Not Enough Hours in the Day: “Reporting Pay” Laws as a Tool for Remedying Work Hour Insecurity in American Low-Wage Jobs

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1938 FLSA designed to provide minimum standard of living, through:

- Minimum hourly wage rate to root out “underpay”
- Protections against the “evils of overwork” (through OT mandate)
- Has fueled wage-centric thinking and policies for improving low-level jobs

But in today’s service sector jobs, underemployment is the story:

- Work hour inadequacy, plus variability, unpredictability

Negative impacts on workers:

- Insufficient and unstable take-home pay
- Blocked access to benefits (government and employer)
- Problems with arranging dependent care, budgeting, saving
Context

• Larger backdrop of breakdown of traditional employment relationship at the bottom end of the labor market

• Escalating in a down economy, and increasing attacks on labor standards, unionism, and public sector employment

• Parallel trends:
  • Involuntary part-time work
  • Contingent work
  • Temp work
Research questions

*Focusing on low-wage, hourly-paid service jobs (e.g., retail, restaurant, hospitality):*

- What is the scope of the problem of work hour insecurity?
- What is the effect, if any, of “reporting pay” laws that attempt to remedy the harm caused by work hour insecurity?
- Are there more effective solutions?
Multi-pronged project

- **Social science article** (fall 2013): leveraging unique survey data on NYC retail workers; content analysis of reporting pay laws

- **Law review article** (spring 2014): technical review of the characteristics and functioning of guaranteed pay laws

- **Future survey** of low-wage hourly service workers within matched pairs of states with and without reporting pay laws
“Work hour insecurity” defined

• Inadequacy
• Variability \textit{involuntary, employer-driven}
• Unpredictability

All three together = disruptive, destabilizing

• Statistically significant associations between parents’ working nonstandard hours and work-family conflict, marital problems, and fewer hours spent with children
• Inability to maintain eligibility for public assistance
• Difficulty arranging dependent care
• Difficulty budgeting and saving around unpredictable income fluctuations
• Hard to attend school, get a second job
Mechanisms of hour insecurity

“Just-in-time” scheduling

• No set schedule/ last minute posting
• Last minute shift changes, reductions, cancellations
• On-call workers
• Unexpected early send-homes

• Aided by sophisticated scheduling software: Kronos, Dayforce
Employer motivations

Enjoy flexibility in staffing

Save money on wages
  • Jamba Juice CFO: Scheduling software “helped us take 400, 500 basis points out of our labor costs, or 4 to 5 percentage points, a savings of millions of dollars a year” (NYT, 10/27/2012)

Avoid triggering overtime pay requirements

Avoid paying benefits to full time employees
  • Continues with Affordable Care Act’s 30-hour threshold

Shift business risk to workers
Data

Reporting pay law text

- Collection of laws in 8 states & D.C. with reporting pay statutes, and relevant case law
- Simulations of reporting pay due in all states for varying shift lengths and hourly wages

Retail Action Project study (with Stephanie Luce of CUNY)

- Fall 2011 survey administration
- Retail stores with a minimum of 3 NYC sites and 100+ employees per store
- 10 segments: furniture, home furnishings, electronics and appliances, home centers, cosmetics and beauty supply, clothing, shoes, books, office supply, stationery, and department stores
- 435 employees from 230 stores
Reporting pay laws: \textit{Details}

- Guaranteed minimum number of hours due (1-4)
- Receive greater of guarantee or actual hours worked
- Varying wages (minimum wage or regular rate)
- Varying exemptions for notice, certain industries, shift lengths
# Simulated reporting pay wages

<table>
<thead>
<tr>
<th>State</th>
<th>Min hourly wage</th>
<th>Median hourly wage</th>
<th>6-hour scheduled shift</th>
<th>3-hour scheduled shift</th>
</tr>
</thead>
<tbody>
<tr>
<td>CA – Los Angeles</td>
<td>$8.00</td>
<td>$10.14</td>
<td>$10.14 (1 hour)</td>
<td>No reporting pay</td>
</tr>
<tr>
<td>CT – Bridgeport</td>
<td>$8.25</td>
<td>$11.22</td>
<td>$22.44 (2 hours)</td>
<td>$11.22 (1 hour)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>for laundry employees Sundays through Fridays, and beauty shop employees (no reporting pay for others)</td>
<td>for laundry employees Sundays through Fridays, and beauty shop employees (no reporting pay for others)</td>
</tr>
<tr>
<td>DC</td>
<td>$8.25</td>
<td>$11.21</td>
<td>$16.50 (2 hours)</td>
<td>No reporting pay</td>
</tr>
<tr>
<td>MA - Boston</td>
<td>$8.00</td>
<td>$10.63</td>
<td>$8.00 (1 hour)</td>
<td>$8.00 (1 hour)</td>
</tr>
<tr>
<td>NH – Manchester</td>
<td>$7.25</td>
<td>$10.69</td>
<td>No reporting pay</td>
<td>No reporting pay</td>
</tr>
<tr>
<td>NJ – Newark</td>
<td>$7.25</td>
<td>$11.39</td>
<td>No reporting pay</td>
<td>No reporting pay</td>
</tr>
<tr>
<td>NY – New York City</td>
<td>$7.25</td>
<td>$11.02</td>
<td>$14.50 (2 hours)</td>
<td>No reporting pay</td>
</tr>
<tr>
<td>RI – Providence</td>
<td>$7.75</td>
<td>$10.46</td>
<td>$10.46 (1 hour)</td>
<td>$10.46 (1 hour)</td>
</tr>
</tbody>
</table>
## RAP Survey: Demographics

<table>
<thead>
<tr>
<th></th>
<th>New York City (“retail sales workers,” 2006-2011 ACS 5-year summary file)</th>
<th>Retail Action Project Survey Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age (mean years)</td>
<td>33.5</td>
<td>26.4</td>
</tr>
<tr>
<td>Female</td>
<td>61.0</td>
<td>58.0</td>
</tr>
<tr>
<td>Non-white</td>
<td>77.0</td>
<td>83.8</td>
</tr>
<tr>
<td>Non-US-born</td>
<td>49.0</td>
<td>21.5</td>
</tr>
<tr>
<td>Female immigrant</td>
<td>29.0</td>
<td>10.1</td>
</tr>
<tr>
<td>Support dependents</td>
<td>17.0</td>
<td>29.8</td>
</tr>
<tr>
<td>Female and support dependents</td>
<td>9.0</td>
<td>16.9</td>
</tr>
<tr>
<td>High school degree or less</td>
<td>36.0</td>
<td>28.7</td>
</tr>
<tr>
<td>Bachelor’s degree or higher</td>
<td>13.0</td>
<td>21.5</td>
</tr>
</tbody>
</table>
RAP Survey: *Use of the early send-home practice*

- 36% reported being sent home early “sometimes,” “usually,” or “always”
  - Versus “rarely” or “never”

- 54% reported being sent home early at least once

- [34 employees, or 7%, had missing data on this variable]
RAP Survey: Other destabilizing practices

Clustering of practices producing work hour insecurity

Employees who had at least “sometimes” been sent home early were:

- Twice as likely to experience having an entire scheduled shift cancelled (33 vs. 16%)
- Twice as likely to have a manager reduce or otherwise change work hours (60 vs. 33%)
- Three times as likely to have a shift cancelled the day it was scheduled (28 vs. 9%)
- Required to be available to be called into work at the last minute significantly more often (53 vs. 41%)
RAP Survey: *Destabilizing practices (cont’d)*

Employees who had at least “sometimes” been sent home early also also indicated:

- Receiving fewer scheduled hours than they would like (69 vs. 40%)
- Receiving a mean of 21.9 actual hours of work per week as compared to 25.8 hours for their counterparts
- Experiencing greater weekly fluctuation in their work hours from week to week (16 vs. 12 hours of fluctuation)
RAP Survey: *Differential impact across workers*

**Non-white workers:**
- 84% of the sample
- But 92% of those sent home early at least “sometimes”
- Just 78% of those “rarely” or “never” sent home early

**High school degree or less:**
- 29% of the sample
- But 36% of those sent home early at least “sometimes”
- Just 24% of those “rarely” or “never” sent home early
RAP Survey: Respondent experiences with NY reporting pay law

- Guarantees 4 hours at minimum wage ($7.25/hour) if worker scheduled for 4+ hours

- Among the “sent home” group:
  - 32% “always” received reporting pay
  - 35% “never” did

- Over-represented in the “never” category:
  - Non-white employees
  - Female immigrants
  - Those with a high school degree or less
Impact of law?

- Under-enforcement
  - Little top down enforcement
  - Low damage awards
  - Burden rests on employees to file complaints

- Unintended consequences of greater enforcement:
  - Incentive to move to shorter shifts, or cancel shifts early
  - All on-call world
But it can work…

Haley-Lock (2011): In Vancouver (BC) chain restaurants, waiters given side work instead of early send-homes; response to provincial reporting pay law

• 2-4 hours guaranteed pay, depending on length of scheduled shift

• Climate of greater regulation of employers; employers used to less discretion and more compliance with legal requirements?
Other solutions?

- FLSA amendment, drawing on most robust state laws
- Strengthen & expand reporting pay laws
  - Use growing state and city level initiatives (paid leave, paid sick days) as feet in the door
- Ratchet up work hour law enforcement and penalties
  - Legal education/advocacy to workers
  - Incentives (damages)
  - Top down enforcement
- Government as employer: placing work hour requirements on labor market intermediaries, in government contracts
- Other approaches…
  - Private business: e.g., Costco’s minimum hours guarantees
  - European model: minimum daily, weekly, or monthly pay rather than hourly
  - Unionism & CBA provisions: new organizing approaches
Thank you!

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