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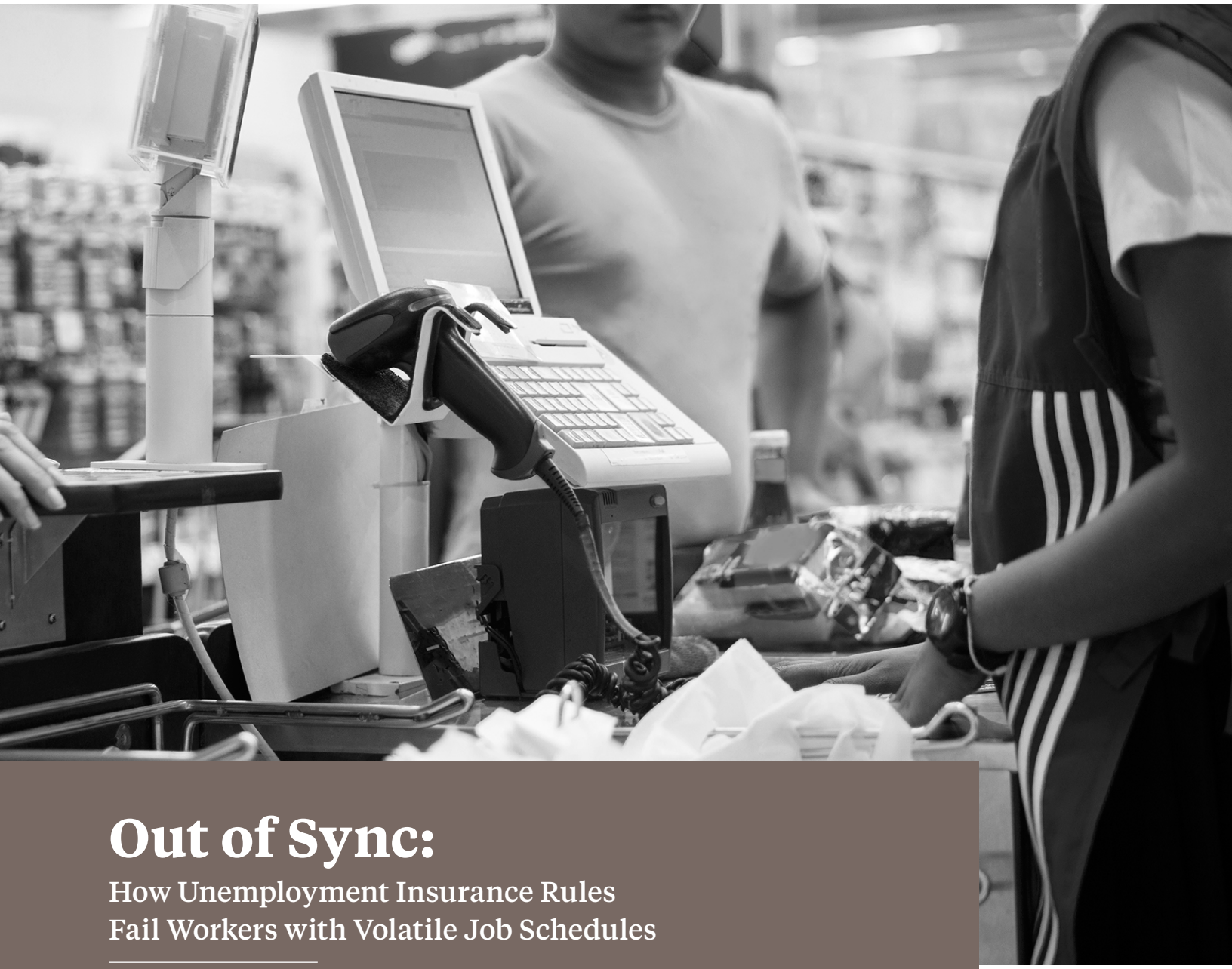

Out of Sync:

How Unemployment Insurance Rules Fail Workers with Volatile Job Schedules

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AUGUST 2015

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Acknowledgements

The authors are grateful for the feedback provided by George Wentworth and Rebecca Smith of NELP; Jodie Levin-Epstein of CLASP; and Rachel Deutsch of the Center for Popular Democracy. We also thank the agency officials and advocates who participated in interviews that provided invaluable information for this paper. All errors in the paper are our own.

About NELP

For more than 45 years, the National Employment Law Project (NELP) has worked to restore the promise of economic opportunity for working families across America. In partnership with grassroots and national allies, NELP promotes policies to create good jobs, enforce hard-won workplace rights, and help unemployed workers regain their economic footing. For more information, visit us at www.nelp.org and follow @NELPNews

About CLASP

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Executive Summary

Millions of Americans are employed in jobs with volatile schedules that fluctuate weekly, both in terms of total hours and shift times; these workers receive little advance notice of their shifts and are frequently required to work "on call." One consequence of job-schedule volatility is job loss: for some workers, the mismatch between job schedules and the rest of their responsibilities become untenable, either forcing them to quit or leading them to be fired from their jobs. In these cases, workers and their families need a safety net to help them while they seek new, hopefully more stable, employment. For many jobless workers, public cash assistance is not available, often leaving unemployment insurance (UI) as the only safety net. This paper explores the extent to which UI responds to the needs of workers who are jobless due to volatile work schedules.

Our analysis of access to UI for workers with volatile schedules is based upon legal research and interviews with agency staff or advocates in 10 states. We find that, with some exceptions, UI rules fail to address the needs of such workers. Not just formal UI rules, but state unemployment agency practices negatively affect workers with volatile schedules. Often, when workers who have lost their jobs as a result of scheduling challenges seek UI, state agencies simply apply existing UI rules to these cases—regardless of their fairness or reasonableness in such cases. To better address the needs of workers with volatile job schedules who are seeking UI benefits, states may need to establish new rules, revise existing ones, or rethink how they are applying existing rules.

Three widespread state agency policies, with varying degrees of support from legislatures and courts, stand out as barriers to UI benefits for individuals losing work who have experienced substantial reductions in hours:

1. An employee is expected to explore alternatives to quitting with his or her employer, regardless of whether doing so would be futile.
2. Employees who leave their jobs because of volatile scheduling practices are seen as not having "good cause" for quitting if such schedules are deemed customary in the industry or occupation, or if the employer disclosed to the employee at the time of hiring that such scheduling practices were prevalent.
3. State agencies make contradictory rulings regarding whether a worker must endure a "trial period" of the new terms and conditions of her job (such as reduced hours or altered schedules) before quitting. Agencies may disqualify workers for leaving their jobs too quickly without trying out the new conditions; or, conversely, deny a claim because the worker is seen as having acquiesced to the new conditions by working under them for some time before quitting. Either way, benefits are denied.

Other policies that affect workers with volatile schedules include varying degrees of recognition of conflicts between work and caregiving responsibilities within UI rules. In all these cases, this paper advocates changing UI rules to increase support for workers subject to volatile scheduling practices.

Rules governing access to partial UI benefits also fail workers affected by volatile schedules. In all states, partial benefits can provide income support for workers experiencing reduced hours or individuals who accept part-time jobs while unemployed. Partial benefits are meant to mitigate the impact of sudden drops in income that occur when employees' schedules do not provide adequate hours and they experience low earnings as a result. However, partial UI benefit rules have not been updated in decades in most states. With low maximum weekly earnings levels, and overly restrictive rules about the amount of wages disregarded in many states, lower-wage, partially unemployed workers often get little or no help under existing rules. In addition, jobless claimants may be discouraged from trying a part-time job because of the financial penalty caused by even small earnings.

Based upon our analysis, we make these recommendations:

1. Legislatures should adopt federal, state, and local fair-scheduling legislation to reduce job losses due to volatile schedules.
2. States should amend their UI rules to:
   a. Require employees to seek accommodation

with employers only when doing so is reasonable and not futile;

   b. Excuse quits related to volatile schedules, regardless of whether such scheduling practices are customary in an industry or occupation;
   c. Clarify rules about how long individuals are expected to "test out" changed working conditions before quitting and at what point continuing in a job indicates acceptance of changed working conditions.

3. States should update their partial UI rules to protect workers subject to volatile scheduling and encourage jobless workers to accept part-time jobs.
4. State agencies should engage in outreach efforts to increase transparency and improve public understanding of UI rules for workers experiencing volatile schedules.

UI laws, policies, and agency practices leave many workers subject to volatile scheduling practices in the lurch. A primary failing of existing rules and practices is that, while workers under traditional scheduling arrangements who experience significant changes in their working conditions may be able to leave their jobs with good cause and maintain eligibility for UI, the experience of volatility, which is different from a one-time change, is often not recognized under UI law. In short, the UI system has not caught up with the realities of today's labor market and often fails workers with volatile schedules when they are most in need. With the changes advocated here, we can bring UI programs more into sync with the realities of workers experiencing volatile scheduling.

1 Introduction

Millions of Americans work in jobs that are not only low-paying, but also profoundly unstable; these workers experience schedules that fluctuate wildly from week-to-week, both in terms of total hours and shift times, offer little advance notice of schedules, and frequently require on-call work. At the same time, involuntary part-time work, which reached record highs during the recession, remains extremely high – workers simply aren't getting enough hours to make ends meet despite their willingness to work. In the current economy, employers' volatile scheduling practices are as much a problem as low wages in some occupations. Though higher wages are critical, if those wages are only available for one or two shifts a week, or in jobs that wreak havoc on workers' lives, we have not solved our nation's job quality problems. We refer to schedules with one or more of these characteristics as volatile schedules in this paper.

The effects of volatile schedules on workers' lives are far reaching. With little stability or predictability in their schedules, workers struggle to arrange child care and access child-care subsidies, to attend classes or job training, to hold down often desperately needed second or third jobs, or simply to budget. One consequence of job schedule volatility is job loss – for some workers, the mismatch between job schedules and the rest of their responsibilities becomes untenable, either forcing them to quit or leading them to be fired from their jobs. In these cases, workers and their families need a safety net to help them manage while they seek new, hopefully more stable, employment. Too many low-income families fall into the gap between inadequately funded need-based cash public assistance programs, and restrictive rules that limit their access to UI.

This paper reveals the limited extent to which UI is responsive to the needs of workers who are jobless due to volatile work schedules. In addition, it finds that partial UI benefits are often unavailable to workers whose hours are reduced either temporarily or permanently – a common experience for workers in jobs with volatile schedules. The paper draws on a combination of legal research, qualitative interviews with UI officials and advocates, and other available data and analysis to offer researchers, policymakers, and advocates a broad overview of the intersections between increasingly prevalent features of today's low-wage job market and one crucial safety net program – UI.[1]

The paper provides some background on volatile job scheduling; offers an overview of UI rules that are relevant to the topic; examines how UI rules might apply specifically to workers with volatile schedules; makes a series of recommendations; and concludes by summarizing our findings.

2 Volatile Job Schedules: Background

A growing body of research shows that volatile schedules are prevalent in today's economy. A recent analysis by University of Chicago researcher Susan Lambert and her colleagues examines the scheduling experience of early-career workers.[2] The study found that among a national sample of workers age 26 to 32 years holding hourly jobs, more than 40 percent receive one week or less advanced notice of their job schedules for the upcoming week. Half of these workers have no input into their schedules and three-quarters experience fluctuations in the number of hours they work, with hours varying by more than eight hours per week on average.

A recently released report by Lonnie Golden of the Economic Policy Institute finds that about 17 percent of the workforce (including workers of all ages) experiences unstable work shift schedules, which includes irregular, on-call, split, and rotating shifts.[3] Golden notes that this figure may be low because of the wording of survey questions. More than a quarter of part-time workers are affected by irregular schedules.[4] This is particularly concerning given that, in the wake of the Great Recession, involuntary part-time employment remains high, with about 6.5 million workers in part-time jobs despite a desire for more employment.[5] Further, a recent study by the U.S. Government Accountability Office (GAO) found that approximately 2 million workers are employed "on call."[6] In addition, during the earlier years of the economic recovery, job growth was concentrated in sectors characterized by lower-wage work, which are also more likely to engage in unfair scheduling practices.[7] Workers in certain sectors may be especially affected by unfair scheduling practices. A 2012 study of retail workers in New York City found that just 17 percent had a set schedule, while 70 percent received their schedules within one week of their shifts.[8]

Although erratic schedules make life difficult for workers in a variety of personal and familial circumstances, certain workers are especially vulnerable. For example, parents of young children often need some degree of predictability and flexibility to arrange child care. Yet, among early-career working parents in hourly jobs, nearly 70 percent of mothers and 80 percent of fathers of children 12 or younger receive hours that fluctuate by up to 40 percent.[9] Students, workers caring for older adults or disabled family members, or workers with chronic health problems are also hit especially hard by the effects of volatile schedules. Workers who must hold second (or third) jobs in order to make ends meet – as is the case for many lower-wage workers – often confront the need to juggle multiple unstable schedules.

Schedule volatility is linked to income instability. A recent study by the Federal Reserve Board found that nearly one-third of Americans experience considerable fluctuations in their incomes.[10] Moreover, more than 40 percent say that these ups and downs are a result of irregular work schedules.[11] These findings also suggest that the issues of income and scheduling instability are not limited to part-time workers: more than half of those attributing their income instability to scheduling issues were full-time workers.[12]

Some workers lose their jobs as a result of volatile job schedules.[13] Unfortunately, no existing survey we are aware of has quantified job loss due to scheduling volatility. Nonetheless, we know that poor job quality of various kinds often contributes to job loss. For example, one in seven low-wage workers reports losing a job in the past four years because they were sick or needed to care for a family member.[14] Almost one in five low-wage working mothers has lost a job due to sickness or caring for a family member.[15] In addition, some research captures the strain created when job schedules conflict with child care and affect parents' ability to hold jobs. In an in-depth qualitative study of low-income working parents' child care decisions, researchers note that "many parents [in the study] said that they knew that at some point they would not be able to continue their jobs due to strict schedules and their employers' inflexibility."[16] Thus, what we do know about job loss due to employment that cannot accommodate working parents – or others with a need for predictability, stability, or flexibility – suggests there is likely to be at least some job loss related to scheduling challenges.

Advocates around the country are organizing to

improve workers' job schedules, both by introducing legislation to create fair scheduling protections and through collective bargaining. San Francisco recently passed a "Retail Workers Bill of Rights," which includes provisions to set standards for advance notice, compensation for last-minute changes to schedules, access to hours, and more.[17] While public and policymaker interest in such legislation is growing, many workers will continue to face scheduling challenges while the fight for fair schedules continues. These workers need a UI safety net that can help them meet their needs – and those of their families – when they simply cannot keep up the juggling act any more. When workers subject to unfair scheduling practices lose their jobs, they need assistance to make ends meet until they can secure a new job – hopefully with more reasonable hours and

3 Varieties of Volatile Scheduling Challenges

Job schedule volatility takes a wide range of forms. In turn, workers experiencing such scheduling challenges may find themselves in need of unemployment insurance under a variety of circumstances. Scheduling challenges may include:

a. Lack of advance notification of schedules: Many workers receive little notice of their job schedules, with some employers never posting schedules at all and others disseminating or posting them within only a few days of the first scheduled shifts.

b. Lack of worker input into schedules: Nearly half of workers do not have any input into their job schedules;[18] they work entirely at their managers' discretion.

c. Little worker control over schedules: Managers often change, cancel, or add workers' shifts at the last moment; impose mandatory overtime; send workers home early, without pay; deny them sufficient time to rest between shifts; and/or assign them to "split shifts," or shifts with nonconsecutive hours.

d. On-call shifts: Some workers are required to be "on call" or "call in." This means that they must make themselves available to work, but are not guaranteed a shift and are generally not paid while on call if they are called in.

e. Access to hours: Workers are frequently not guaranteed any minimum number of hours per week and receive too few hours to make ends meet.

f. Retaliation for scheduling-related requests: Requests for more notice of schedules or other accommodations frequently lead to retaliation, such as reduced hours, disciplinary action, or even job loss.

4 Overview of UI Rules

UI is a federal-state social insurance program that provides weekly benefits for up to six months to individuals who are considered involuntarily unemployed.[19] Basic eligibility and disqualification rules, including weekly amounts and number of weeks compensated, are primarily determined at the state level. The legal rules governing UI programs include statutes passed by legislatures; rules, regulations, and interpretations issued by agencies; and court decisions in appeals concerning these statutes and administrative rules. As our shorthand term for all these sources of UI law, we refer to the combination of these sources as "UI rules."

Because volatile scheduling is an emerging employer practice that has not received much attention until recently, there are very few reported UI cases directly involving volatile scheduling practices. As a result, our examination draws on analyses of related cases involving cuts in hours or wages causing individuals to leave work, or creating problems that led to discharges or quits. The rules reviewed below help to provide the context for this analysis.[20]

A. Eligibility Rules

UI claimants must meet certain requirements to initially qualify for weekly benefits and remain eligible on an ongoing basis. First, they must meet monetary eligibility requirements, which establish a threshold for sufficient earnings prior to job loss. Second, they must meet nonmonetary eligibility requirements, such as filing a timely claim for benefits, being able to work, being available for work, and actively seeking work for each weekly or biweekly claim period.

Claimants must show that they are available to work in a range of jobs that exist in the current labor market. State agency adjudicators consider the days and hours of the week each claimant is willing to work, the geographic area of his or her work search, and the kinds of jobs a claimant is willing to accept. Adjudicators also consider a claimant's willingness to work and diligence in seeking work. Many states have availability rules specifically barring eligibility to those available only for part-time work. Twenty-one states deem jobless workers who limit their availability to part-time work ineligible. Another 20 states permit eligibility only for those workers with a past history of part-time work. Appendix Table 1 summarizes part-time availability provisions for all state UI programs.

B. Disqualification Rules

UI rules disqualify only those who have voluntarily quit their jobs without good cause. In a majority of states, any valid cause for leaving work must involve reasons related to employment (usually for reasons "attributable to" employers). Non-work related reasons for leaving are usually termed "personal reasons." Only 10 states specifically recognize personal reasons as good cause. In recent years, a number of states have recognized "compelling family circumstances" for leaving work, which include survivors of domestic violence compelled to leave work, people accompanying their spouses to new work locations, and people leaving work due to caregiving obligations.[21] Twenty-five states exempt quits for compelling family circumstances from disqualification. Appendix Table 2 shows the overall breakdown of states and their disqualification rules regarding quits.

UI rules also disqualify those fired for deliberate, willful, or reckless reasons, while paying UI to individuals fired for reasons of negligence, inadvertence, or not within their control. Claimants can also be disqualified for refusing offers of work, unless they have good cause to so. A job offer must be for "suitable" work. Most states define suitability as involving consideration of the individual's prior earnings, skills, experience, and training.[22]

C. Partial Unemployment Insurance Rules

Employees who face a reduction in their usual hours and earnings may be eligible for partial unemployment insurance benefits. Partial benefits can mitigate the impact of sudden drops in income that occur when employees are subject to unstable schedules. State UI programs also provide partial unemployment insurance benefits to unemployed claimants working part time while they search for a permanent, full-time job. We refer to claimants in the former group as "job-attached partial UI claimants" and those in the latter group as "job-seeking partial UI claimants." Partial UI rules apply to both categories of workers, with some

variations between categories.

In general, otherwise eligible workers can claim partial benefits as long as they are working part time and have earnings below a certain threshold.[23] Earnings thresholds vary significantly by state. In an estimated 24 states, workers can claim partial benefits if they are working part time and earning less in a week than their "usual weekly benefit" (for total unemployment). In 27 other jurisdictions, the earnings threshold for receipt of partial benefits is *higher* than the worker's usual benefit amount, with the threshold usually being a multiple of the usual benefit amount. The latter approach is likely to help a greater number of workers, given the stagnation in maximum weekly benefit levels in many states. See Appendix Table 3 for a breakdown of state rules.

To calculate the weekly benefit a claimant would receive while working part time, most states take the difference between the claimant's benefit for total unemployment and her part-time earnings, after accounting for an "earnings disregard." By applying a disregard, state UI programs ignore a portion of the claimant's wages when calculating the benefit amount. This is meant to incentivize work. Earnings disregards vary widely by state. Currently nine states disregard a fixed amount, ranging from as low as $25 in Maine to $150 in Hawaii.[24] Other states calculate the disregard amount as a portion of benefits or part-time wages or tie the disregard to the federal or state minimum wage.

Unfortunately, a significant number of states have outdated partial UI rules, which often preclude underemployed workers, including those dealing with volatile schedules from receiving benefits. Nonetheless, partial benefit payments make up a growing share of regular UI weeks paid in the U.S., rising from 6 percent in the 1970s to 9 percent in the past decade, including a peak annual rate of 11 percent in 2011, around which time the share of employees working part time involuntarily reached its recessionary peak.[25]

5 Applying UI Rules to Workers with Volatile Job Schedules

Traditional UI rules too often fail to adequately protect vulnerable workers who lose their jobs as a result of volatile scheduling practices. Numerous traditional UI rules – those designed for a labor market involving predictable and stable job schedules – appear applicable to these workers' situations. However, they are being applied in the context of a labor market increasingly characterized by volatile job schedules without serious reexamination by agencies, legislatures and courts, an oversight that often leads to denial of benefits. As awareness of volatile job schedules has grown in the last few years, it is time to carefully examine the application of UI rules to workers whose unemployment arises from this new context.

As noted above, it is not uncommon for individuals with volatile job schedules to experience job losses. In addition to being fired for failing to adjust to scheduling changes, workers with volatile schedules may be compelled to quit their jobs. In this section of the paper we analyze the emerging subject of how UI rules apply to workers who have become jobless as a result of common work scheduling scenarios.

Three widespread state agency practices, with varying degrees of support from legislatures and courts, stand out as barriers to UI benefits for individuals losing work due to volatile scheduling. First, workers subjected to significant reductions in hours, or even elimination of all shifts, must first ask employers for more hours before quitting. Second, when volatile schedules are deemed "customary" in an industry or workers are advised of volatile schedules at the time of hiring, substantial reductions in hours are no longer considered good cause for quitting. Third, agencies have inconsistent rules about if or how long workers must test new schedules or other terms of employment before they quit. Agencies expect workers to either accept new hours or conditions of work with a test period before quitting, or find that workers have acquiesced to substantial changes in working conditions if they do not leave immediately. We examine these three restrictive agency practices in more detail below.

In addition, existing UI rules developed outside the context of volatile scheduling practices provide important context for our legal analysis here. For example, rules pertaining to reductions in hours and work-family conflicts may also limit the utility of UI as a safety net for individuals losing jobs as a consequence of volatile scheduling practices.[26] Partial UI rules, trial work rules, and work search rules may also need to be modified to appropriately apply to the volatile scheduling context. These rules are also analyzed in this section.

A. Employees' Duty to Exhaust Alternatives to Leaving Work

Courts in many states (and some agency rules or statutes) require that claimants give employers an opportunity to accommodate the circumstances inducing them to leave work prior to quitting.[27] This requirement, most frequently articulated as a duty to exhaust all reasonable alternatives before quitting, is widely applied by UI agencies, according to our field research. As a result, while UI rules traditionally excuse a quit related to substantial reductions in wages and hours, adjudicators first require employees to try to work with employers to address the problem (i.e., employees need to seek an increase in hours or wages) prior to quitting. This added requirement can create a major barrier for workers facing problems accessing hours and, in turn, income.

The variation and discretion in the application of these requirements can be seen in several case examples:

- In Washington, the UI agency disqualified a claimant who quit her job the day her employer advised that her full-time job would be reduced to part time in 10 days and she would have to pay more for her health care coverage. The agency held that her immediate leaving demonstrated her failure to do everything possible to preserve her employment.[28] However, the reviewing court found that leaving 10 days prior to the substantial cut in pay did not amount to a violation of the rule requiring her to preserve her employment. Ultimately, the court held that claimant was entitled to unemployment benefits beginning after the 10-day period when the conversion to a part-time schedule was set to take place.
- A Delaware appellate court found that a change in an employee's working hours and the resulting

conflict with her family obligations constituted work-related good cause for quitting when her hours were extended into the evening.[29] The claimant's discussions with her employer immediately after her change in working hours satisfied the obligation to make reasonable efforts to resolve her childcare conflict before she quit.

- In another Delaware case, the state Supreme court rejected a claimant's asserted reasons for good cause for her leaving as well as the reasonableness of efforts to preserve her employment, arguing that though she met with her manager and requested a transfer, she failed to use the formal Employee Relations process at her firm.[30]

In interviews, agency officials also described a requirement that employees make a "good faith effort to work with the employer" prior to leaving work, yet as in the cases described above, descriptions of the nature of the requirement varied. An Arkansas adjudicator described the requirement as going beyond a conversation with a supervisor, saying, "[the workers] may go to their supervisor but they may not go to the individual over their supervisor and they just decide to quit, you know, and that's what we look for. Who all did you go to? Did you exhaust every reasonable effort to try to rectify this situation?" In this case, the worker is not only expected to confer with her direct supervisor, but also to go beyond the supervisor, higher up the chain. The adjudicator noted, "I would say probably 80 percent don't do anything to preserve their [jobs]. They just get up and leave, they just quit."

While this duty to explore alternatives is imposed upon employees, there is no concomitant obligation imposed on employers to accommodate employees when setting job schedules or making other changes in their terms of employment. Such requirements on employees are often applied unrealistically, especially in cases where low-level employees with little or no job security are expected to confront supervisors with the power to retaliate against, or even discharge, them. Further, employer engagement requirements are not generally understood by workers, nor are they always clearly established by regulatory agencies and courts, and they are applied only after a quit, making it virtually impossible for individual workers to know what they must do to comply at the time they are actively considering leaving a job. Wider dissemination of information by agencies and community groups regarding UI program rules could reduce these information gaps.

B. Substantial Changes in Hours or Wages Don't Always Count as Good Cause for Workers with Volatile Schedules

When workers' hours are reduced, either temporarily or permanently, they may struggle to make ends meet, forcing some to quit. As noted earlier, a substantial reduction in wages is ordinarily good cause for leaving a job under UI rules.[31] Many rulings on this issue find that reductions of pay of about 25 percent are substantial enough to constitute good cause for quitting ("the 25 percent rule").[32]

A straightforward application of this UI rule to workers experiencing volatile scheduling would mean that many employees could quit without disqualification from UI in any week for which their hours were reduced by one quarter or more. If a significant portion of employees did so, this in turn would translate into higher experienced-rated UI payroll taxes on these firms, potentially disincentivizing the practice.[33] However, under common administrative practices, workers' prior knowledge of their industries' volatile scheduling practices or notification at the time of hiring of such practices can prevent them from receiving benefits if they are forced to leave. This means two workers who both quit because of a reduction in hours could be treated differently: the worker employed in an industry not known to engage in volatile scheduling practices may be more likely to receive UI benefits, while the worker employed in an industry that is generally understood to have volatile schedules, might be less likely to get UI.

In interviews, officials in several states confirmed that a change in work schedule would be treated differently than a work schedule that has consistently been unstable and was acknowledged to be such at the

time of hire. A Connecticut agency official explained, "If this is a situation where the employer has changed [the worker's] shift or [...] they were hired to work days and now they're changed to nights and as a result [the worker lost] childcare, [then] the employer has changed something that has had an adverse effect on the claimant." Under such circumstances, the agency official said, the worker could be found eligible because the job loss was a result of something the employer did. Similarly, the Arkansas adjudicator said, "Let's say [the worker] was hired to work [from] 7am to 3pm and now all of a sudden the hours have changed. That's a breach in the hiring agreement." Under such circumstances, the worker could be found eligible if she leaves the job.

Yet, many officials and advocates noted that if a worker is aware that a job is likely to have a volatile schedule when she is hired, she will probably be disqualified if she quits for this reason. An advocate in Connecticut said, "The problem is, if you have one of those [...] retail jobs [with] crazy erratic hours, it's going to be really hard to show, 'this wasn't the deal I signed up for,' because lacking other options, that was the deal they signed up for." She added, to avoid disqualification, "you'd have to show that what you were told or led to believe about the hours when you started [was different from what you experienced]." Similarly, UI agency staff in New Hampshire, Oregon, Connecticut, and Arkansas all noted the importance of what the worker knew at the outset of the job.[34]

Workers with volatile schedules who experience a substantial cut in hours, but who are not certain whether the cut is permanent or temporary (and are not informed by their employers) may also find that the 25 percent rule does not apply.[35] This is a common experience among low-wage retail workers who find that they are suddenly taken off the schedule with no explanation. UI agencies and courts may view temporary reductions in work as less compelling reasons for leaving. In turn, employers may claim that any change in hours was subject to future reversal. This can lead to claims being denied based on the argument that workers should have accepted a temporary, albeit substantial, reduction in hours. Uncertainty regarding the permanence of cuts in hours can also make it difficult for workers to know whether to quit a job or file a claim for partial unemployment benefits.

Court decisions also reflect these restrictive administrative practices concerning when a scheduling change provides good cause for leaving a job. That is, if the employee is advised at the time of hire that scheduling may vary, then a subsequent quit triggered by a changed schedule is likely to be disqualifying.[36] In contrast, when the employer has agreed to a specific work schedule, a later unilateral change in hours provides good cause to excuse a quit.

C. Inconsistent Application of Rules Regarding a "Test Period" for New Working Conditions

States inconsistently apply UI rules that establish whether or not workers must endure new working conditions for some "test period" prior to leaving. Agencies sometimes hold that an employee's failure to attempt to continue working for a period after a substantial cut in hours or other change in working conditions is disqualifying. In other cases, an individual's initial acceptance of a new working condition is treated as his or her acquiescence to those conditions if he or she later quits. The variation in approaches makes it virtually impossible for claimants to know in advance how to proceed when faced with objectionable changes in the terms and conditions of their work.

In a Kentucky case, the agency held that a worker accepted changes in his terms and conditions of employment by staying in the job for 10 months. The claimant was hired as a carpenter and general maintenance worker at a wage of $100 and soon after agreed to temporarily replace a night watchman, as well as take on other duties that required him to be "on call" for 24 hours, 6 days a week.[37] He was provided with a one-room structure without running water or heat in order to carry out these new duties. No additional pay was given to reflect his increased responsibilities. The claimant consistently reminded his employer that this arrangement was supposedly temporary and sought to return to the original work arrangements. After 10 months, he informed the employer that he could no

longer live on the premises and wished to return to his former 40-hour work week. He then quit. Kentucky's second-level administrative appellate body held that the claimant had acquiesced in the changes by waiting 10 months to leave and he was disqualified from receiving UI for leaving the job without good cause. The appellate court reversed the decision, terming the agency's acquiescence holding as "disturbing" and stated that it "runs counter to the underlying philosophy of unemployment compensation which is to encourage individuals to work."[38]

A case considered in an Illinois appellate court shows that in some cases quitting early in a test period for new employment arrangements leads to disqualification. A claimant was denied benefits by the court because she tried working under a new schedule for a period deemed too short. The case involved a factory assembly worker whose hours were reduced by 25 percent (from 40 hours a week to 30).[39] The court's unfavorable decision was grounded in the fact that the claimant quit only three weeks after the reduction of hours took effect. The claimant had asked for more hours from her employer when the reductions were announced and then told her employer she would quit at the end of the next week if they were unable to provide more hours.

State agencies are therefore applying these rules in ways that find claimants have either stayed at jobs with new conditions too long or not long enough. These inconsistencies result in benefit denials where there is little doubt that substantial modifications of wages, hours, and working conditions would otherwise be seen as good cause for leaving. And, unlike the requirement to seek alternatives to quitting, which is at least found in some statutes and rules, policies that interpret duration of time in a position as "acquiescence" are not spelled out in state statutes or rules, making their application even more variable and difficult to predict. In effect, such acquiescence policies require that claimants should test the waters prior to quitting a job with good cause – but not for too long – despite the fact that the underlying voluntary leaving statutes contain no requirements that they do so.

D. Child Care Conflicts

In addition to these restrictive practices, other common issues arise under UI rules for workers impacted by volatile schedules. For the most part, an erratic schedule in and of itself is not considered good cause for leaving a job. However, in some cases, such as those involving child care arrangements, the conflicts created by the schedule could lead to a favorable determination when a worker applies for UI. For example, Oregon officials noted that loss of child care would constitute a "grave situation" under their rules, which could make the worker eligible. Said an adjudicator in Oregon, "Quitting for childcare could be grave. We would just have to review it. Most often people who work erratic schedules have some type of care setup for those different schedules when they start working [the job]. And so most often what we see is when a care provider says I can no longer watch your child, and then we look at what they did to try and secure new childcare during that shift. And if they've done everything they could then we would definitely allow them." (This official's comments also speak to the need to try to preserve the job by seeking alternate arrangements, as noted above.)

An adjudicator in Arkansas also indicated that the interaction between an erratic schedule and child care might be seen favorably when benefit determinations are made – however she suggested that the "hiring agreement" would still be pertinent. She explained, "if it's a situation where [the worker] lost their child care and they had to leave because the hours just kept changing and they couldn't keep child care for that reason, then we're going to go back and kind of look at the situation [...] and again go [to see if it was] a breach in the hiring agreement."

In contrast, a Wisconsin official indicated that child care conflicts would not be likely to lead to a favorable decision regarding benefits access; rather, a worker who could not secure child care would be seen as unavailable for work. This is the case despite the fact that the challenges of finding child care during nontraditional work hours are well documented.[40]

E. Trial Work Provisions Permit Quits in Some States

Some states have trial work provisions, which permit a jobless worker to accept a position that is possibly unsuitable and leave that job without a penalty within certain limits. These provisions can permit workers to avoid disqualifications when they quit to accept work that falls within their specific requirements.

Such provisions may be especially helpful for claimants who elect to work part time and claim partial benefits while they search for a permanent job, especially if the worker experiences volatile scheduling practices in the part-time job. In certain states, if a worker accepts a part-time job and becomes separated from the job for a reason other than a layoff, her eligibility and weekly benefit amount may be subject to change. This policy acknowledges the inherent risk in trying any new job; at the same time, it complements recommendations in this paper to hasten claimant returns to work by relaxing partial UI rules.

A Connecticut advocate noted that a worker could take a job knowing it had a volatile schedule, but if she quit before 30 days (or in some cases longer), she would avoid disqualification. "If they give it an honest try because they're trying to get back to work and then they find out it's not working out for them, then that's considered a trial period to quit." An official in Connecticut also pointed to such a possibility. "If the individual went into that job just basically to try it or [...] they didn't do [the job] for very long, we could actually approve them on what we call a trial period, they tried it and then they realized [...] it was too difficult to maintain child care. We give them credit for trying," she said.

Similarly, a New Hampshire adjudicator pointed to a trial period of 12 weeks in her state as a possible way for a worker to retain eligibility when quitting due to scheduling challenges. Yet, in contrast, a Wisconsin official indicated that if the reason for terminating the "trial period" (10 weeks in Wisconsin) is due to a feature that is typical of jobs in the labor market, even quitting during the trial period can be disqualifying. In the case of many jobs that have volatile job schedules, such as those in the retail and restaurant industries, UI agency analysis of the labor market would likely find schedule volatility to be a feature typical of such jobs.

While trial period rules offer some relief from quit rules in states that have them, they have specific limitations. Workers who stay in their jobs beyond the trial period permitted will not be exempt from voluntary quitting disqualifications. And, many claimants do not know these limitations at the time they are making decisions about leaving work.

F.Low-Income Thresholds and Earning Disregards for Partial UI Disincentivize Work and Limit Effectiveness of Safety Net

Workers with unstable weekly schedules who are employed in states with narrow definitions of partial unemployment are deprived of a crucial source of income replacement, even though their earnings may be significantly lower than they were under their regular schedule. At the same time, unemployed claimants who are offered a part-time job that pays more than what their state's program deems as partially unemployed are forced to choose between accepting the job and earning just a fractional amount more than they would by claiming full benefits or turning down the job, possibly weakening future prospects.

Similar challenges emerge as a result of low disregards, which when not tied to a variable measure like wages or benefits—or if defined as a small percentage of either measure—have the effect of reducing employees' UI benefits by a rate of almost one dollar for every dollar of earnings; this is especially true in states where the maximum allowable earnings do not exceed the claimant's full benefit. The result is that a worker's total income is still much lower than it was before the work-hours reduction (see Figure 1 on next page).

G. Some States Have Particularly Egregious Partial UI Rules

State UI programs specify a maximum dollar amount per year that claimants can receive in UI benefits; that amount is usually divided by the weekly benefit for total unemployment to determine the maximum potential duration of benefits receipt. Since the maximum dollar amount may be used for weeks of total or partial unemployment, claimants can receive benefits

for longer than the duration calculated based on total unemployment benefits. Michigan is the only state we have identified where this provision does not apply; there, one week of partial benefits claimed results in a full week's reduction in a claimant's maximum entitlement. Michigan's rule effectively deters workers experiencing unstable work-schedules—especially those who fear losing their jobs in the future—from applying for partial UI benefits, because of the disproportionate reduction in their overall benefit entitlement.

An Indiana rule is particularly troublesome for workers with volatile schedules. There, job-attached partial UI claimants are subject to a stricter penalty than job-seeking partial UI claimants. No claimant can earn more than the weekly benefit he or she would receive if totally unemployed. While the benefit payment for a job-seeking claimant is reduced by one dollar for every dollar of part-time earnings in excess of 20 percent of the benefit for total unemployment, job-attached workers on a reduced schedule do not have any part-time earnings disregarded at all.[41] Indiana's rule effectively bars workers enduring involuntary reductions in work-hours and earnings from receiving UI benefits.

Finally, New York State's UI program is one of just two programs to base eligibility for partial UI on days of any work (North Carolina is the other); it's the only UI program not to disregard any earnings. Each day on which any work is performed, including unpaid work, results in a 25-percent reduction in a worker's weekly benefit. New York's partial UI rules are especially unfair to the state's lower-wage workforce. For example, a worker earning $20 an hour for eight hours of work in one day (for a total of $160 for the week) would still receive three-quarters of her regular benefit. By contrast, a lower-wage worker who works 20 hours over four days for $8 an hour (for a total of $160) would receive no UI benefits.[42]

Figure 1.A. Partial UI Rules

State	Part-time Earnings must be less than:	Earnings Disregard
Arizona	WBA	$30
New York	< 4 days of any work. Earnings cannot exceed $420.	$0
Connecticut	WBA*1.5	1/3 wages

Figure 1.B. Total Weekly Income for Partial UI Claimants

State	Full WBA	Part-time Earnings	Earnings Disregarded	Amount WBA reduced	Partial WBA	Total Income	Total Income is > Full WBA by:
Arizona	$240	$250	$30	$240	$0	$250	$10
New York	$315	$250	$0	$236	$79	$329	$14
Connecticut	$315	$250	$83	$167	$148	$398	$83

Figure 1 helps to explain these phenomena, by showing how a claimant eligible for a weekly benefit for total unemployment on par with the national average of $315 (or in Arizona, the maximum benefit of $240) would fare if he or she was earning $250 for part-time work. (For the purposes of New York's rules, assume the claimant worked on three days during the week.)

In this scenario, workers in Arizona cannot receive any benefits because their part-time wages exceed their usual benefit; if they accept the job, they would take home just $10 more than they would if totally unemployed. In New York, claimants in this scenario would earn just $14 more. Connecticut has strong partial UI rules, so workers there can usually claim substantial benefits while they work part time, as the figure shows.

H. Work Search Requirements for Partial UI Claimants Not Always Clear

As noted earlier in this paper, workers who receive UI benefits must demonstrate they are able and available for work and actively seeking work from week to week. Unemployed claimants who find temporary part-time work are usually required to look and be available for work that is similar to the job they lost. Work-search requirements for claimants employed on a reduced schedule can vary, depending on the state and the extent of the work-hours reduction. Usually, claimants whose regular employers can verify that they will return to full-time/normal schedules soon are exempt from active work-search requirements.[43] How states define "soon" is not always clear, according to a review of claimant handbooks. For example, claimants in Vermont who expect to return to a regular schedule within 10 weeks are not expected to search for other work. Otherwise, they must make the usual number of weekly job-search contacts; this may include their regular employer.[44] Washington establishes a cut-off at four months. That state also waives work-search rules for employees whose regular schedule reductions are less than 60 percent. This means that employees whose schedule reductions do not meet either criterion are not deemed job-attached, and thus must search for other work.[45]

Even when job-search is required of partial claimants, certain states account for the time spent working. For example, a representative of the Connecticut Department of Labor noted that partial claimants are not expected to conduct a job search so intensively that it interferes with obligations to their current job or forces them to quit that job. For example, a claimant working part time over three days in a week would most likely not be expected to provide documentation for work-search activities occurring on more than two days per week.[46] However, this is not necessarily standard practice across all state programs.

Workers experiencing irregular bouts of reduced work, lasting for one or two weeks at a time over the course of their employment, may find it difficult to meet their state's work-search rules. Performing and documenting adequate work searches may be unrealistic for those who, in addition to receiving too few hours of work, are scheduled for on-call shifts, are required to maintain open availability at all times, or receive little advanced notice of their schedules.

6 Recommendations

Based on the research and analysis outlined in this paper, we make the following recommendations.

1. Adopt Federal, State, and Local Fair Scheduling Legislation

Passing legislation to address volatile scheduling practices would improve labor market conditions generally and make access to UI more straightforward for workers who continue to experience unfair schedules and ultimately lose their jobs.

Fair scheduling legislation is being considered in jurisdictions around the country and at the federal level. For information on the federal Schedules that Work Act, state and local bills, and other scheduling policy related materials, visit CLASP's National Repository of Resources on Scheduling Policy.[47]

Fair scheduling legislation should include provisions requiring the following measures. Specifics for these provisions should be tailored to meet the needs of particular geographic locations and political contexts.

- Advance notification of schedules
- Reporting time pay (minimum pay for reporting to work)
- Restrictions pertaining to on-call work, including compensation for being on call
- Predictability pay (compensation for changes in schedules)
- Split-shift pay (compensation for working nonconsecutive hours as a part of one shift)
- Right to refuse hours added with little notice and/or after the schedule has been posted, without fear of retaliation.
- Right to request changes to schedules or scheduling accommodations without fear of retaliation
- Access to hours for existing qualified part-time employees prior to hiring of additional staff
- Right to rest, including limitations on "clopenings" (the term describing shifts in which workers are responsible for closing an establishment one day and opening it on the next) and other unfair practices
- Strong enforcement of new and existing worker protections

2. Amend UI Laws to Better Accommodate Job Losses Due to Volatile Schedules

UI laws currently do not provide adequate protection to jobless workers who lose jobs for reasons related to volatile schedules. Outdated laws and restrictive administrative practices that we have explored above must be addressed for UI to better support these workers. Advocates and policymakers should consider these UI reforms:

a. Eliminate Requirements that Employees Explore Alternatives to Quitting When Unreasonable or Futile

When an employee quits as a direct result of established policies or changes by an individual's employer, including reductions in hours or eliminations of shifts, he or she should not be expected to explore with that employer alternatives to quitting; the employer has knowledge of the policy and the employee can reasonably expect any challenge is futile. If the worker quits in such circumstances, he or she should be eligible to receive UI. In general, the employee's responsibility to exhaust alternatives should not apply unless the employer shows there is an existing alternative to quitting. This approach places the burden on the employer to show that employees have the opportunity and ability to negotiate with supervisors at a level high enough to have the power to make needed accommodations, rather than simply expecting workers to negotiate under conditions extremely unlikely to yield success.

b. Stop Disqualifications for Quits or Discharges Related to Customary, But Unreasonable, Scheduling Practices

Agencies and legislatures should clearly articulate rules to protect the rights of employees to leave work when employer scheduling practices are unreasonable, rather than denying benefits to these workers because such practices have become customary in certain industries. For example, when variable scheduling results in a temporary variation in pay of more than 50 percent or a permanent reduction in pay of 25 percent, workers should have good cause to leave, regardless of whether or not these scheduling practices are customary. When

employers engage in unfair scheduling practices that result in employee absences from work, any discharges for this reason, should not be disqualifying. These sorts of changes are essential for UI to protect employees subject to volatile schedules.

c. Update Partial Benefit Formulas to Raise Earnings Caps and Increase Income Disregards

States should amend their partial benefits policies to include a cap on earnings that is higher than a state's weekly benefit amount and increase the amount of dollars an individual can earn without losing benefits (increase the income disregard). As noted in Table 3, states with the best-designed policies cap earnings at 40 or 50 percent above the full weekly benefit level and disregard earnings up to 50 percent of a claimant's full weekly benefit amount, or one-third of weekly part-time earnings, as in Connecticut. There, 14 percent of UI weeks paid over the previous decade were for weeks of partial unemployment.[48]

States should apply the same eligibility and benefit rules to job-attached and job-searching partially unemployed individuals; exclusionary provisions like Indiana's should be eliminated. While it is reasonable for states to expect claimants will search for work that is similar in wages and working conditions to what they lost, states should grant some flexibility to job-attached partial claimants, given the potential volatility of their schedules from week to week.

d. Repeal or Make Transparent Policies that Define "Acquiescence to Working Conditions"

States should be clear about the length of time a worker is required to endure new working conditions prior to quitting, and at what point such "testing" constitutes acquiescence to those conditions. Ideally, no amount of time in a job with unfair working conditions should be considered acquiescence. Given the realities of low-wage work and today's labor market, it is unrealistic to assume that failure to leave a job is the equivalent of acquiescing to working conditions that are less than ideal.

e. Expand Public Education Regarding UI Rules for Workers Experiencing Volatile Schedules

State agencies should conduct outreach to ensure UI beneficiaries and applicants are aware of their options and obligations. States may perform such outreach by creating materials and developing a website clearly delineating rules related to UI access for workers with volatile schedules; working with community groups and directly with the public to share information; and updating and improving claimant handbooks. States should require employers separating from an employee to give employees a notice concerning their UI rights and responsibilities and information about how to get further information (such as a separation notice, as is required in Connecticut).

7 Conclusion

A significant proportion of workers – particularly among the growing part-time workforce – face an intolerable set of working conditions, including a range of volatile scheduling practices. These workers' schedules wreak havoc on their personal and family lives, leaving them struggling to make ends meet. Despite workers' best efforts to hang on to their jobs, too often the conditions under which they are working make it virtually impossible to stay on the job. Some have no choice but to quit a job when their child care providers will no longer accommodate the unpredictability that is passed on from parents' work schedules to children's lives. Others must choose between continuing a job training or higher education program that offers promise for better career options down the line or holding onto a job that makes no allowances for regularly scheduled classes. Still others find themselves late for work one too many times when an erratic schedule makes navigating public transportation or juggling a second job impossible; such workers are fired for situations that are far from under their control. When these workers experience joblessness, the UI system should offer a safety net as it does to other involuntarily unemployed workers. But the UI system has not caught up with the realities of today's labor market; as a result, it often fails workers when they are most in need.

UI law, policy, and agency practices leave many workers in the lurch when they experience volatile scheduling practices. Among the failings is the ironic fact that, while workers who experience a significant change in their working conditions may be able to leave their jobs and maintain eligibility for UI, the experience of volatility, is often not recognized under UI law. Further, workers employed in industries with the worst labor practices are doubly disadvantaged: not only are these workers forced to toil under bad conditions, their "choice" to accept a job in an industry characterized by the routine presence of these conditions often disqualifies them from benefits should they ultimately be forced to leave the job. Yet, "choices" for low-wage workers are far from free under current labor market conditions; to perceive continued employment in a job with a volatile schedule as "acquiescence" to the unjust conditions workers face is simply unfair. And widespread requirements that workers "explore alternatives to quitting with their employers" prior to leaving work are often unrealistic and fail to recognize the power dynamics in the workplace. Additional provisions and practices related to testing periods and trial periods also make UI difficult to access for some of today's most vulnerable workers. Finally, rules regarding partial UI benefits, which could be an important resource for those who face fluctuating hours, are often out of date and afford extremely limited benefits.

It is not just formal rules, but state agency practices that often negatively affect workers with volatile schedules. Frequently, for volatile scheduling situations, adjudicators determine how existing UI rules – not necessarily written with volatile scheduling in mind – will apply. Because of this variability, further research focusing on state UI agency practices is needed in order to gain a better sense of the nature and extent of the UI challenges workers with volatile schedules are experiencing.

But given what we do know, based on legal research, policy analysis, and interviews with agencies and advocates, it is clearly time for states to update their UI rules to reflect the realities of a labor market increasingly characterized by erratic, unstable, and unpredictable job schedules. Such volatility is widespread, and despite promising efforts to move legislation that would curb some of the worst forms of volatile scheduling practices, it is imperative that we repair the safety net for the workers who are likely to continue experiencing these conditions for some time to come.

Appendix

Appendix Table 1. UI Rules on Availability and Caregiving

State	Part-Time Availability for All or with Good Cause	Part-Time Availability Permitted with Work History	Availability Only for Full-Time Work
Alabama			●
Alaska			●
Arizona			●
Arkansas		●	
California	●		
Colorado		●	
Connecticut			●
Delaware	●		
Dist. of Columbia	●		
Florida	●		
Georgia		●	
Hawaii		●	
Idaho		●	
Illinois			●
Indiana			●
Iowa		●	
Kansas		●	
Kentucky			●
Louisiana	●		
Maine	●		
Maryland		●	
Massachusetts	●		
Michigan			●
Minnesota		●	
Mississippi			●
Missouri			●
Montana		●	
Nebraska		●	
Nevada		●	

Appendix Table 1. UI Rules on Availability and Caregiving			
State	Part-Time Availability for All or with Good Cause	Part-Time Availability Permitted with Work History	Availability Only for Full-Time Work
New Hampshire		●	
New Jersey		●	
New Mexico			●
New York		●	
North Carolina		●	
North Dakota			●
Ohio			●
Oklahoma		●	
Oregon			●
Pennsylvania	●		
Rhode Island	●		
South Carolina		●	
South Dakota		●	
Tennessee			●
Texas			●
Utah			●
Vermont		●	
Virginia			●
Washington			●
West Virginia			●
Wisconsin			●
Wyoming	●		
Total	**10**	**20**	**21**

Notes for Table 1: There are 51 UI jurisdictions (50 states and the District of Columbia). The 10 states in the first column (next to "State") evaluate availability on a case-by-case basis without discriminating against part-time work, or they permit claimants with good cause (such as family responsibilities) to seek part-time work. This application of availability is more favorable to claimants than rules found in other states.

The 20 states in the second column adopted the "past history" option concerning part-time work under UI Modernization, or they had similar provisions in place prior to 2009. Under either situation, states require that those limiting their availability to part-time work have a history of part-time work prior to filing a claim. Part-time work generally means at least 20 hours a week but less than full-time hours. In most cases, this means that a majority or more of a claimant's qualifying wages were earned in part-time work. As a result, only those caregivers working part time prior to losing work can satisfy the availability requirements.

These 21 states in the third column have a statute or rule requiring UI claimants to be available for full-time work, rendering claimants with family or other limitations on availability ineligible as they cannot declare themselves available for full-time work.

Appendix Table 2. UI Rules for Excusing Quits for Good Cause				
State	Personal Reasons for Good Cause Accepted	Compelling Family Reasons Accepted	Other Favorable Provisions	Good Cause Limited to Work-Related Reasons
Alabama				●
Alaska	●	●		
Arizona			●	
Arkansas		●		
California	●	●		
Colorado		●		
Connecticut		●		
Delaware		●		
Dist. of Columbia		●		
Florida				●
Georgia				●
Hawaii	●	●		
Idaho				●
Illinois		●		
Indiana				●
Iowa				●
Kansas			●	
Kentucky				●
Louisiana				●
Maine		●		
Maryland				●
Massachusetts			●	
Michigan				●
Minnesota		●		
Mississippi				●
Missouri				●
Montana				●
Nebraska				●

Appendix Table 2. UI Rules for Excusing Quits for Good Cause				
State	Personal Reasons for Good Cause Accepted	Compelling Family Reasons Accepted	Other Favorable Provisions	Good Cause Limited to Work-Related Reasons
Nevada	●			
New Hampshire		●		
New Jersey				●
New Mexico				●
New York	●	●		
North Carolina				●
North Dakota				●
Ohio				●
Oklahoma		●		
Oregon	●	●		
Pennsylvania	●			
Rhode Island	●	●		
South Carolina		●		
South Dakota				●
Tennessee				●
Texas				●
Utah	●		●	
Vermont				●
Virginia				●
Washington		●		
West Virginia				●
Wisconsin		●		
Wyoming				●
Column Totals	**9**	**19**	**4**	**26**

Notes for Table 2: There are 51 state jurisdictions listed in this table (50 states plus the District of Columbia). Results were current as of September 2014. Because some states are listed in more than 1 of the first 3 columns, the overall totals in the final row exceed 51. Nine states in the first column do not restrict good cause for leaving to reasons related to work and would accept valid personal causes that would constitute good cause for leaving work with proper documentation. Nebraska and Virginia each have quit statutes that do not explicitly limit reasons for good cause to those related to work, but both have court decisions that judicially impose that limitation and so neither of these states apply their statutes to recognize personal reasons for leaving work. For this reason, they are not included in the first column with states accepting personal reasons for good cause to quit.

States listed in the second column are states that have compelling family circumstances amendments that were passed to comply with the requirements of UI Modernization. Six states that already recognized personal reasons also adopted compelling family circumstances exceptions under UI Modernization (AK, CA, HI, NY, OR, RI). The "other favorable provisions" listed in the third column forgive quits where a disqualification would be against equity and good conscience (KS, UT) or where quits for compelling family circumstances are deemed involuntary (MA). Arizona has an agency rule that defines compelling circumstances to include family responsibilities where there is no alternative to leaving.

Appendix Table 3. State Partial UI Rules		
State	Earnings from week of less than full-time work must be less than:	Earnings Disregard Amount or Formula:
Alabama	WBA	1/3 WBA (From $15)[1]
Alaska	WBA*1-1/3+($50)	1/4 wages over $50+($50)
Arizona	WBA	$30
Arkansas	WBA*1.4	2/5 WBA
California	WBA+(Greater of $25 or WBA*1/3)	Greater of $25 or 1/4 wages
Colorado	WBA (and less than 32 hours of work)	1/4 WBA
Connecticut	WBA*1.5	1/3 wages
Delaware	WBA+(Greater of $10 or WBA*0.5)	Greater of $10 or 1/2 WBA
District of Columbia	WBA*1.25+($20)	1/5 wages+($20)
Florida	WBA	8 times federal MW
Georgia	WBA+$50	$50
Hawaii	WBA	$150
Idaho	WBA*1.5	1/2 WBA
Illinois	WBA	1/2 WBA
Indiana	WBA	Greater of $3 or 1/5 WBA (from other than base period employer)
Iowa	WBA+$15	1/4 WBA
Kansas	WBA	1/4 WBA
Kentucky	WBA*1.25	1/5 wages
Louisiana	WBA	Lesser of 1/2 WBA or $50
Maine	WBA+$5	$25
Maryland	WBA	$50
Massachusetts	WBA*1-1/3	1/3 WBA
Michigan[2]	WBA*1.6	For each $1 earned, WBA reduced by 40 cents (benefits and earnings cannot exceed 1.6 WBA). For every week of partial UI benefits claimed, total weeks of benefits payable are reduced by one full week.
Minnesota	WBA (and less than 32 hours of work)	1/2 wages
Mississippi	WBA+$40	$40
Missouri	WBA+(Greater of $20 or WBA*0.2)	Greater of $20 or 1/5 WBA

Appendix Table 3. State Partial UI Rules		
State	Earnings from week of less than full-time work must be less than:	Earnings Disregard Amount or Formula:
Montana	WBA*2	1/2 wages over 1/4 WBA
Nebraska	WBA	1/4 WBA
Nevada	WBA	1/4 wages
New Hampshire	WBA*1.3	3/10 WBA
New Jersey	WBA+(Greater of $5 or WBA*0.2)	Greater of $5 or 1/5 WBA
New Mexico	WBA	1/5 WBA
New York	Work occurring on less than four days in a week and/or paying less than $420.	None. Any work on a single day reduces WBA by 25%.
North Carolina	Week of less than three customary scheduled full-time days	1/5 WBA
North Dakota	WBA	3/5 WBA
Ohio	WBA	1/5 WBA
Oklahoma	WBA+$100	$100
Oregon	WBA	Greater of 1/3 WBA or 10*state MW
Pennsylvania	WBA*1.3	Greater of $6 or 3/10 WBA
Puerto Rico	WBA*1.5	WBA
Rhode Island	WBA	1/5 WBA
South Carolina	WBA	1/4 WBA
South Dakota	WBA	1/4 wages over $25
Tennessee	WBA	Greater of $50 or 1/4 WBA
Texas	WBA+(Greater of $5 or WBA*0.25)	Greater of $5 or 1/4 WBA
Utah	WBA	3/10 WBA
Vermont	WBA*2 (and less than 35 hours of work)	1/2 wages
Virgin Islands	WBA*1.5+($15)	1/4 wages over $15
Virginia	WBA	$50
Washington	WBA*1-1/3+($5)	1/4 wages over $5
West Virginia	WBA+$61	$60
Wisconsin	$500 (and less than 32 hours of work)	$30+(1/3 wages over $30)
Wyoming	WBA	1/2 WBA

Notes for Table 3:

[1] Effective August 1, 2015, the earnings disregard in AL will rise from $15 to earnings worth 1/3 of the full WBA.

[2] Effective October 1, 2015, the maximum earnings threshold will decline to 1.5 times the full WBA.

Sources: United States Department of Labor, "Comparison of State Unemployment Insurance Laws," Chapter 3: Monetary Entitlement, Tables 3-8. "Partial Unemployment and Earnings Disregarded When Determining Weekly Benefit," http://www.unemploymentinsurance.doleta.gov/unemploy/pdf/uilawcompar/2015/monetary.pdf, and state workforce agency websites.

Endnotes

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11. Ibid.
12. Ibid.
13. Other negative effects of volatile jobs schedules include poorer health outcomes, increased stress, marital strain and more. See citations in: Lonnie Golden, Economic Policy Institute, *Irregular Work Scheduling and Its Consequences*, Economic Policy Institute, 2015, http://www.epi.org/publication/irregular-work-scheduling-and-its-consequences/ and Liz Ben-Ishai, Sasha Hammad, and Christina Warden, *Tackling Unstable and Unpredictable Work Schedules: A Policy Brief on Guaranteed Minimum Hours and Reporting Pay Policies*, Center for Law and Social Policy, Retail Action Project, and Women Employed, 2014, http://www.clasp.org/resources-and-publications/publication-1/Tackling-Unstable-and-Unpredictable-Work-Schedules-3-7-2014-FINAL-1.pdf.
14. *Hard Work, Hard Lives: Survey Exposes Harsh Reality Faced By Low-Wage Workers In The US*, OxFam America, 2013, http://www.oxfamamerica.org/static/media/files/low-wage-worker-report-oxfam-america.pdf.
15. Ibid.
16. Ajay Chaudry, Juan Pedroza, and Heather Sandstrom, *How Employment Constraints Affect Low-Income Working Parents' Child Care Decisions*, Urban Institute, 2012, http://www.urban.org/research/publication/how-employment-constraints-affect-low-income-working-parents-child-care.
17. Jobs with Justice San Francisco, http://retailworkerrights.com, (accessed June 14, 2015).
18. Golden, op. cit.
19. Stephen A. Woodbury, *Unemployment Insurance*, Upjohn Institute for Employment Research, 2014, http://research.upjohn.org/up_workingpapers/208/.
20. For more details on these rules, see background information provided in Liz Ben-Ishai, Rick McHugh, and Kathleen Ujvari, *Access to Unemployment Insurance Benefits for Family Caregivers: An Analysis of State Rules and Practices*, AARP Public Policy Institute, April 2015, http://www.aarp.org/ppi/info-2015/access-to-unemployment-insurance-benefits-for-family-caregivers.html.
21. The American Recovery and Reinvestment Act (ARRA) created incentives for states to adopt statutes allowing compelling family circumstances to count as good cause for leaving a job. See Rebecca Dixon, *Modernizing Unemployment Insurance: Federal Incentives Pave the Way for State Reforms*, National Employment Law Project, May 2012, http://www.nelp.org/content/uploads/2015/03/ARRA_UI_Modernization_Report.pdf.
22. William Haber and Merrill G. Murray, "Unemployment Insurance in the American Economy," *Journal of Economic Issues* 1:3 (1965). California Unemployment Insurance Code, Sec. 1258 contains the typical language: "In determining whether the work is work for which the individual is reasonably fitted, the director shall consider the degree of risk involved to the individual's health, safety, and morals, his physical fitness and

prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence, and such other factors as would influence a reasonably prudent person in the individual's circumstances."

23. For the most part, states deem as part-time any employment lasting fewer than the customary full-time schedule or number of hours for the individual's industry or occupation. Otherwise, states usually define it as between 35 and 40 hours per week. There are exceptions, as in Colorado, Minnesota, and Wisconsin, where a claimant working for 32 or more hours in a week cannot claim benefits, regardless of his or her earnings.
24. Recent legislation in Alabama raises the earnings disregard from $15 to part-time wages worth one-third of the weekly benefit claimants would receive totally unemployed. Under this change, Alabama's UI program will move from having the lowest disregard of 52 out of 53 UI jurisdictions (New York State's UI program does not disregard any earnings) to having one of the stronger ones. More information about the rule change is available at Claire McKenna, "New Alabama Unemployment Insurance Law Makes Part-Time Work Pay,"*National Employment Law Project Blog*, http://www.nelp.org/blog/new-alabama-unemployment-insurance-law-makes-work-pay/, May 13, 2015.
25. NELP calculations of monthly regular State UI weeks compensated data from United States Department of Labor, Office of Unemployment Insurance, Employment and Training Administration, Claims and Payment Activities, Data from http://www.ows.doleta.gov/unemploy/DataDownloads.asp.
26. In this article, we limit our case citations in footnotes by emphasizing decisions from higher state courts when available and favoring those that broadly discuss other cases and authorities. Cases discussed in text are selected because of their specific facts and to illustrate points in our discussion, rather than for their legal authoritativeness.
27. Deborah Maranville, "Workplace Mythologies and Unemployment Insurance: Exit, Voice, and Exhausting All Reasonable Alternatives to Quitting," v. 31, p. 459 (2003), http://scholarlycommons.law.hofstra.edu/cgi/viewcontent.cgi?article=2209&context=hlr, provides a survey of statutes and cases imposing this requirement as well as a critique of the requirement.
28. Grier v. Dep't of Employment Security, 715 P.2d 534 (Wash. App. 1986).
29. White v. Security Link, 658 A.2d 619 (Del. Super. 1994).
30. Thompson v. Christiana Care Health System, 25 A.3d 778 (Del. 2011).
31. An early leading case is Bunny's Waffle Shop v. California Employment Comm'n., 24 Cal.2d 735, 151 P.2d 224 (1944). *See also* Annotation, *Unemployment Compensation: Eligibility as Affected by Claimant's Refusal to Work at Reduced Compensation*, 95 A.L.R.3d 449 (1979) (and supplement).
32. Tate v. Mississippi Employment Security Commission, 407 So.2d 109 (Miss. 1981), Boucher v. Maine Employment Security Commission., 464 A.2d 171, 176 (Me. 1983) (citing cases). Other cases collecting many authorities are Consumer Action Network v. Tielman, 49 A.3d 1208 (D.C. 2012) and Dehmel v. Employment Appeal Board., 433 N.W.2d 700 (Iowa, 1988).
33. State UI employer payroll taxes rise as employees file valid claims through a process known as experience rating. In other words, as UI benefit payments to a firm's laid-off employees rise, tax rates on the firm are increased in subsequent years. If more workers who were scheduled for low or no weekly hours quit work with good cause and received UI benefits, rising payroll taxes on those employers should act as a brake on volatile scheduling practices.
34. This finding is important when considering what provisions are useful in legislative proposals seeking to improve employer scheduling practices, such as those presently being considered in localities, states, and at the federal level. Many of these proposals include a requirement that employers provide a "good faith" estimate of weekly hours/schedules at the time of hire. Such information would be useful to an employee who finds that the estimate was inaccurate and must leave his or her job. For example, see Section 4(c)(1) of the proposed Schedules That Work Act, H.R. 3071, (July 15, 2015).
35. The temporary versus permanent distinction is found in statutes, regulations, and cases. Under a 2013 amendment, North Carolina defines a permanent, 50 percent reduction in hours as good cause. North Carolina General Statute, Employment Security, Sec. 96-14.5. Connecticut agency rules provide that a temporary reduction in hours to less than full time work is not good cause for leaving. Connecticut Administrative Code, Good cause – hours, Sec. 31-236-21(b). While recognizing that a 50 percent reduction in hours was generally good cause for leaving, a Missouri court held that a two-week temporary reduction in hours did not constitute good cause. Miller v. Help at Home, 186 S.W.3d 801 (Mo. App. 2006).
36. Verizon Services v. Epling, 739 S.E.2d 290 (W.Va. 2013); Waslyk v. Review Board, 454 N.E.2d 1243 (Ind. App. 1983).
37. Nichols v. Kentucky Unemployment Insurance Commission, 677 S.W.2d 317 (Ky. App. 1984).
38. Nichols, 677 S.W.2d at p. 320.
39. Collier v. Department of Employment Security, 510 N.E.2d 623 (Ill. App. 1987).
40. See for example, *Choices in the Real World: The use of family, friend and neighbor child care by single Chicago mothers working nontraditional schedules*, Illinois Action for Children, 2012, http://www.actforchildren.org/site/DocServer/Choices_in_the_Real_World_2013.pdf?docID=3641.
41. The difference in formulas is described in the state's UI claimant handbook: Unemployment Insurance Claimant Handbook, Indiana Workforce Development, July 23, 2014, http://www.in.gov/dwd/files/Claimant_Handbook.pdf.
42. Recently passed legislation in the New York Assembly which would provide that eligibility for partial benefits be based on weekly part-time earnings, rather than days of any work, and that earnings worth half of a claimant's usual weekly benefit be disregarded. More information is available at Bill A4839-2015, of February 9, 2015, Relates to the calculation of weekly unemployment insurance and the repeal of certain provisions relating thereto, Labor Law, New York State, 2015, http://open.nysenate.gov/legislation/bill/A4839-2015.
43. In addition, states with special employer-based programs typically do not require participating claimants to search for other work. In this way, this type of program is similar to work-sharing, because the goal is to retain experienced employees. The costs associated with providing partial UI

benefits are less than the costs of laying off a portion of the workforce and then recruiting and training new hires once business picks up. This means that partial claimants on a reduced schedule for an employer that does not participate in any such program are required to meet their state's work-search rules.

44. Representative of the Vermont Department of Labor, telephone conversation, June 25, 2015.
45. Handbook for Unemployed Workers, Employment Security Department Washington State, https://esdorchardstorage.blob.core.windows.net/esdwa/Default/ESDWAGOV/Unemployment/ESD-Handbook-for-Unemployed-Workers.pdf. This was confirmed by an email exchange with representatives of the Washington Employment Security Department.
46. Andrew Subiono, Unemployment Insurance Operations, Connecticut Department of Labor, telephone conversation, May 15, 2015.
47. Center for Law and Social Policy, "A National Repository of Resources on Job Scheduling Policy", 2015, http://www.clasp.org/issues/work-life-and-job-quality/scheduling-resources. See also, The Center for Popular Democracy, "Fair Workweek Initiative", http://populardemocracy.org/campaign/restoring-fair-workweek.
48. NELP calculations of Labor Department data. See note 25 above for details and source.

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