well as the inclusion of provisions that undermine one another. These findings mean that one year post-implementation, workers in Oregon continued to experience unpredictable scheduling without meaningful compensation, though they were benefiting from the right to rest provision. Thus far, the law is not increasing schedule predictability. As other jurisdictions consider passing scheduling legislation with the goal of mitigating the effects of unpredictable scheduling, they must consider the issues we raise in this study. That said, we also remind the reader that unpredictable scheduling is just one piece of the overall precarity workers endure. Without guaranteed minimum hours, better wages, access to affordable and secure housing, and access to childcare and health care, workers face precarious circumstances that make them vulnerable to having to accept wage labor under almost any conditions, exacerbating a variety of forms of flexible discipline including unpredictable scheduling.

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