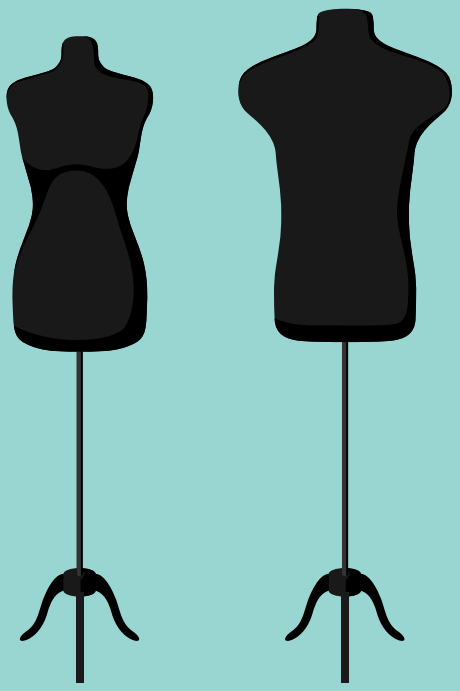
SHORT SHIFTED



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The Retail Action Project (RAP) is a member-based organization with the mission of building worker power, elevating industry standards, and promoting family-sustaining jobs. We achieve this through engaging in collective action, highlighting worker voices, growing workers' professional capacity, and nurturing member leadership. RAP is an initiative of the Retail, Wholesale and Department Store Union.

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EXECUTIVE SUMMARY

As the retail industry grows, it is adopting "lean" manufacturing practices to manage a part-time workforce. Retailers' just-in-time scheduling practices take advantage of sophisticated software and an increasingly desperate workforce to cut labor costs to the bone. The current lack of public protections around work hours, paired with persistent unemployment and high underemployment, has left workers vulnerable to abusive cost-reduction strategies. Trends in retail may represent the frontier of new employer practices that have major implications for workers in a range of industries, unless we take steps now to intervene in these troubling practices. *Short-Shifted* looks at how scheduling relates to workers' daily experiences on the job, the effects of open availability requirements, and the challenges of managing income with unstable hours.

Almost all of the workers we interviewed grapple with unpredictable schedules, misused technology, part-time limbo, arbitrary rules, favoritism, barriers to a career ladder, or wage theft, as well as the challenges of balancing work, child care, and school. Only 40 percent of workers surveyed have set minimum hours per week, and approximately half of the part-time workers we surveyed would like to work full-time. One quarter of the workers are scheduled for on-call shifts, and the vast majority report that they find out from a supervisor if they are needed for the on-call shift only two hours before the shift starts.

Retailers' use of unpredictable scheduling practices means that workers already struggling with low wages and discrimination are left in a constant state of insecurity about when they will work or how much they will earn on any given day. Workers and their communities are facing economic insecurity to meet the bottom line of a rapidly expanding industry.

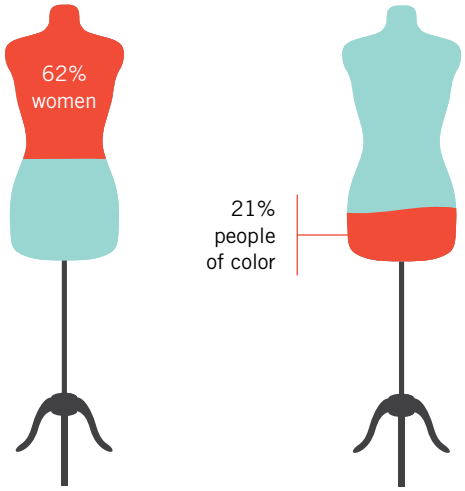
Low-wage workers around the United States are taking action for a $15 per hour minimum wage. But without full-time hours, a higher minimum wage is not enough to lift working families above poverty. Organizing and policy campaigns for higher wages must be tied to a vision of a fair workweek.

INTRODUCTION

Retail is one of the largest sectors in the United States and the global economy. Global retail revenue was approximately $15 trillion in 2013, and is expected to reach $20 trillion by 2020. Employment in the sector generally accounts for 10 to 15 percent of total employment in wealthy countries and retail jobs will continue to be a major source of job growth in the coming decade.[1]

The retail sector employs a diverse cross section of the American workforce—62% women, 21% people of color, workers both young and old (median age is 34, average age is 38).[2] As the industry grows, it is adopting "lean" manufacturing practices to manage its workforce. But these efforts to cut costs come at the expense of retail workers themselves. Retailers are seeking out more employees, while providing those workers with less job stability. Retail workers increasingly face the challenges of unpredictable schedules and what scholars call "work-hour insecurity."[3] According to the Bureau of Labor Statistics, less than half of the retail workforce works full time, and the number of those working fewer than 20 hours per week has grown by 14% in the past decade. Involuntary part-time workers—those who want full-time work but cannot find it—are the fastest growing portion of the workforce. Since 2003, the number of involuntary part-time workers has more than tripled. Meanwhile, scheduling practices leave workers with hours that fluctuate unpredictably from week to week—workers may work 40 hours one week and 15 the next.

There's a new race to the bottom. Companies that have already reduced operating costs by making deals with irresponsible subcontractors and using the cheapest available materials are now cutting corners in the form of the "just-in-time scheduling" of their workforce.[4] These "lean" manufacturing practices take advantage of sophisticated software and an increasingly desperate workforce to cut labor costs to the bone. Retailers' demands for open availability and the use of unpredictable scheduling means that workers already struggling with low wages and discrimination in our economy—women, people of color, caregivers, and lesbian, gay, bisexual, transgender, and queer workers—are left in a constant state of insecurity about when they will work or how much they will earn on any given day. Workers and



In 2013, 62% of retail sector workers were women, and 21% were people of color

Since 2003, the number of involuntary part-time workers has more than tripled

their communities are facing economic insecurity to serve the bottom line of a rapidly expanding industry. The interviews we collected for this report show that the quality of jobs at major retailers in the United States has slid to such depths that workers have learned to not expect anything from their employer: no raises, hours, opportunities for advancement, or basic benefits such as earned time off.

Low-wage workers around the United States are taking action for a $15 per hour minimum wage. But without full-time hours, a higher minimum wage is not enough to lift a worker out of poverty. Campaigns for higher wages must be tied to a vision of a fair workweek. *Short-Shifted* looks at how scheduling relates to workers' daily experiences on the job, the effects of open availability requirements, and the challenges of managing income with unstable hours.

Retailers are shifting to just-in-time scheduling for several reasons. First, new technologies allow retailers to track sales patterns and predict labor costs with more precision. Retailers skim workers' hours in order to cater to these fluctuations in business. Corporate headquarters give store managers tightened monthly budgets in order to extract more profit, and managers in turn seek to properly staff during business peaks, and not "waste" precious labor hours during slow periods.[5] Second, policymakers have deregulated labor markets and defunded inspection agencies, making it easier for employers to hire workers with little regulatory oversight. The lack of public protections around work hours has left workers vulnerable to abusive cost-cutting strategies. Third, persistent unemployment and high underemployment provide a large pool of potential workers. Employers can hire multiple part-time workers to share the equivalent of one full-time job. The result is a mounting practice of irregular, unpredictable schedules for frontline retail workers.

Just-in-time scheduling can now be found beyond retail in fast food and full-service restaurants, hotels, entertainment, construction, and information sectors. Contingent, part-time work is growing in occupations once thought of as stable "good" jobs: employers hire low-wage temporary workers instead of full-time high-wage manufacturing employees, freelance "independent contractors" instead of full-time computer programmers, and adjunct faculty instead of tenured professors.

Therefore, trends in retail may represent the frontier of new employer practices that have major implications for workers in a range of industries. Additionally, U.S.-based retailers are beginning to implement some of their stateside scheduling practices in their stores overseas. For these reasons, it is crucial to understand the impact of unstable scheduling practices on workers.

In 2012, we released *Discounted Jobs*, a report detailing working conditions for New York City retail workers, based on a survey of 436 workers at major retailers. We found that several unpredictable scheduling practices were prevalent, including on-call shifts, variation in the number of hours and shifts per week, and being sent home before the end of a shift.[6]

Given the pervasive nature of unstable schedules in New York City, we decided to follow up our survey with new research looking more closely at the impacts of just-in-time scheduling in retail on workers' lives. Existing research finds that retail workers rarely have the power to plan their own schedules that allow them to keep work, family, and personal commitments, and to request changes based on workers' needs. Instead, "flexibility" in the sector is primarily driven by employer needs.[7] Other studies find that workers' lack of schedule control in any industry has a significant negative impact on their physical and psychological health.[8] We build upon this work in *Short-Shifted*, analyzing the impacts of non-standard work schedules on New York City retail workers.

This report details the findings from surveys of over 200 workers in Manhattan and Brooklyn. We focused primarily on workers in national apparel stores with more than 100 employees, as these stores are more likely to be on the forefront of new scheduling practices. In addition, we conducted in-depth interviews with 44 workers. These interviews show that when workers cannot

control their hours, they have difficulty planning outside commitments including school, child care, and second incomes. The way that companies approach scheduling makes workers feel disrespected and undervalued. Retail workers know their employers view them as easily replaced, no matter how hard they work. We believe that working conditions in the apparel industry represent the forefront of just-in-time scheduling, and the possible future of jobs more generally unless we take steps now to intervene in these troubling practices.

FINDINGS

The *Short-Shifted* survey shows that unpredictable scheduling and part-time hours continue to pose challenges for many retail workers (see the Appendix for detail on our methodology). Only 40 percent of workers surveyed have set minimum hours per week, and approximately half of the part-time workers we surveyed would like to work full-time. One quarter of the workers are scheduled for on-call shifts, and the vast majority report that they find out from a supervisor if they are needed for the on-call shift only two hours before the shift starts. While the survey does not reflect a representative sample of retail workers, the results highlight trends found in data collected by the Bureau of Labor Statistics that show an increase in involuntary part-time work, particularly in service industries.

Our in-depth interviews allowed us to go beyond the data to get a fuller picture of the work lives of retail workers. The following themes emerged.

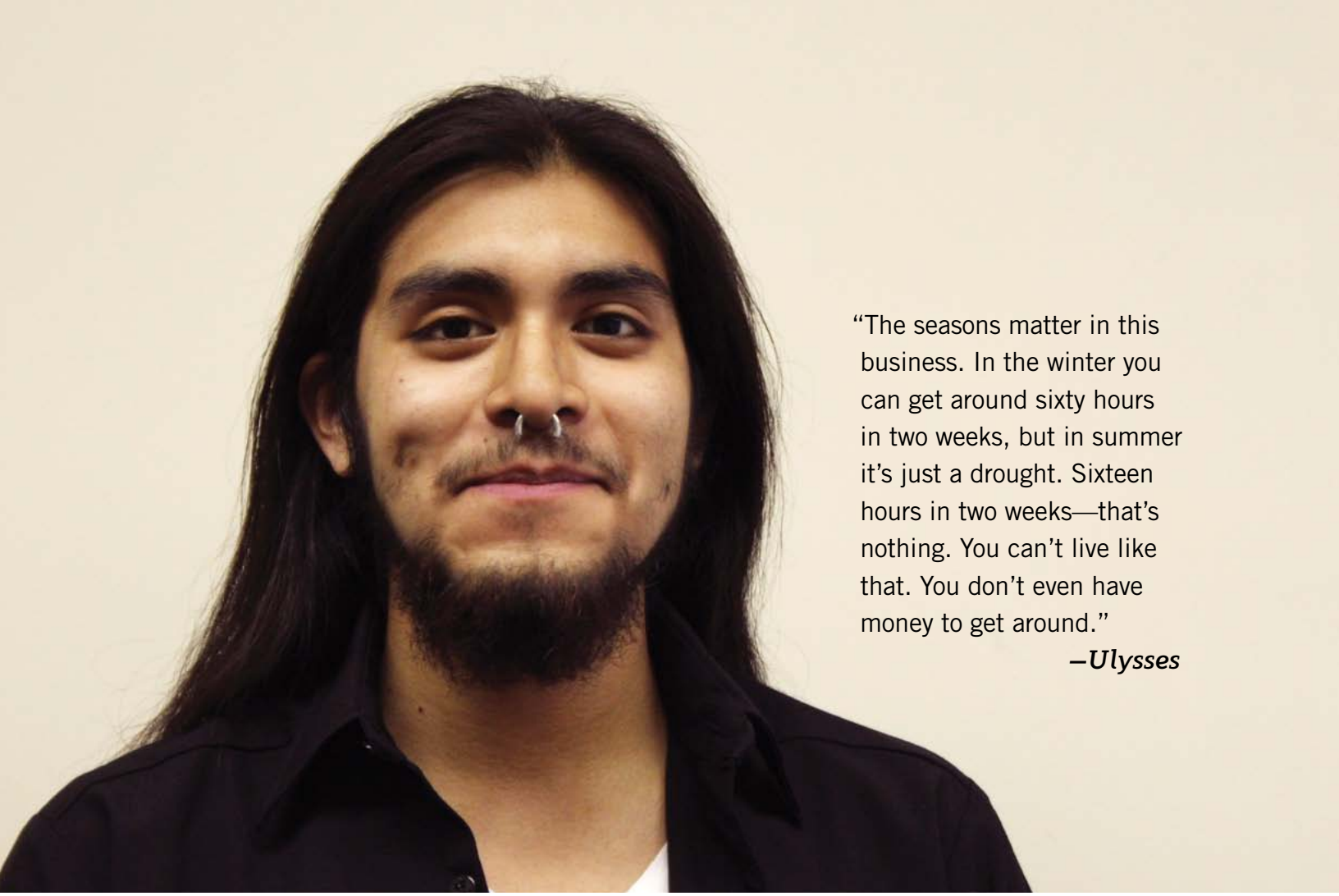
Unpredictable Schedules

Almost all workers we interviewed are grappling with complicated scheduling practices, as employers shift their staffing levels without consideration of workers' time or need for a living wage. Retailers use a variety of methods for setting hours and schedules. Some schedules are changed on a weekly basis, others are done bi-weekly, and a few employers post schedules several weeks in advance. However, too many employers give workers their schedules with just a few days' notice. For example, many managers will post a schedule on Thursday for a workweek that starts on Sunday. Several workers reported that their schedules were posted every Saturday for a workweek starting the next day.

Others shared that their schedules frequently change during the week after they are initially posted. Heath[9] worked a 1 pm to 9 pm shift one day, and the manager told him he had to show up the next morning to work a 6 am to 2 pm shift. The schedule had been changed with less than 24 hours' notice, leaving Heath with only nine hours between shifts.

During the hiring process, job candidates are generally asked which days they are available and their preference for shifts, but that may have little bearing on the hours they actually receive. Many retailers mandate open availability, meaning they expect the employee to be available any day and any time, but often do not schedule workers within their stated availability, or do not take advantage of their availability to give them full-time hours. Instead, they schedule workers for part-time erratic shifts. Ashley is a full-time student with two jobs. She stated, "We have this system where you sign in and create your own schedule and the days you can't work. Then they pick and choose out of your availability the days they want you. It's kind of frustrating because it's like, my Monday's open, why don't you take me? Instead they schedule me for other days when my schedule is tight and then ask me to stay longer, when I can't stay."

Retail is a seasonal business, with higher activity at different points throughout the year, such as around holidays. This isn't unique—farmworkers, teachers, and construction workers all experience seasonal employment. However, the biggest players in the retail sector are increasingly implementing erratic schedules that make it difficult for workers to plan for their lives and know how much work they can count on during any given week or season. Ulysses, a part-time worker at Levi's, remarked that going into the holiday season, there is much more work available, making it possible to



"The seasons matter in this business. In the winter you can get around sixty hours in two weeks, but in summer it's just a drought. Sixteen hours in two weeks—that's nothing. You can't live like that. You don't even have money to get around."

—Ulysses

get 20 hours of work plus additional shifts to bring his hours up to 30 per week. However, during the summer, his hours can drop to as low as eight hours per week. He said he would prefer to work 30 hours a week, but "mostly I just want a set schedule; I don't want it everywhere, all over the place." His employer can change his schedule with very little notice, but then requires Ulysses and his coworkers to give advance notice when they cancel or change their shift.

Another worker, Modesta, has two part-time retail jobs at two major global retailers in order to get by. She noted that at Victoria's Secret, the post-holiday season is the slowest time and she would sometimes get only two or three hours of work per week. Some workers say they might get scheduled for four days one week and two the next. Modesta reported that at her other job, Armani Exchange, managers say they can't ever give employees more than four hours, with a maximum of five and a half hours per shift. "Managers often send us home early, wasting our time," Modesta said. "With such short shifts, sometimes I feel embarrassed to ask if I can stay and work for a couple more hours. I would rather have a job with a stable schedule instead of juggling two part-time jobs."

Some retailers only post a hard copy of the work schedule in the break room, or workers have to go to the store to print out their individual schedule, which means that workers have to come into the store to see when they work, or call in to ask a coworker to check for them. Even then, employees do not always have the ability to see when others are working, making it more difficult to swap shifts, or pick up extra shifts. Without the ability to easily access their schedules and know when coworkers are on shift, workers are not able to see and act upon inequities in the distribution of work hours that could affect all store employees.

Misused Technology

Large employers are utilizing integrated workforce management software to measure sales and customer flow. Often these systems are nearly fully automated, including, for instance, detectors embedded in the welcome mat that measure conversion rates—how many people enter the store in relation to how many walk out with bags—which affect inventory levels, sales promotions, and worker hours. As we discussed in our *Discounted Jobs* report, at some major retailers, workers' sales per hour one week determine their schedule the next.

Yet the specialized software is rarely used to benefit the employee. Workers are being asked to do more and more skilled work without the benefit of training on selling or computer skills, putting less privileged workers at an economic disadvantage. At Bath & Body Works, workers have an increasingly long list of responsibilities, including cashiering, monitoring the floor, tracking conversion rates, and using sophisticated point-of-sale technology, including online scheduling systems, where workers sign in and mark their availability to work.

Workers are also frequently enlisted to operate the computers and programs that will decide their scheduling fates. Yet only managers have the ability to override the "optimized" schedule that comes out on the other side of the algorithms, and managers are rarely encouraged to take into account other employees' needs when doing so. Workers report a frequent source of frustration comes from managers scheduling workers for fewer hours than they are available.

With all the technical sophistication put to work minimizing pay for workers, one would hope that some might be utilized to make the scheduling process easier and more transparent. Yet in many stores employees must still submit requests by paper form that they have to physically hand in to managers. Often, although companies use software that determines workforce levels by the hour, schedules are not available online, and are only posted in the break room.

While major retailers may find computerized scheduling and tracking software useful, these technological practices often shift the cost of doing business from the employer to the worker. If there is bad weather, the scheduling algorithm can indicate that employees should be sent home before their shift ends. This means workers go home without a full shift's pay. Employers are able to change shifts at the last minute but if the employee does not know about the updated schedule and comes in late to work, they will get penalized. Managers might have a cap on total employee hours per month, which, once hit, will result in cut hours and full reliance on on-call shifts.

Part-time Limbo

In the retail industry, "full-time" or "part-time" designations seem to have little standardized meaning in terms of hours worked. Some "full-time" workers are scheduled for only 35 hours per week while "part-time" workers can get scheduled for a wide range of hours, from zero to 40 hours a week. The absence of systematic designations can be deeply frustrating and confusing for those trying to make a living in retail. A number of interviewees stated that while they have worked 40 hours a week for sustained periods of time, they were never considered full-time and did not receive benefits. Several workers explained that employers do not want them to hit or exceed 40 hours a week, and they assumed that this was to avoid paying overtime pay or providing benefits. For example, Christina is part-time but picks up extra shifts that cowork-

"Sometimes I'll pick up shifts when people call out, thinking that [the company will] give me more shifts in the future. But they don't and I ask myself, 'why in the world am I making myself available for you all these days?' I live with my parents and if I wanted to get out I'd have to get another job." ***–Ashley***

ers do not want. She has to calculate her shifts carefully, "because if you hit 40, they go crazy so I do like 39.5 hours. I'm a part-time worker. If I'm at 39.75 on Saturday, they'll send me home, even if it's in the middle of my scheduled shift."

Part-time and full-time designations do not necessarily correlate to standard shifts. Some stores might have part-time employees work shifts of up to 10 hours a day, but only two days a week. Some stores have various levels of part-time: "Part-time 1" workers get 15 hours per work, while "Part-time 2" employees get 25. Some chains give different maximum hours per store. For example, one chain retailer sets a limit of 15 hours per week in one location, but a higher maximum elsewhere in the city with different sales patterns.

Just-in-time scheduling furthers structural underemployment and unemployment by creating jobs with such limited work hours that workers often would benefit more by being unemployed than continuing to work part-time. A number of interviewees noted that although they consistently ask to be classified as full-time or receive more hours per week, their employers refuse and instead continue

to hire new part-time workers. One interviewee told us that her store, Forever 21, brought on six new employees at one point, and dropped her schedule to two days per week, prompting her to quit due to insufficient hours.

Full-time hours or official full-time status are often only attainable through promotions. In a few stores, there are full-time employees who get benefits, but those are primarily managers or older workers who have been there since before these scheduling practices took hold. But even then, some stores have cut their hours below 40, forcing workers to apply for partial unemployment. Ashley remarked, "I'm not considered full-time but during holiday season I work full-time hours. Only managers can get full-time status officially."

> "My manager informed me that I could work 40 hours a week, but that I couldn't be made full-time. I think they wanted to cut my hours to avoid paying me benefits. I've never been able to pay the rent with this job because of the changing hours and low pay." ***—Lily***

Other interviewees noted that they were originally offered jobs at 40 hours a week but told they would not be "full-time" and not be eligible for benefits. Coupled with the low pay rate, workers voiced dissatisfaction about their jobs. Daniel said, "I do need a decent check, I would love to do 40 hours a week, but the pay's not going to match, the benefits are not there." These barriers to sustainable hours and wages create cultures of ambivalence, with workers left feeling undervalued, creating a cycle of low expectations about retail work. Not seeing their employers investing in them, workers become divested from the career potential in this high-growth industry. High turnover rates in the industry mean that retail workers often do not connect with each other on the job, making it difficult for employees to come together to improve working conditions.

Arbitrary Rules, Favoritism, and Barriers to a Career Ladder

In the interviews for *Short-Shifted*, workers reported frequently facing arbitrary and opaque employment practices, including barriers to shift-swapping that facilitate worker-driven flexibility. Employees are given strict rules for work assignments; for example, Christina explained how she often tries to get more hours and shifts, but "if I'm a cashier I can't take a shift from someone who does stock." This stipulation limits her ability to get more hours. Moreover, the management at her store wanted to exert control over employee communication regarding shifts, limiting workers' voices at work. Christina explained, "We used to post shifts in the break room, because we wanted to try to trade with coworkers. But we are not allowed to do that anymore. We are supposed to call in and explain that we want to take a shift, so they can give you approval."

> "If we're short on cashiers, they'll put someone from stock because we don't have enough people to do it. But if I wanted to switch with them, they'll say, 'no, you can't do that.'" ***—Christina***

Scheduling can also seem arbitrary and secretive. Ashley said, "I don't know what other people get [as far as hours scheduled per week]. We're not supposed to talk about it. The schedule isn't posted for everyone to see." Instead of granting workers regular schedules that allow them to pay the bills, some stores employ advanced tracking systems to make workers compete for better schedules based on performance. Tasha said, "For some time we had a sales contest [at Forever 21]. Whoever makes top sales gets to pick their own schedule." However,

the ability to set one's schedule indefinitely is not guaranteed. For instance, Uniqlo selects certain items to sell every week. If an employee is the top seller for that item in a given week, they might get more hours and a better schedule, but that may only last for one scheduling cycle. Furthermore, Tasha explained that at Forever 21, her hours fluctuated based on "how they thought my performance was. It would be determined by a lot of things: how you close, if you come in on time, etc. Say you missed work one day last week, even if it's because of an emergency, they'll cut your hours the next week." Workers are under duress every week to prove that they deserve the hours they are getting, instead of knowing there's a baseline of hours they can count on.

Ashley told us, "I called out once for the first time in 11 months and they took away my Monday shift. You give them your all but it feels like you're being penalized for calling out."

Workers looking for more hours or more regular schedules are likely to quit in search of better jobs. That can leave remaining workers covering more work. When asked about the greatest annoyances on the job, several interviewees mentioned "coverage," meaning that there are not enough employees to cover all stations or sections. This may be due to high turnover, or it may be intentional staffing decisions: employers may deliberately understaff the sales floor in hopes of keeping labor costs low. Whether intentional or due to high turnover, understaffing leaves remaining workers to multitask and cover large areas with no relief.

Not all employees feel so demoralized, although rarely do even the most positive employees speak well of their store scheduling practices. Many enjoy working in retail and helping customers. T.K. said, "I love helping people, I love working with customers. It's like I am addicted to trying to help people." Many interviewees liked their coworkers and appreciate some of the aspects of the job including variable scheduling when they need part-time hours. But overall, the dominant sentiment was that of feeling undervalued.

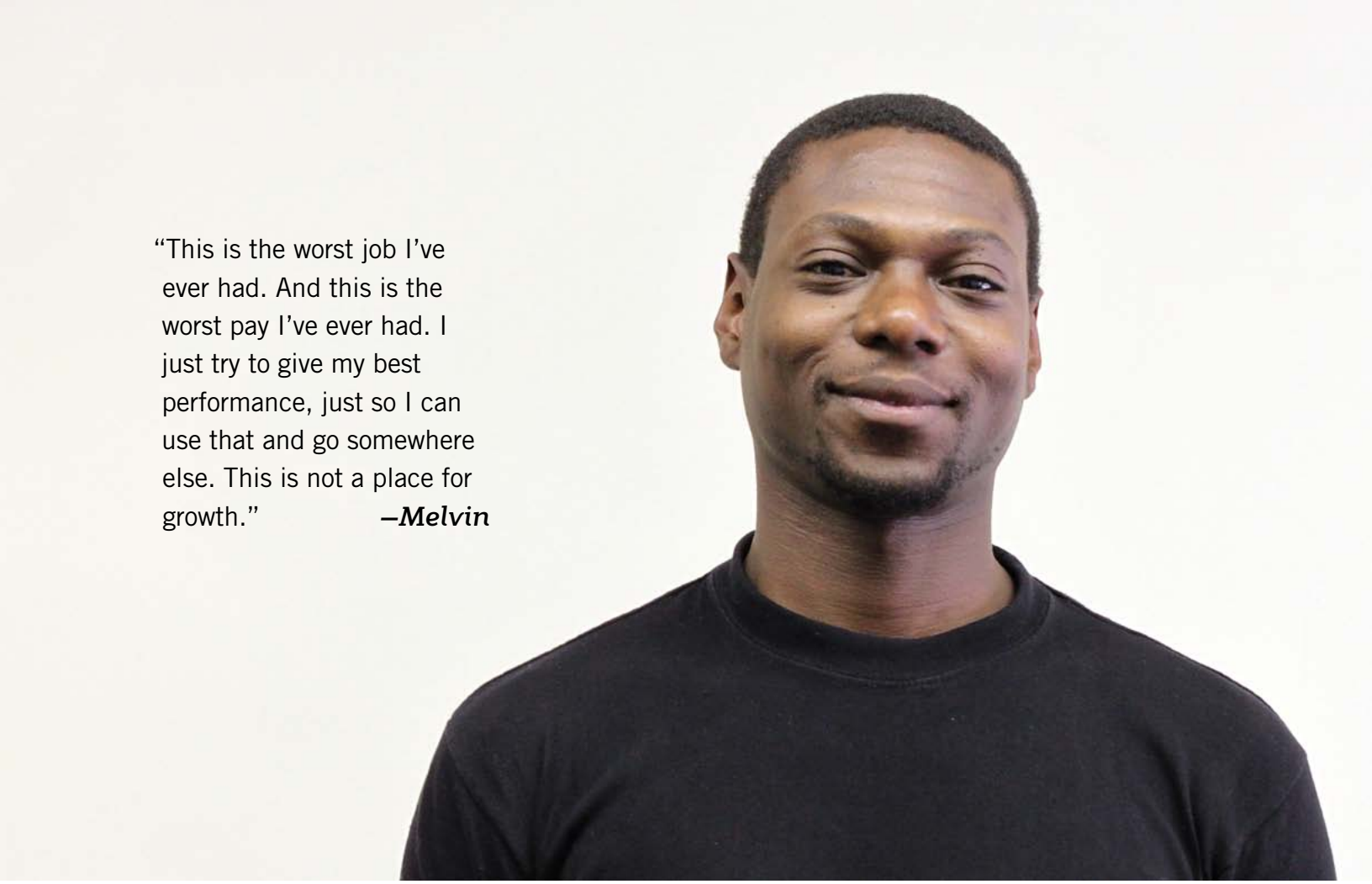
> "We always have between two and four people on each floor. It's hard when it gets really busy and the person at the cash register has to make sure the area stays clean, greet the people, answer the phones, and do shoe checks. And the person on the floor has to do customer service and clean the area. It's hard, it's too much, but that's how it is. If we don't meet the sales goals, they start cutting hours." ***—Dominique***

Stolen Time and Wage Theft

Inaccurate Documentation of Hours

Many employees do not receive regular paystubs. Several payroll companies have shifted to paperless documents, putting low-wage workers, who may not own a home computer, at a disadvantage. There are also more opportunities for discrepancies in pay, and employees may not be getting their full pay. For example, Shaq stated, "You need to go into the store to get your paystub. The paystub does not show your hours. You have to go online and check your hours, and compare those to what's listed on your paystub." Christina added, "I get direct deposit. They're supposed to give the stub but I have to ask repeatedly." And Lily explained, "I get my paystub because they have messed up before so I keep track. I always check." Tasha also found it challenging to get the stub: "We had to come in at certain hours on Friday to get our paychecks, and sign a piece of paper. It takes a while to set up direct deposit. I only got the paystub when I quit—just the last one. I don't know what happened to the others."

Wage theft—when employees work without getting paid—is a widespread practice in retail and other low-wage sectors. One study estimated that wage theft accounts for $2.9 billion in stolen earnings each year in New York, Los Angeles and



"This is the worst job I've ever had. And this is the worst pay I've ever had. I just try to give my best performance, just so I can use that and go somewhere else. This is not a place for growth." ***—Melvin***

Chicago alone.[10] Our interviewees explained that it has become increasingly difficult to know if wage theft is occurring because when shifts and schedules change so frequently, it is not always easy to know how much you should be paid. In 2012, 73% of retail workers said they were not paid for a full four hours when sent home early, as is legally required by New York State Law.[11] A lack of education about legal rights, such as reporting pay, further complicates workers' ability to track what is owed to them. Hours worked and wages received for reporting to work tend not to be included in paystubs, so workers don't know what they are being paid for. Erratic scheduling and a lack of information make it more challenging for workers to hold their employers accountable when they violate the law.

Tracking pay is made more complicated when managers switch schedules. Changes may result in discrepancies between workers' own records, the written schedule, and the automated program that tracks schedules. Ashley explained that one system will mark her hours as the full shift as scheduled, but another system tracks her hours worked, and pays her only for that. So if a worker is scheduled for a longer shift but is sent home early, they will just be paid for what they worked. And all of this assumes that

the data is always entered into the computers accurately and consistently.

Working Off The Clock

Workers also find themselves doing tasks for the job "off the clock." This includes having to help customers while on break. One worker explained that since she is in a uniform, customers will approach her on her way out for lunch, or even in the bathroom, to ask for help, but when she helps them it does not count toward paid work time but towards her lunch break. Yet if she comes back from break a minute late, she will be penalized.

> "We have to wear the clothes of the store, so we bring in bags to change. We clock out and then have to get in line to have security check our bags. If a lot of people get off at once we might have to wait 10 or 15 minutes." ***—Heath***

At another store, workers scheduled for the opening shift are required to be outside waiting when the store manager opens the door at 5 am. They have to be there before the manager arrives, because if they are not there when the door opens they will be penalized.

Others complained about the time they must take to find coverage if they are sick. Lily explained, "If you wake up sick you have to call and find coverage. I will spend an hour texting and calling people at seven in the morning to take my shift for me and they are sleeping." The hour of time Lily spends getting a replacement is not paid time. However, New York City recently enacted pro-worker paid sick day legislation that prohibits employers from forcing employees to find a replacement when they need to call out due to illness.[12] It remains to be seen if retail stores will comply with this law.

Wage theft also occurs when employees are not given breaks as mandated by New York State law. New York employers are required to provide at least a half hour uninterrupted lunch period between 11 am and 2 pm to employees who work a shift of more than six hours starting before 11 am. The break does not need to be paid, but it must be provided.[13] This does not always happen, particularly during busy seasons. One woman explained that special events and sales were the worst, as that was when they were usually called on to work long shifts with few breaks. During those times, she said, "no one reaches out to tell you when you can take a break so you have to find someone to get approval, and they might say no, you have to wait. And then you end up working the whole 11-hour day without getting approval for a break. Your managers are supposed to look out for you"

Balancing Work, Child Care, and School

Unpredictable scheduling is difficult for many reasons, but can be particularly hard on workers with long commutes, or commitments such as child care or other family caregiving responsibilities, school, and second jobs. For many NYC retail workers it is difficult to live close to their job due to high rents in areas with retail density. Of the workers who participated in our "Discounted Jobs" survey, fewer than half lived in the same borough as the store where they were employed. The issue of commuting persisted in our more recent interviews as well. Tamar said, "Last week I had a 2:30 pm to 4:30 pm shift, and I said, 'it takes more than two hours just to get here.'" Long commutes exacerbate the challenges of drop-off and pick-up for parents with young children. For example, Shannon has to leave work no later than 4:30 pm to get her child from daycare by 6 pm. This means she cannot agree to stay overtime or to take on additional shifts, even if she needs the money, unless she can find a family member to pick up her child.

Every interviewee with children relies on a combination of family members and daycare, and most people said they need help from mothers, siblings, or grandparents to help with pick-up

"The scheduling issue is good and bad. It's good because you can have a flexible schedule to accommodate classes, but it is also bad because I think the managers hold it against you if you say you cannot work certain days."

—Onieka

and drop-off to daycare or school. Often this becomes a complicated patchwork of multiple adults helping to take or pick up a child from school or daycare.

Parents explain that scheduling problems are enhanced when you have children, because it is not possible to predict when your child will be sick. Annemarie's daughter has asthma, which sometimes required her to miss work to take care of her daughter or take her to the doctor. Annemarie would have to call out, which resulted not only in lost pay but also in "points" against her. She explained that while she could have used a paid personal day to do this, her employer requires 72 hours' notice. Points stay on a worker's record for a year, and as long as the employee has points, they are not eligible for promotions. An added challenge to coping with unpredictable scheduling is the pressure to conceal one's family status for fear of discrimination—even in the hiring process.

Shamika juggles two jobs to support her son, including a position in the cosmetics section at Whole Foods. She said that last-minute changes to her work schedule can wreak havoc in her personal life. She explained, "I've had it. I'm not staying at anybody's store until 9 or 10 o'clock at night. I want to be home in the evening to cook dinner for my child. I've learned that if you don't speak up for yourself, they will do anything to you"[14]

Similarly, students who work in retail report mixed experiences about trying to balance school and work. As Onieka reported, she felt she needed to set aside days to study but her manager at Target would call her in to work, and penalize her if she didn't agree to come in. Several interviewees remarked that they felt they had to say they were available for full-time hours to get the job, even though they were not given full-time hours after hire. If they had said they were a student who needed days off, it would have made it harder to get the job in the first place.

> "At a job interview, the manager specifically said he doesn't like hiring people with kids. They're a liability. Your kid gets sick, you can't come in. Simple as that. Something happens to your kid at school, you have to leave." ***—Shamika***

Many workers are in a bind in that they have other commitments that make them need a part-time schedule. At the same time, the low hourly wage means it is nearly impossible to survive on part-time hours, so workers are constantly looking to pick up additional shifts. Some stop by the store or call in every day to see if they can come in to work. Melvin, who is regularly scheduled for 30 hours a week, remarked that he often gets called in to work on days he is not scheduled to work, or gets called to come in earlier than his scheduled shift. Because his hourly wage is so low, he adds, "I need the money—I gotta take it." This is in part because the erratic schedules make it difficult to pick up a second job. Research shows that workers with unpredictable schedules are less likely to hold second jobs than other workers because it is difficult to coordinate a second job when someone does not have a reliable schedule at the first.[15]

SOLUTIONS

Low-wage, part-time workers have to hustle for hours, piecing together different jobs just to be able to gather enough money to pay their bills. If a worker is picking up one job and moving on to whatever she can grab onto next, she cannot maintain the stability necessary to advance at work, let alone stay in school or raise a family. In response to the twin crises of underemployment and unpredictability, retail workers came together for a forum hosted by the Retail Action Project called "Hustlin'" where they identified problematic scheduling practices used by corporate retailers. Workers from across retail industry tiers then developed a Just Hours Code of Conduct to guide a vision for a fair workweek. New York City retail workers are organizing workplace justice campaigns and advocating for statewide policies to address the impacts of just-in-time scheduling. The recommendations below follow the Code of

JUST HOURS NEW YORK
RESTORING THE FAIR WORKWEEK

Retail Action Project members came together to develop an innovative Just Hours Code of Conduct to change standards in the industry. They determined that we have the right to:

- Stability in hours
- Predictability in schedules
- Family-sustaining hours
- Care for ourselves, our families, and our communities
- Work without discrimination
- Access to affordable benefits
- A stronger social safety net

Conduct's standards and represent a mix of existing models and proposed solutions.

Stability in Hours

Strengthening Reporting Pay

One policy tool that would reduce work-hours insecurity is "reporting pay" legislation, currently found in eight states and the District of Columbia. These laws vary in their requirements and coverage, but on average, they require employers to pay workers for a minimum number of hours when they are scheduled for a shift. For example, the New York state law requires employers to pay minimum wage for four hours of work, even if the worker is sent home early, or at least six hours if scheduled across two shifts.[16] Several states require the employer to pay the full regular rate of pay for the shift.

A recent analysis of reporting pay laws finds several modifications that could improve their effectiveness. First, the laws mostly have low pay levels and weak penalties for non-compliance. The laws should be amended to increase wages and to include the penalties found in the Fair Labor Standards Act—namely, employers found in violation should be required to pay double damages and attorney fees. The legislation needs stronger enforcement mechanisms, including targeted enforcement and anti-retaliation protections for workers who complain about violations. Furthermore, the paper suggests that government contracts and grants should include reporting pay provisions so that public money comes with worker protections that improve work-hour insecurity.[17] With the rise of just-in-time scheduling, updating and reinforcing existing reporting pay laws is vital to workers' economic security.

A particularly abusive just-in-time scheduling practice that is rapidly spreading is on-call shifts, when workers are forced to be available without pay or a guarantee of work. In order to balance this unpredictable system, current reporting pay laws should be updated to reflect modern scheduling practices in the retail industry. If workers report via phone or in person to a scheduled on-call shift and their employer tells them not to come in to work, workers would receive minimum shift pay in line with the reporting pay policy in their state. Compensating workers' premium pay for a shift that the employer canceled with less than 24 hours' notice would also discourage last-minute scheduling changes. At the very least, such amendments would allow workers a better sense of how much they will earn that week.

Unions have been addressing scheduling issues in collective bargaining agreements at least since 1939, when the United Auto Workers added language about minimum shift pay to their contract.[18] A 1984 study found that a majority of collective bargaining agreements had call-in and reporting pay clauses, which required employers to pay full or even premium pay rates to compensate for workers' time when they were called into work unexpectedly or when they came to work but were sent home before their shift ended. However, since union density in the retail industry is low, few workers benefit from these agreements in the U.S. In order to address scheduling issues on a broad basis, we need public policies that protect workers' ability to exercise the right to organize.

Guaranteed Weekly Hours

Some unions have won guaranteed minimum hours in their collective bargaining agreements. Under such policies, workers can expect a set number of hours of work each week. At the New York City Bloomingdale's flagship store represented by Local 3 United Storeworkers of the Retail, Wholesale and Department Store Union (RWDSU), part-time workers have a regular schedule of at least 20 hours per week and full-time workers are guaranteed 37.5 hours per week. Full-time H&M workers represented by Local 1102 of the RWDSU are guaranteed 36 hours per week.

Even some non-union large retailers such as Costco provide part-time workers a guaranteed minimum number of hours. Under such policies, workers may receive hours in addition to their weekly minimum. Particularly in light of the rise of on-call scheduling, guaranteed minimum hours create stability for workers who can depend on a minimum weekly income.

Predictability in Schedules

A study of a national retail apparel chain suggests that scheduling in the industry may be more predictable than commonly thought. In the study, only 12 percent of managers reported that their store experienced reductions in hours greater than 30 percent over the course of a full year. For the majority of stores, at least 80 percent of hours remained the same every week.[21] This stability in labor requirements means that employers should be able to provide greater advance notification of schedules.

Nevertheless, unpredictability in retail workers' schedules is only getting worse. Employers could easily provide greater advanced notification of weekly schedules and changes. In other countries, retail unions cover a greater share of the retail workforce and have had more impact on scheduling practices. In Germany, retailers covered by collective bargaining agreements are required to post schedules 26 weeks in advance. Danish and French agreements require 16 weeks advance notice, with an option to change schedules up to four weeks in advance.[22] The collective bargaining agreement with Macy's negotiated by Local 1-S RWDSU enables workers to choose shifts three weeks in advance and select permanent shifts off up to six months ahead of time. Local 3 RWDSU members at the flagship Bloomingdale's are able to select permanent days off 26 weeks in advance and select one weekend off a month of their choice. Local 1102 RWDSU members at H&M have an agreement that once a worker's schedule has been set, it cannot be changed or amended without the worker's consent. Collective bargaining agreements provide mechanisms to address both workers' and employers' needs in regards to predictability and advance notification of schedules.

Family-Sustaining Hours

Working full-time hours is frequently not an option for many workers—about one-third of all part-time retail workers would prefer to work full-time. As involuntary part-time work is on the rise, families who want full-time hours are left with fluctuating schedules that make planning their weekly income impossible. In 2013, residents of the city of SeaTac, Washington, voted to pass Proposition 1. In addition to instituting a $15 per hour minimum wage, the legislation promotes full-time employment. The Los Angeles County Living Wage Ordinance, which applies to certain County service and cafeteria contracts, requires employers to employ full-time workers in order to be eligible for a county contract. Contractors must apply and receive special permission to use part-time employees, based on specific guidelines. Such policies give workers the choice to accept full-time work as it becomes available.

Caring for Ourselves, Our Families, and Our Communities

Right to Request and Receive

San Francisco and Vermont have passed legislation mandating that employers consider workers' scheduling requests. Businesses must engage in an interactive process that respects an employee's right to request a flexible or predictable schedule and present a compelling business case for denying a request. Strong legislation would include incentives to grant requests related to caregiving, enrollment in education or workforce training, or employment at a second job. The right to request scheduling adjustments free from retaliation helps women and caregivers stay at their jobs, while allowing them time to take care of their families.

Paid Sick Leave

Few part-time workers are offered the predictable, full-time schedules they need to adequately care for their families, and fewer still receive paid sick leave in order to heal themselves or care for ill family members. Paid sick leave laws currently cover San Francisco, the District of Columbia, Seattle, Portland, Jersey City, New York City, and the state of Connecticut. Earned sick time is an important protection for public health, particularly since many sectors that do not provide paid sick leave involve heavy customer interaction. Furthermore, paid sick days create scheduling and income stability. If workers must call out sick,

they would not lose wages, nor would they have to work another shift to make up for the day they were sick.

Reasonable Scheduling Availability
As discussed in the previous worker stories, employees must have open availability just to be considered for a frontline retail position. Mothers and other caregivers are disproportionately impacted because their family responsibilities make it difficult to meet retailers' demands for open availability. A simple solution would be for managers and the scheduling technology that companies employ to respect workers' stated availability and schedule them within those time frames. Unionized workers at Macy's in New York City are not expected to have open availability for all of the store's hours, a common industry expectation. Instead, full-time workers need to be available for only 32 hours per week to maintain their full-time status. Such arrangements would help workers stay in school, care for their family members, and be able to better plan their lives.

Recently, the Organization United for Respect at Walmart (OUR Walmart) won a victory when the company agreed to implement a new policy to make scheduling easier through an online software system, Access to Open Shifts. Workers can look online and find when additional shifts are available, which should make it easier to increase total hours worked per week.[26]

Work Without Discrimination

Since full-time status is now a promotion, and hours are doled out as a bonus, race and gender matter when it comes to who bears the brunt of unpredictable part-time hours. Industry research found that more than half of caregivers must be available for on-call shifts, forcing them to arrange for child or elder care at the last minute. Women are also more likely to work part-time and experience unpredictability. In fact, one study found that women were 64 percent of the frontline part-time workforce, but only represented a third of retail management.[27] As such, we need equal opportunity policies that promote the full-time employment and occupational advancement of workers of color, women, and caregivers. Collective bargaining agreements and grievance procedures help ensure that women, workers of color, and LGBT workers receive equal opportunity to earn dignified wages, access benefits, be considered for promotions, and receive desirable schedules.

Some of our interviewees noted that many job applicants choose not to reveal that they are pregnant or parenting during the interview process, in hopes that this will increase their chances of being hired. Other workers continue to hide their caregiving status from their managers in fear that their schedules may change or they may be pushed out of their jobs. Parents need strong protections from discrimination in hiring and in how they are scheduled in order to encourage workplaces free of fear and environments where workers have the flexibility and income to raise a family.

Access to Affordable Benefits, Equal Pay, and Opportunities to Advance

Some European countries have passed laws prohibiting unequal treatment of full-time and part-time employees. For example, under the Equal Treatment Act of 1993 in the Netherlands, employers must provide the same benefits, wages, and training opportunities to part-time and full-time workers. That country also passed the Part-Time Employment Act, which gives workers the right to periodically request a change in their weekly work hours (either requesting more or fewer hours). Many collective bargaining agreements in European countries require employers to provide the same benefits and wages to part-time employees as they do for full-time employees.

A Stronger Social Safety Net

Broader social policy can relate to schedule control problems, including unpredictable shift hours as well as the impacts of underscheduling. Today, most public policies do not cover part-time workers, and create adverse incentives for employers to employ a large part-time workforce with high turnover. For example, the Affordable

Care Act only requires employers to insure workers who work 30 hours a week consistently. As a result, some employers are now capping workers' schedules at 29 hours a week or less to avoid the mandate all together. Building the political voice of part-time workers and educating policymakers about low-wage worker scheduling trends is vital.

In a 2012 cross-national study, researchers found that in general, country spending on social expenditures is positively correlated with worker schedule control. The interviewees for *Short-Shifted* expressed a desire for more hours of work because they could not survive on the income from their job. However, if there were programs in place that reduced the costs of housing, child care, transportation, and health care for all, low-wage part-time workers would be less dependent on wages for survival. In fact, one study found that workers prefer fewer hours of work if given the option in countries with a strong safety net. For example, many workers in Sweden wanted jobs with shorter hours, which suggests that Sweden has managed to make part-time jobs attractive. This indicates that if U.S. retailers paid higher wages and workers had the option of obtaining health care, paid leave, and other benefits as part-time workers, more retail workers might be satisfied with part-time hours, benefiting both workers and employers.

Since retail is a seasonal industry, workers may experience being out of work from January through March and working overtime in November and December. Workers may work full-time hours for an extended period. However, most workers do not receive the full time benefits—such as higher hourly pay, paid time off, or health and retirement benefits—that come along with working the full-time hours. Workers need greater protections against misclassification across different industries and part-time workers with the same experience doing the same work should receive comparable hourly pay, access to benefits, and earn paid time off.

Local 3, RWDSU's Memorandum of Agreement with Bloomingdale's addresses such misclassification by ensuring that part-time associates who are scheduled for full-time hours on a regular basis are eligible for full-time benefits.

Partial Unemployment Insurance Reform

Workers who are eligible for unemployment can claim partial benefits when they experience a substantial decrease in hours. New York's partial unemployment insurance system is one of the least supportive in the country, paired only with North Carolina as programs that base a worker's partial benefit amount on the number of days she works instead of on how much she earns that week. This system strains underemployed, low-wage workers and the state's unemployment trust fund. Since a worker's benefit drops 25 percent for each day she works, even if it's for just an hour, workers are often penalized for accepting part-time work. With the advent of short shifts, employers often retaliate against workers by reducing normal shift length and spreading an underemployed worker's short shifts over multiple days in a week so as to prevent the company's experience rating from increasing. New York's (and North Carolina's) partial unemployment insurance system could be improved by:

- calculating partial benefits based on a worker's part-time earnings instead of the number of days worked, and
- creating incentives to return to work by giving workers a credit for part of their earnings.

Model Policies Abroad

Some European countries also have laws mandating employers to participate in Works Councils via a system of codetermination. In Germany, Denmark, and the Netherlands, retail employers must negotiate with worker representatives on Works Councils over schedules and other working conditions. Few of the New York City workers we interviewed benefitted from advanced scheduling technology, whereas German and Dutch retailers utilize advanced technologies to allow worker feedback in scheduling. Another factor that limits some of the scheduling variation in other countries is shopping hours restrictions. Many countries still bar stores from opening on Sundays or staying open late at night. In addition, some countries have more regulations that require shift wage premiums, such as higher rates for work after 8 pm or on weekends. Unions in Germany, Denmark, France, and the Netherlands have also won higher pay rates for work on weekends, holidays, and evenings.

Customer Education and Solidarity

Retail workers' jobs are shaped by service encounters that triangulate workers, management, and customers. Therefore, shoppers' actions can make a tremendous impact on both workers and employers. The Center for Frontline Retail, a New York City-based organization helping workers achieve quality employment in the retail sector, has launched the Shoppers' Alliance. This initiative brings together retail workers, socially responsible shoppers, and community institutions in order to support workers advocating for their rights in the workplace. In addition to showing solidarity with worker organizing, the Shoppers' Alliance will build public awareness about the social costs of underemployment and unpredictable scheduling to motivate retailers and policymakers to take action.

How Employers Can Benefit

Unpredictable scheduling is driven by employer desires to cut labor costs, but studies suggest that retailers may be better off with more sustainable employment policies. The practice of "just-in-time scheduling" is associated with lower wages and higher turnover. But turnover costs can be significant. One study estimates that the discount retailer Costco saves approximately $387 million per year in turnover costs, relatively to the high-turnover retailer Sam's Club, by paying higher wages and benefits.[34]

Another study found that unpredictable schedules are "associated with high rates of employee absenteeism, low staff morale, and a lack of staff loyalty."[35] This, in turn, impacts customer satisfaction. It can also have negative impacts on manager morale, as just-in-time scheduling places high demands on managers to constantly adjust staffing levels, train new employees, and deal with disgruntled workers. Supervisors often cannot exercise control over scheduling decisions that come from the corporate arm of a large retailer, so they are forced to implement structures that they know frustrate employees. In one survey of retail managers, it was reported that 93.5 percent of supervisors found that giving staff enough hours was essential to employee retention.[36] On the flip side, understaffing can lead to reduced customer loyalty and negative reviews on social media.[37]

Retailers may see short-term cost savings by keeping staffing levels at the minimum, but studies have found that higher staffing levels on the sales floor can pay off in the long run when customers experience higher satisfaction and make more purchases. MIT Professor Zeynep Ton found four low-price retailers that use a "high-road" model by paying higher wages and providing better benefits than competitors, and have higher sales per employee and per square foot.[38] Another study found that for every additional dollar spent on payroll, large U.S. retailers recouped a $4 to $28 increase in sales.[39] More sales staff means shorter lines, greater assistance in finding products, and fewer "phantom stock-outs."

Finally, employers may also benefit by providing more job training to their employees. Research shows that increased job training can improve productivity and customer loyalty. This includes training in "soft skills" for better customer relations,

as well as training on various technologies related to increased e-tailing, product knowledge, knowledge of store operations and procedures, and cross-training to cover multiple tasks and sections.[40]

CONCLUSION

Retail workers are at the forefront of employers' adoption of "just-in-time scheduling" practices in a range of industries in an effort to reduce costs and exercise control over their workforce. Our interviews demonstrate that these practices have serious negative implications on workers. Schedules throughout the industry are becoming absolutely unpredictable, making it difficult or impossible for workers to advance economically by obtaining a second job or attending college, and pose a particularly difficult challenge to arranging for child care. Workers face low wages and little chance to move up a career ladder, contend with arbitrary rewards and punishments, and are overworked as employers understaff the sales floor. In extreme cases, employers violate the law by failing to pay workers for full breaks or minimum shift hours. Retailers are utilizing sophisticated technology to track sales, customer flow, and labor costs, yet that same advanced technology is not available to workers themselves to make scheduling more convenient. It is clear that employers push "flexibility" for their own purposes, rather than to benefit employees.

There is a host of legislative practices that could improve conditions for workers, including regulations mandating or incentivizing more hours, stronger protections from wage theft, and better enforcement of existing laws. Retail workers would greatly benefit from union representation and collective bargaining that would guarantee improved standards. Retail unions in Europe have bargained for more hours and more advanced notice of scheduling, higher wages, and more job training in order to move up a career ladder. In the U.S., collective bargaining agreements have included minimum shift pay, call-in pay premiums, and guaranteed minimum hours.

Finally, research shows that while some of these just-in-time scheduling practices appear to benefit the employer's bottom line in the short term, in the long term they may not be the most sound business practice. In fact, studies indicate that employers can increase worker morale and productivity, as well as customer satisfaction and loyalty, with larger workforces, higher wages, and lower turnover. Retail work is fast-paced and requires skill. Under current conditions, even at $15 per hour, someone working 29 hours a week throughout the year would be limited to earning no more than $22,620—significantly below the $26,521 annual income needed for a single person to meet their basic living expenses in New York City.[41]

Retail work does not have to be insecure, low-wage, and unpredictable. Indeed, some of the larger retailers who engage in low-wage, low-road employment in New York City provide better jobs elsewhere, such as those paying a much higher minimum wage in San Francisco, California and Santa Fe, New Mexico, or those in Europe providing much more advance notice for schedules. Retail is a major sector in the U.S., accounting for about 10 percent of all jobs. In order to build a more equitable, inclusive, and healthy economy, we must find ways to improve jobs in this sector.

APPENDIX: METHODOLOGY

In order to select a group of retail workers for in-depth interviews, we began with a short survey administered in stores in Manhattan and Brooklyn to compile a list of potential interviewees. As with the last report, we selected chain stores (defined as three or more locations), and large stores (with 100 or more employees). We surveyed 236 workers in total. From that group, workers were then asked to participate in in-depth interviews. We conducted 44 interviews, with each lasting approximately two hours. During these interviews, we asked about the details of how their work scheduling happens, how they cope with unpredictable hours, and how they balance work with other activities such as school or parenting.

The interviewees were 66 percent women and 34 percent male. The majority were people of color. The ages of interviewees ranged from teenagers to workers in their late 50s and early 60s. The interviewees currently work for 35 different chain stores, including apparel, shoes, home goods, discount, department stores, home improvement, and art and bookstores. The majority of interviewees had worked in other retail jobs before their current position.

Endnotes

1 The definition of retail varies slightly by country, but in general refers to "the final step in the distribution of merchandise." This includes store and non-store retailers that primarily sell to the general public (as compared to wholesalers). Our survey focused on specific sectors of retail, but when we refer to the retail industry we are referring to all segments, which encompass a wide range of products, such as grocery, gasoline, clothing, electronics, books, shoes, and more. Statistics on the industry come from Stephanie Luce. 2013. "Global Retail Report." A report by UNI Global Union. http://blogs.uniglobalunion.org/commerce/wp-content/uploads/sites/7/2013/10/Global-Retail-Report-EN.pdf

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12 http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml

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17 Alexander and Haley-Lock. 2013.

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