

Terms of Reference
ILAW Future of Labor Law Database
Unstable/on-call work schedules

Future of Labor Law Database

The ILAW Network is building an on-line member-accessible database that would contain model legislation that addresses priority topics, accompanied by a range of supporting documents and commentary that speak to content, process, and implementation concerns. Other databases, including ones administered by the ILO, already contain labor law legislation currently existing in different countries. However, we are not aware of any database that purports to offer the recommendations as to what could and should exist, much less one that is created, maintained, and updated by the global community of labor and worker rights lawyers, themselves. We are of course mindful that around the world there are different legal systems, cultures and histories, and that any recommendations will need to be adapted to local circumstances, though we believe that many of the principles will be transferable.

As legal, legislative, or political circumstances evolve, we expect that members will be continuously involved in providing updates or changes to posted provisions and memos, triggering further committee evaluation. Members will also be encouraged to post updates regarding their efforts to seek passage of ILAW Network proposals or other provisions on the same topic, and/or whatever use they have made (e.g., collective bargaining) of the model language as they see fit.

Problem to be addressed

Worldwide, workers are hired on unstable schedules in which the work time is variable and usually beyond the control of the worker. This includes schedules in which factors such as the starting and stopping times, the days regularly assigned, and the overall hours per pay period are significantly variable. In some case, workers are on-call, meaning they are not assigned any hours in advance but must make themselves available in case they are needed on short notice.

For employers, these scheduling practices allow for maximum flexibility to assign work to respond to changes in the demand for labor. Also to their benefit, it creates significant vulnerability, as workers under such arrangements often need of more hours to increase income and will therefore accept whatever work hours are provided and often compete with their co-workers for the added working time. For workers, frequent changes in starting and stopping times beyond workers' control, often with little advance notice, impose significant costs. Of course, the instability of income is a significant problem, especially when total hours vary, and workers are paid by the hour. Further, workers have difficulty planning secondary employment, which is often necessary to supplement the low income, and may turn to gig employment (which is even more insecure). It also means difficulty in planning the rest of their life, including with family. This is a major problem for parents (and especially mothers), especially in countries without high-quality affordable childcare. Other costs include worker health, as being exposed

to irregular work schedules is associated with various physical and mental health problems. Further, if the work extends into evenings or nighttime, there is a greater risk of fatigue and therefore risk of injury on the job. In some countries, the unstable work schedules can actually undermine workers' eligibility for social protection schemes that require minimum hours of work or sufficiently low incomes.

While future research will provide insight, it is likely/expected that when firms in poorly regulated environments (i.e., due to lack of legislation or applicable collective agreements) rehire as economies pick up from the impact of the Covid-19 pandemic, they will make use of non-standard forms of employment, including irregular scheduling practices, in order to maximize flexibility and labor costs low.

Research:

The ILAW Network seeks to identify the elements of an effective regulatory and legislative framework which union and worker rights lawyers and other advocates in countries around the world could draw upon as the basis for effectively regulating work scheduling to minimize variability and lack of notice of change. This framework would include appropriate measures needed to deter employer abuse in the first instance, as well as to offer workers expeditious and low-cost mechanisms to contest the misuse of such arrangements, along with effective remedies.

Such model regulation/legislation, along with necessary explanatory memos, commentary, and supporting documents, would become a part of the ILAW Network's Future of Labor Law Database, a wiki-style on-line, member-accessible database that will address both content and implementation concerns.

The research needed on this particular topic will likely need to begin with a survey of legal, regulatory, and administrative measures that some countries have put in place and that have been (relatively) successful in preventing the widespread abuse of irregular scheduling practices. Most likely, even while some countries have elements of an effective apparatus, no one country has developed a complete framework. The research will therefore need to examine ways that these selective best practices, among others, can be combined so that if adopted, as a whole, they could have the effect of preventing, eliminating, or at least substantially reducing the misuse.

Conditions:

ILAW seeks this work to be conducted by September 30, 2021. Compensation to be negotiated.