

Reproduced with permission from Daily Labor Report, 97 DLR C-1, 5/20/14. Copyright © 2014 by The Bureau of National Affairs, Inc. (800-372-1033) <http://www.bna.com>

Work Schedules

Use of Employee Scheduling Software Raises Union Concerns About Seniority, Work Hours

Although employee scheduling software is helping employers control labor costs and boost productivity, its impact on retail and restaurant workers is far more bleak, advocates for employees told Bloomberg BNA May 8-19.

"In New York, we're interviewing workers at all big retail chains—Gap, Banana Republic and others," said Stephanie Luce, an associate professor of labor studies at City University of New York. The interviews are part of an ongoing research project focused on scheduling challenges facing retail workers in New York City.

"What is prevalent in our interviews is just huge frustration with scheduling," she said. "It's arbitrary. It feels like it's unpredictable. And it can change from week to week or season to season. So this concern about who gets to set the schedule, and do employees have any voice or protections in that, is very prevalent."

'On Call' Scheduling Has Drawbacks. The Retail Action Project, a New York-based campaign sponsored by the Retail, Wholesale and Department Store Union, released a video May 1 highlighting the conundrum retail employees face daily over their work schedules. RWDSU is an affiliate of the United Food and Commercial Workers.

"Even though the technology enables [employers] to predict 80 percent of their labor costs well in advance, they are scheduling workers according to the smaller percentage of hours that they can't predict," Carrie Gleason at the Center for Popular Democracy said.

"Workers are unable to get sufficient hours, and are forced to endure 'on call' scheduling, where they must wait by the phone to see if they'll be called upon to work," RAP organizers said on the union's website. "They can't take other jobs, or do anything else that would interfere with their unstable, unpredictable work hours."

The video is part of an effort to educate workers and policy makers about the need for "fair, stable and predictable schedules for millions of underemployed low wage workers in one of America's biggest job creating industries," RAP said.

Employment of retail sales workers is projected to grow 10 percent from 2012 to 2022, according to the Labor Department. That growth is about as fast as the average for all occupations, the agency said, but because many workers leave retail there will be a large number of job openings in that sector.

There were 4.6 million retail jobs in 2012, the agency said. It projected that 450,200 will be added in that sector by 2022.

Wanted: 'Family-Sustaining' Practices. Carrie Gleason, director of a new initiative at the Center for Popular Democracy that focuses on work scheduling issues, told Bloomberg BNA May 16 that new policy protections are needed to ensure "family-sustaining practices" in low-wage sectors.

The technology currently available could be used to actually improve scheduling practices for workers, she said.

"Burgeoning low-wage industries are now relying heavily on a part-time workforce and increasingly using scheduling technology according to fluctuating market demand," she said. The ultimate result for workers is "very little say in how they work and when they work."

Gleason also said, "Even though the technology enables [employers] to predict 80 percent of their labor costs well in advance, they are scheduling workers according to the smaller percentage of hours that they can't predict."

Giving workers more access to the technology would allow them to self-schedule, she said, adding that this would really elevate the quality of workers' jobs. "But, unfortunately, companies like Macy's are not using the technology to the workers' potential," she said.

Unions have criticized Macy's for not considering employee seniority when using scheduling software to decide who works and when.

Some Retailers Address Scheduling Concerns. Retailers and restaurants in some cities have taken steps to address workers' scheduling concerns, either because they made a business decision to do so or union members pushed for changes during negotiations over collective bargaining agreements.

Employers cited as trailblazers include United Parcel Service of North America Inc., Costco Wholesale Corp., Lord & Taylor, In-N-Out Burgers Inc., and, after new contracts were negotiated, Macy's and Bloomingdale's Inc. in New York City.

All part-time workers at Costco receive their schedules at least two weeks in advance and are guaranteed a minimum of 24 core hours each week, according to a policy brief the Center for Law and Social Policy and two other groups released in March (49 DLR A-6, 3/13/14).

“We want people to work for us who consider us a career,” Mike Brosius, the company’s assistant vice president of human resources, said in the brief. “Long-term employees are more productive and serve the needs of our customers better. So we give our employees what’s fair and what they need to make a living.”

In a Harvard Business Review article titled “Why ‘Good Jobs’ Are Good for Retailers,” Zeynep Ton, an adjunct associate professor of operations management at the Massachusetts Institute of Technology’s Sloan School of Management, highlighted Costco, Trader Joe’s, QuikTrip and Mercadona, a supermarket chain in Spain. She said these retailers invest in their employees and, in return, reap healthy profits.

“Not surprisingly, I found that unpredictable schedules, short shifts, and dead-end jobs take a toll on employees’ morale,” Ton wrote. “When morale is low, absenteeism, tardiness, and turnover rise, increasing the variability of the labor supply, which, of course, makes matching labor with customer traffic more difficult.”

Unions have pushed to shape employers’ scheduling policies in collective bargaining agreements.

Union Turns to NLRB for Help. UFCW Local 888, in East Rutherford, N.J., filed an unfair labor practices charge April 28 with the National Labor Relations Board against Century 21 Department Stores LLC. The family-owned, discount retail clothing company operates eight stores in New York and New Jersey and plans to open another one in Philadelphia, a company spokeswoman said May 20.

In its charge, the union alleged that Century 21 refused to bargain “over the implementation and effects of a change in the work schedule system at its Manhattan facility, in violation of the National Labor Relations Act.”

“Until two years ago, we had no issue with scheduling,” Max Bruny, president of UFCW Local 888, told Bloomberg BNA May 16. “Everyone had a fixed schedule. The model was full-time employment. We had members there for 40 years. They had a good schedule [and] good predictability.”

Now, workers are being assigned fewer hours or shifts that require them to work later than they traditionally have—regardless of seniority.

The new scheduling system is “hard on the workers’ life—a nightmare,” Bruny said.

Employees who have worked for Century 21 for decades are now being scheduled to work erratic hours, sometimes at night, he said.

“Grievances we’re filing relate to workers not being able to schedule for school or take care of sick family members,” Bruny said.

ACA Could Lead to Drop in Workers’ Hours. Neil Trautwein, vice president and employee benefits counsel at the National Retail Federation, told Bloomberg BNA May 19 that the Affordable Care Act could be a factor in employer decisions about how many hours employees are scheduled to work. The NRF represents retailers, chain restaurants and grocery stores.

ACA rules mandate that employers with 50 or more full-time workers provide health care coverage. Anyone who works at least 30 hours a week is considered a full-time employee. A tax penalty of as much as \$3,000 per employee is levied for noncompliance.

“The 30-hour definition under the ACA is unnecessary and distorts how we manage employees,” Trautwein said.

The NRF supports the Save American Workers Act (H.R. 2575), proposed legislation that calls for raising the threshold from 30 hours per week to 40 hours per week. The bill’s backers say this would preserve employee wages and working hours.

“There will be an [employer] incentive, particularly for less well-performing employees, to be held below 30 hours,” Trautwein said. “That’s a natural consequence of the ACA structure.”

He added that employee scheduling software also helps employers move high-performing workers into certain positions at certain times.

“Broadly speaking, part-time jobs have been valued in retail and chain restaurants, particularly over the years because of flexibility they allow to wrap work around school or other family responsibilities,” Trautwein said. “A lot of part-time workers aren’t interested in working a large number of hours.”

Union Wants More Input About Schedules. UFCW Local 888, which represents more than 2,500 workers at Century 21, would like more input about the new scheduling system and its impact on workers, Bruny said.

“[Century 21] says we should negotiate for all the stores at one time in two years,” when the union’s five-year contract with the stores expires, he said.

“Our argument is, ‘This is a drastic change in the workers’ lives,’” Bruny said. “Workers are becoming part-timers overnight. I think that should trigger negotiations. That has to be bargained collectively before a change can be made.”

Bruny also would like to negotiate with Century 21 over whether hourly employees can be cross-trained so they are prepared to work in different store departments should they agree to do so based on the scheduling system. “That would make it easier on the workers,” he said.

Without negotiating over such matters, Bruny added, “we are losing quite a few longtime, full-time workers.”

A Century 21 spokeswoman declined to discuss the NLRB charge, but said to ask “Kronos directly for a statement.”

Kronos Inc. is a workforce management company in Chelmsford, Mass., that sells electronic scheduling systems to organizations. The company did not respond to a Bloomberg BNA request for comment on the NLRB charge UFCW filed against Century 21.

Macy’s West Scheduling Proposal. During recent contract negotiations in California, leaders of UFCW Local 5 in San Jose described as “problematic” a Macy’s West proposal to implement an electronic scheduling system the company calls “My Schedule Plus.”

“While the computer-based program would create greater scheduling flexibility and an opportunity for more hours for those that want them,” the union said May 5 in an online post, “without modification it would eliminate base schedules and ignore seniority around shift selection.”

Mike Henneberry, a spokesman for UFCW Local 5, told Bloomberg BNA May 8: "At first the company said, 'We can't change it.' But it turned out they could."

Macy's did not respond to a Bloomberg BNA request for comment.

Henneberry said Kronos created the Macy's scheduling system.

Charles DeWitt, vice president of business development for Kronos, said such software can be adapted to suit employers' unique needs.

"If the employer wants to maintain a base schedule or respect seniority, it can," he told Bloomberg BNA May 12. "Various employers have different policies. With the Kronos system, we've tried to capture all that in a system and let retailers, hospitals, and manufacturers put their policies in place."

Respecting Employee Seniority. Members of RWDSU Local 3 in New York in 2012 ratified a five-year collective bargaining agreement with Bloomingdale's that gave some 2,000 employees at the company's flagship store in New York City more control over hours and scheduling, the union said (86 DLR A-8, 5/3/12).

RWDSU said at the time that scheduling flexibility in the Bloomingdale's contract went further than any other union contract with a large retail company. Under the contract, senior employees have first choice of their preferred hours, and all workers are able to choose one weekend off a month and the late nights they want to work.

A 2011 contract settlement covering some 4,000 workers at Macy's in New York City also improved em-

ployees' control over their scheduling, the union said (121 DLR A-13, 6/23/11).

Allen Mayne, RWDSU's director of collective bargaining, told Bloomberg BNA May 9: "The main problem with the Macy's system is it did not recognize an employee's seniority. It lumps all employees together in the same pool and hours are divided up depending on your availability."

This has a detrimental impact on long-term employees, especially in retail, Mayne said. "In a union environment, where benefits are even better, many employees have many years of seniority," he said.

RWDSU was able to negotiate in the contract a work rule that allows employees with seniority to have priority access to the scheduling system, Mayne said.

"But there's not enough oversight," he said. "This is done kind of on the honor system, but people can get in there and input out of seniority order."

Luce at CUNY said there's a "disconnect" between how sophisticated and helpful to employers the scheduling software has become in the past 15 years and how rudimentary it remains for most retail employees.

"Employees are still submitting their scheduling requests on paper or going into the store to look at their schedules," she said. "Clearly, the software could allow for employees to be at home and swap shifts. But they are not given access to those systems."

BY RHONDA SMITH

To contact the reporter on this story: Rhonda Smith in Washington at rsmith@bna.com

To contact the editor responsible for this story: Susan J. McGolrick at smcgolrick@bna.com