

HB23-1118: Fair Workweek Employment Standards **Understanding the Impacts of Mandating Scheduling Predictability in an Unpredictable Business**

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Key Points

- HB23-1118, as introduced, would create the most restrictive scheduling laws in the entire country.
- The estimated direct cost for a covered business with 200 shift workers is between \$2,200 and \$5,800 per shift employee per year, for a total cost of \$510,000 to \$1,030,000 per year.
- Evidence from similar laws demonstrate consequences for employees, including less freedom and autonomy to make desired schedule changes, fewer available shifts, fewer available jobs and increased likelihood of part-time work.
- Moving forward it will be imperative to better understand how these costs offset the desired benefits, and if alternatives exist to incentivize more predictive schedules without incurring heavy unintended consequences of a statewide mandate.

Overview

Introduced in the Colorado State House of Representatives on January 24th, HB23-1118, titled "Fair Workweek Employment Standards," proposes to establish multiple new requirements for how the scheduling of shift employees must work across the state of Colorado.ⁱ

Though there are similar laws in several cities across the country, only Oregon has passed one at the state level. To achieve the desired goal of reducing volatility and uncertainty of an employee's schedule inherent to certain professions, HB23-1118 would impose several requirements:ⁱⁱ

- Require shift workers to receive their schedule 14 days prior to start of shift.
- Require employees to submit their desired work hours.
- Require penalty pay to employees under certain conditions:
 - Predictability pay when an employee's shift is changed within 14 days of start time,
 - Rest shortfall pay when an employee is required to work within a minimum period of rest,

- Retention pay when an employer gives work hours to a new employee without first offering those work hours to existing employees, and
- Minimum weekly pay in an amount that corresponds to 15% of the average weekly hours indicated on the employee's anticipated work plan.
- Multiple other new legal requirements

Though the details of the bill as introduced are unclear and have been interpreted in different ways, it seems it would directly apply to food or beverage establishments, food or beverage manufacturing establishments, or retail establishments in Colorado that employ 250 or more employees worldwide.

HB23-1118 Proposes the Most Restrictive Scheduling Requirements in the Country

Every major scheduling requirement and pay penalty in HB23-1118 are either as restrictive, or more restrictive than existing laws. Only Oregon has passed a predictive scheduling law at the state level, which includes several significant differences from HB23-1118, yet still presents challenges to employers and employees.

- Oregon law includes a provision that allows employees to join a voluntary standby list to accept hours within the 14-day window, without pay penalties.
- Oregon law includes an "Act-of-God" provision.
- Oregon law applies to employers with 500 or more employees.
- Oregon law has no requirement for employers to offer work to existing employees before hiring new workers.
- Oregon law started with a 7-day scheduling window before phasing to 14 days.
- Oregon does not require employees to update an "Anticipated Work Plan" for each employee.

The following table briefly describes the major components of HB23-1118 and compares them to several existing laws.

Comparison of "Fair workweek" and "Predictive Scheduling" Laws				
	Colorado (HB23-1118 as introduced)	Oregon ⁱⁱⁱ	Philadelphia ^{iv}	Seattle ^v
Industries Covered	Food and beverage, and retail industry AND contractors who provide labor to them	Retail, hospitality, and food service industry	Retail, hospitality, and food services industry	Retail, and food service industry
Size of firms covered	250+ employees	500+ employees	250+ employees AND 30 or more locations worldwide	Retail - 500+ employees Food service - 500+ employees AND 40+ locations
Number of days in advance of work must employers provide a work schedule	14 days in advance	Initially 7 days, now 14 days	Initially 10 days, now 14 days	14 days
Pay penalty for changing schedule with certain window of time	Yes , pay penalties for adding time, subtracting time or changing location of shift	Yes , pay penalties for adding time, subtracting time	Yes , pay penalties for adding time, subtracting time or changing location of shift	Yes , pay penalties for adding time, subtracting time
Will employers be penalized for changing employee shifts due to weather or other "Acts of God."	Yes	No	No	No
Allow for creation of standby list?	No	Yes	No	No
Do you have to give hours to existing employees first	Yes	No	Yes	Yes
Minimum pay for employees who don't work 15% of their scheduled hours	Yes	No	No	No

Direct Costs of Mandating Scheduling Predictability

While HB23-1118 would mandate greater scheduling certainty for employees, it does not change the uncertain and volatile financial reality that most the businesses covered by the bill face.

Shift work in the covered industries of HB23-1118 are often unpredictable for several practical business-related reasons, which are not granted exemptions under the legislation. Businesses in the food service industry face volatile daily revenue from a host of external conditions, including events that get scheduled within days of taking place, adverse weather conditions that drive away customers, or third-party events, such as sporting events, that can pop up last minute.

Colorado's unemployment rate currently stands at 3.3%, and there are approximately two job openings for every currently unemployed person in the labor force. Employers are constantly competing for talented and qualified employees and in today's market this is more evident than normal. The business nature of each company often requires more scheduling flexibility, despite employers' preference to reduce scheduling volatility. Very often, scheduling flexibility is also desired by the workers in these positions in the first place.

Mandating scheduling predictability on an unpredictable business leads to higher costs and unintended consequences that undermine the very intent of the law.

As the practices of every business are different, the baseline costs of HB23-1118 will vary widely. CSI developed a model to estimate the direct costs of HB23-1118 under a range of business practices. Based on direct business input and review of supporting literature, a plausible range of direct costs are estimated to be between \$2,200 and \$5,800 per shift employee per year. The total costs would range between \$510,000 to \$1,030,000 per year. With CSI's continued analysis of this legislation, it is the expectation that this model could be released publicly for businesses to estimate their own expected costs.

These estimates do not include the significant compliance costs incurred from the measure as well. The costs would be in the form of additional training, record keeping, time scheduling, and other new managerial tasks that would emerge from implementing the new law.

The following tables show results from a model developed by CSI to estimate the direct costs of the pay penalties contained in HB23-1118.

Selected Inputs in the Fair Workweek Model	
<i>Payroll and Scheduling</i>	
Local minimum wage	Number of employed shift workers
Number of scheduled shifts	Average wage of shift workers
Average shift worker's hours	Average shift worker's number of working weeks
<i>Rest Shortfall Pay</i>	
Number and length of shifts that occur within 12 hours of a previous shift	Likelihood of employee non-consent to consecutive shift
<i>Predictability Pay</i>	
Share of shifts rescheduled with less than 14-day notice	Shares of rescheduling actions that increase/decrease a shift's duration
Share of shifts relocated with less than 14-day notice	Shares of rescheduling actions initiated by employees
<i>Retention Pay</i>	
Number of shift workers hired within an average year who perform work that overlaps with the qualifications and availabilities of other employed shift workers	Hours worked by new overlapping hires
<i>Minimum Weekly Pay</i>	
Share of scheduled weeks during which shift workers work less than 15% of their anticipated hours	Average hours less than 15% of anticipated hours worked during a low-hour week

Costs for a Hypothetical 200 Shift-employee Restaurant in Colorado		
Higher Unpredictability Scenario	Moderate Unpredictability Scenario	Lower Unpredictability Scenario
<i>Rest Shortfall Pay</i>		
\$162,400	\$104,400	\$58,000
<i>Predictability Pay (Shift Increases)</i>		
\$168,222	\$111,015	\$54,941
<i>Predictability Pay (Shift Decreases)</i>		
\$45,312	\$22,656	\$7,552
<i>Predictability Pay (Shift Relocations)</i>		
\$60,416	\$0	\$0
<i>Retention Pay</i>		
\$689,040	\$485,460	\$316,680
<i>Minimum Weekly Pay</i>		
\$24,723	\$16,482	\$8,241
Total Additional Cost		
\$1,150,113	\$740,013	\$445,414
Total Additional Cost per Employee		
\$5,751	\$3,700	\$2,227

How Would Employers Comply with HB23-1118?

Given the large direct and managerial compliance costs, employers will be risk averse to violating the law. Evidence from existing research on the impacts of similar scheduling laws describes these impacts.

- Predictive scheduling laws reduce the availability of full-time work and increase the share of part-time workers in covered industries by 9.2%. Two-thirds of this increase comes from employees who report to be working part-time involuntarily.^{vi}
- Surveys of covered workers in Oregon indicate that some employers have chosen to get rid of the ability of workers to trade shifts on their own.^{vii}
- Employers subject to the predictive scheduling law in Oregon have sometimes chosen to leave shifts vacant rather than risk incurring penalties for “employer-initiated” rescheduling.^{viii}
- Administrative burdens, including direct compliance costs, legal costs, reduced flexibility, and impediments to communication with employees.

- Similar to the impacts of increasing the minimum wage, increasing labor costs through HB-1118 will increase the probability that employers will automate jobs at a higher rate.^{ix}
- Though the Oregon law does not require the employers must first offer hours to existing workers before hiring a new employee, the existence of this provision in the HB23-1118 could deter the pace of new hiring, thereby decreasing the job opportunities for future workers.

Over the past 18 months, the price of prepared food has increased by 12.8% as a result of various underlying costs drivers for food service businesses. Strict scheduling requirements will translate to further pressure on affordability as businesses recover some of the higher costs, through increasing consumer prices. If passed, this law would come just months after other major cost changes, such as the increase in the Denver minimum wage, and the new additional fees associated with FAMILI.

The combination of increased pressure on affordability, and the stricter statewide regulations on scheduling, further alter the state's competitiveness, as considerations of businesses on whether to expand to or invest in Colorado change.

Fair Work Week and Issues Related to Employee Autonomy

Employees choose to work in retail and food service industries for a variety of reasons. For some, who want to go to school or balance childcare with another family member, part-time shift work can be an ideal solution. Others wish to work full-time to support their families. In most cases, although schedules vary from week to week, there is autonomy to change one's schedule as needed. Part of the appeal of this sector is its flexibility. In a BLS survey of non-daytime workers, 31% indicated they chose those shifts because it was either a personal preference, it was better suited for family, school, other jobs, or it offered better pay. 10% indicated they worked those shifts because they could not get any others.

But when is too much flexibility a bad thing? 13% of the labor force in Colorado in 2021 worked in retail and food service.^x Many employees experience short notice and variable work schedules from week to week. Studies have shown that these unpredictable work schedules can lead to income instability and diminished health and wellness. The practice, often referred to as just-in-time scheduling, creates income volatility and material hardship for many employees and their families, particularly children who thrive on consistency.

Many of the jurisdictions mentioned earlier in this report have had their laws in place long enough to study their effects. One study of the law's impact in Seattle found that subjective reports of well-being, sleep quality and economic security were improved two years after the predictive scheduling law was implemented. Longer-term outcomes, however, show that, as employers adjust to the costs of the

new law through measures described earlier such as scheduling fewer hours, an unwanted increase in part-time employment can result. Other operational changes due to the law, such as offering employees less freedom to make schedule changes, offering fewer full-time jobs, increasing the share of part-time jobs, and scheduling fewer people per shift, show that, while some workers appear to benefit from predictive scheduling, others are negatively affected.^{xi}

Moving Forward

For businesses facing the economic reality of unpredictable demand, predictive scheduling mandates create significant complications and raise costs. As those costs can lead to managerial decisions that undermine the very purpose of the law, it is important to question whether a statewide legal mandate is the best way to achieve the desired outcomes. A path forward should recognize the economic realities that companies face in the post-COVID environment, preserve the flexibility that many employees desire, and initiate a full conversation about the unintended consequences and ambiguities of predictive scheduling laws.

About the Authors

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Teams & Fellows Statement

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- ⁱ <https://leg.colorado.gov/bills/hb23-1118>
- ⁱⁱ https://leg.colorado.gov/sites/default/files/documents/2023A/bills/2023a_1118_01.pdf
- ⁱⁱⁱ SB0828 (oregonlegislature.gov)
- ^{iv} CHAPTER 9-4600. FAIR WORKWEEK EMPLOYMENT STANDARDS xx (phila.gov)
- ^v Chapter 14.22 - SECURE SCHEDULING | Municipal Code | Seattle, WA | Municode Library
- ^{vi} <https://isfe.uky.edu/research/2022/predictive-scheduling-laws-do-not-promote-full-time-work>
- ^{vii} <https://journals.sagepub.com/doi/abs/10.1177/00197939211064902>
- ^{viii} <https://www.oregonlegislature.gov/dembrow/WGitemsscheduling/6-23%20Cal%20Retailers%20Assn%20analysis%20of%20SF%20FRERO.pdf>
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