



# Unpredictable Scheduling & Fair Workweek Laws in New York City



# Unpredictable Scheduling and Fair Workweek Laws in New York City

---

## About the Authors

**Harold Stolper** is the Senior Economist at the Community Service Society (CSS), where he conducts research and advocacy to raise awareness about the economic hardships facing low-income New Yorkers. He is also a Lecturer in Discipline at Columbia University's School of International and Public Affairs (SIPA), where he teaches quantitative methods for policy analysis. Harold has a PhD in economics from Columbia University, and a Master of Public Administration from SIPA.

**Nancy Rankin** is Vice President for Policy Research and Advocacy for CSS, where she leads the work on labor, housing, youth, and income inequality. She is the founder of the Unheard Third survey and has written and spoken widely on issues affecting upward mobility of low-wage workers and the challenges of meeting work and family responsibilities. Nancy Rankin is a graduate of Cornell and Princeton.

# INTRODUCTION

In 2017, New York City passed Fair Workweek legislation aimed at giving fast food and retail workers the right to predictable schedules. The state Department of Labor has since proposed its own scheduling regulations—at the end of 2017, and again at the beginning of 2019—though none have been adopted yet. These efforts have been propelled by growing nationwide attention and advocacy to combat unpredictable scheduling practices that limit the ability of lower-wage workers to pay their bills, care for their family, and manage their lives.<sup>1</sup>

This policy brief documents how unpredictable work schedules remain commonplace for much of the workforce, despite Fair Workweek laws, and in the absence of state action. CSS first documented the extent of unpredictable scheduling in 2016, more than a year before Fair Workweek protections took effect in November 2017. Our new survey data from July and August 2018 provides an opportunity to assess the initial impact of Fair Workweek laws, and further document the extent of unpredictable scheduling across different sectors and industries.<sup>2</sup>

Our analysis shows that unpredictable schedules are increasingly common across all sectors, and are still most common for restaurant and retail workers; workers in these industries are less likely to know their work schedules at least two weeks in advance, and more likely to work hours that change from week to week.

Unpredictable schedules are most common among lower-income workers, compounding other related challenges that these

workers face. Low-income workers also tend to have very little savings, and rely on stable earnings to pay their bills. When they aren't given sufficient notice or scheduled for enough hours, they may have to scramble to arrange for child care or find themselves unable to pay their bills.

These challenges are compounded by the fact that low-income workers with less scheduling notice also face a host of other job-related obstacles that make it difficult for them to provide for themselves and their families: they are more likely (than low-income workers with more advance notice) to face hours that change from week-to-week and to want more hours, and are less likely to be paid on time and have basic benefits (such as paid leave and health insurance).

## **Unpredictable schedules are most common among lower-income workers, compounding other related challenges that these workers face.**

Our survey also reveals a lack of awareness of Fair Workweek protections, limiting the impact of the law given that enforcement is complaint driven. Fifty-eight percent of fast food and retail workers—the sectors that are targeted by Fair Workweek protections—had heard little or nothing about the new law. This lack of awareness blunts the impact of the law by reducing the risk to employers who fail to comply with its requirements.

---

**1** Philadelphia, San Francisco, San Jose, Seattle, and Oregon are among the state and local governments to enact Fair Workweek laws.

**2** The data analyzed here comes from the Unheard Third, an annual scientific survey of all NYC residents over the age of 18, commissioned by CSS and administered by Lake Research. See the Methodology on page 20 for details on how this survey was conducted.



## KEY FINDINGS

Employed respondents in every income group are less likely to report having at least two weeks' notice in 2018 than in 2016.<sup>3</sup> **In 2018, the share of poor workers reporting less than two weeks' notice was more than twice that of high-income workers** (70 percent compared to 34 percent).<sup>4</sup>

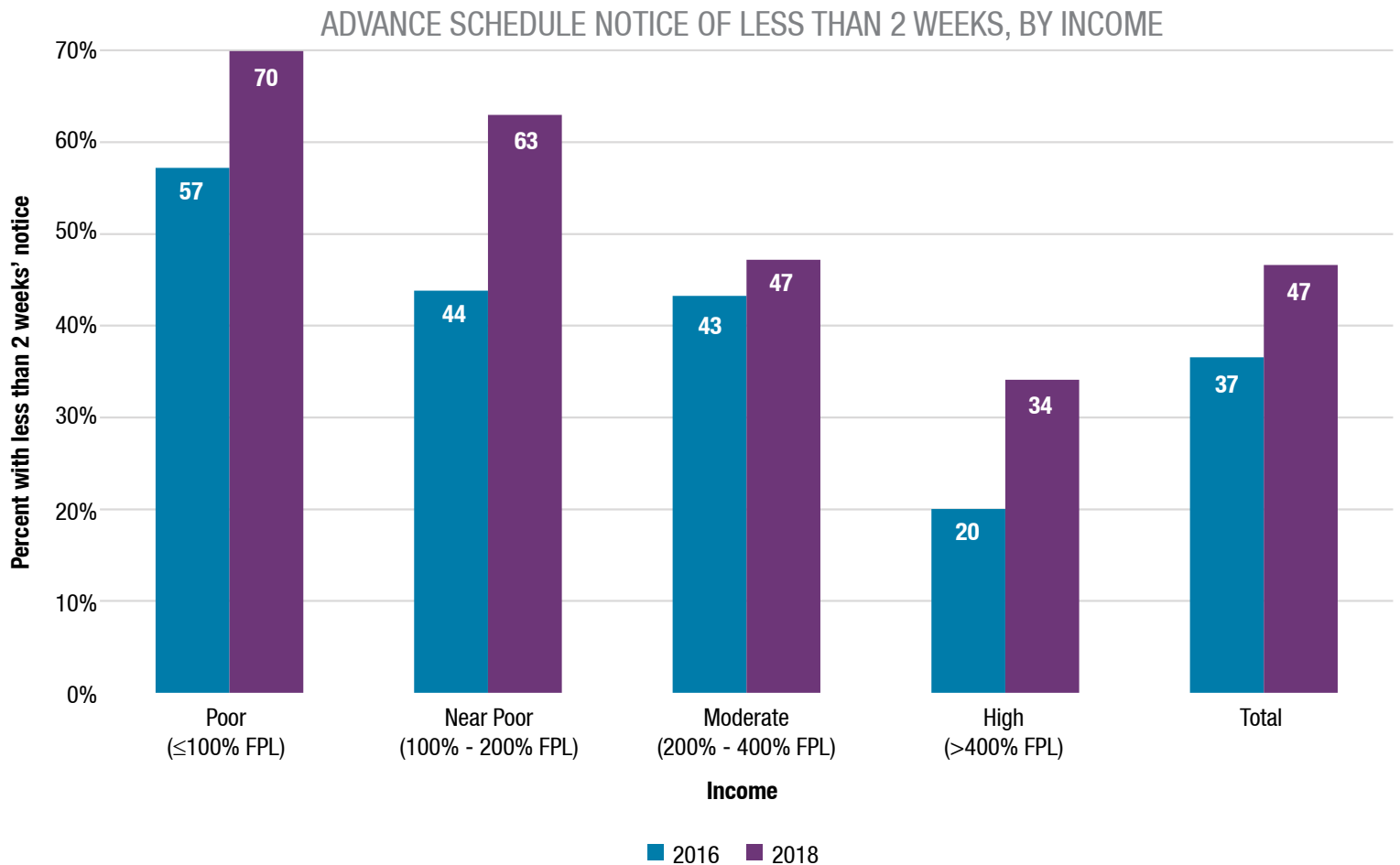
---

**3** The difference between 2016 and 2018 in the share with less than two weeks' notice is statistically significant at or beyond the 0.05 level for all income categories except moderate income. The difference for all workers is statistically significant at the 0.01 level.

**4** For 2018, the difference between poor and high-income workers in the share of workers with less than two weeks' notice is statistically significant at the 0.01 level.

**Short notice has become more common for workers across the income spectrum, and remains most common among lower-income workers—70% of the working poor know their schedules less than 2 weeks ahead of time.**

[All Employed Respondents] **Q:** How far in advance do you usually know what days and hours you will need to work?



Note: The federal poverty level (FPL) for a two parent, two child household was \$25,100 for 2018, based on the federal poverty guidelines issued by the Department of Health and Human Services.

More workers in NYC have less than 2 weeks' advance notice than two years ago, despite increased national awareness of the issue and new Fair Workweek legislation aimed at making schedules more predictable for retail and fast food workers.



Important Information for  
Fast Food Employers/Workers:

# NYC'S FAIR WORKWEEK & FAST FOOD DEDUCTIONS LAWS

**NYC**  
Consumer  
Affairs

### Important Information for Retail Employers/Workers: NYC'S FAIR WORKWEEK LAW

The Department of Consumer Affairs (DCA) Office of Labor Policy & Standards (OLPS) enforces NYC's Fair Workweek Law, which took effect on November 26, 2017. DCA created this overview for employers and employees. Visit [nyc.gov/dca](http://nyc.gov/dca) for more information, including Frequently Asked Questions.

**NOTE:**

- Employers cannot punish, penalize, retaliate, or take any action against employees that might stop or deter them from exercising their rights under the law. Workers should immediately contact OLPS about retaliation. See other side.
- The law covers workers regardless of immigration status.

**About the Law**  
Under the **Fair Workweek Law**, retail employers in NYC must give workers predictable work schedules.

**Covered Employers**  
Employers—including subcontractors and temporary help firms—whose workers perform tasks at a retail business in NYC. See Covered/Not Covered Employees section.  
A retail business is a store that primarily sells consumer goods and employs 20 or more workers in NYC.

**Covered/Not Covered Employees**

<p><b>Covered</b> All employees who work at a retail business store in NYC. See Covered Employers section.</p>	<p><b>Not Covered</b> Employees covered by certain collective bargaining agreements.</p>
--	--

**Overview of Employee Rights**

<p> 72 hours' (3 days') advance notice of work schedule</p> <p> No on-call shifts</p> <p> No call-in shifts within 72 hours of the start of the shift</p>	<p> No shift additions with less than 72 hours' notice unless worker consents</p> <p> No shift cancellations with less than 72 hours' notice</p>
--	--

**Notice of Rights**  
Employers must post the notice "YOU HAVE A RIGHT TO A PREDICTABLE WORK SCHEDULE" where employees can easily see it at each NYC workplace.  
Employers must post the notice in English and in any language that is the primary language of at least 5 percent of the workers at a workplace if available on the DCA website [nyc.gov/dca](http://nyc.gov/dca).

**Recordkeeping**  
Employers must retain records of:

- Worker hours each week
- Each worker's shifts worked, including date, time, and location
- Workers' written consent to schedule changes when required
- Each written schedule provided to workers

Over >

Source: <https://www1.nyc.gov/site/dca/workers/workersrights/fastfood-retail-workers.page#faq>

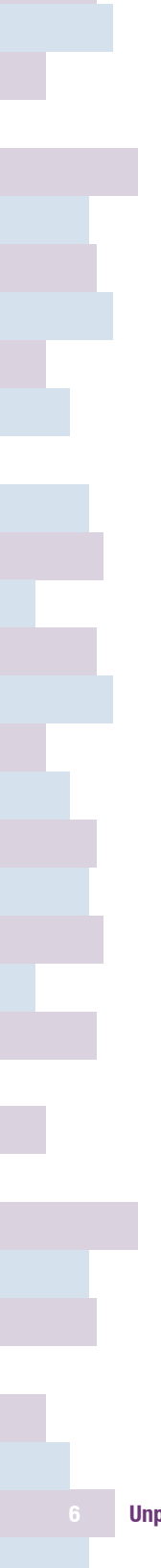
In November 2017, **Fair Workweek laws took effect in New York City**, including the following provisions aimed at providing fast food and retail workers with more predictable schedules:

**Retail workers at firms with at least 20 employees in NYC:**

- 72 hours' advance notice of work schedule.
- No on-call shifts.

**Fast food workers working for national chains:**

- At least 14 days' advance notice of work schedule and establishment of premium pay for last-minute schedule changes.
- Written worker consent plus \$100 for "clopening" shifts.
- Priority to existing workers to work newly available shifts before employer hires new employees.



**More than six out of ten retail workers and nine out of ten restaurant workers (including fast food workers) report that they know their work schedules less than two weeks out.**<sup>5,6</sup> However, we cannot conclude from these figures that Fair Workweek laws have failed to curb unpredictable hours since the city's scheduling legislation only covers a portion of the retail and restaurant workforce. Advance notice requirements only apply to larger retail establishments with 20 or more employees and to fast food workers at national chains, not to most of the restaurant industry. We take a closer look at the retail sector on page 9.

---

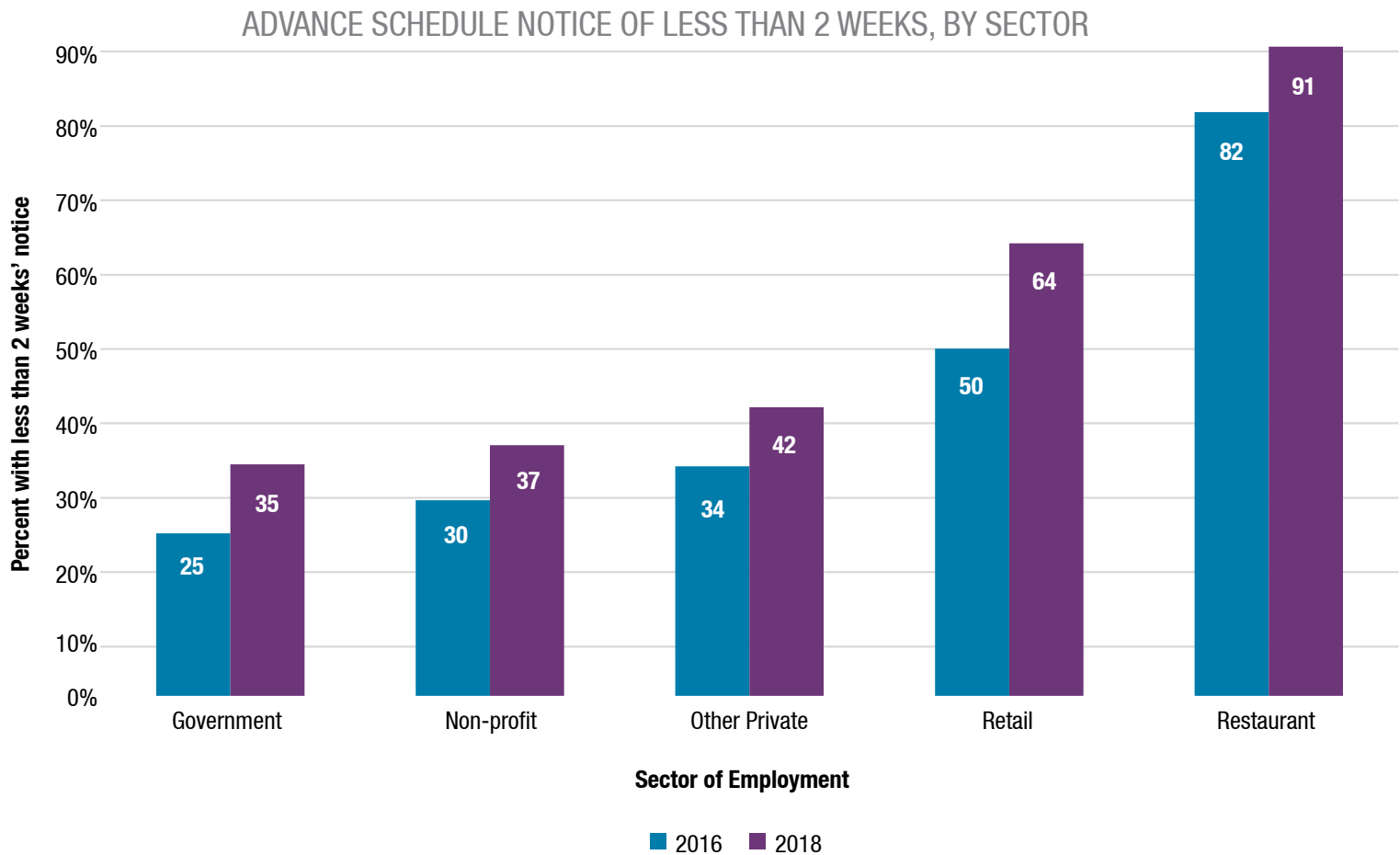
**5** Sector is based on self-identification by survey respondents. Fast food workers are identified in the 2018 survey and grouped with restaurant workers in the opposite chart, but are not identified in 2016; it is likely that fast food workers associated themselves with the restaurant sector in 2016, but this cannot be verified in the data.

**6** Roughly half of retail and fast food workers living in NYC aged 18 and up are covered by Fair Workweek protections, based on the 258 retail and fast food workers who responded to scheduling questions and are included in this chart.




## Restaurant and retail workers still collectively face the shortest notice—the majority of workers in these sectors know their schedules less than 2 weeks out.

[All Employed Respondents] **Q:** How far in advance do you usually know what days and hours you will need to work?



Note: The difference between retail/restaurant workers (combined) and other sectors in the share with less than two weeks' notice in 2018 is statistically significant at the .01 level.



Our 2018 Unheard Third survey includes an oversample of retail workers and self-reported information on workplace size. This allows us to approximately identify which survey respondents working in the retail sector are covered by Fair Workweek protections by looking at workers employed at New York City stores with at least 15 employees.<sup>7,8</sup> This group provides a baseline to document changes in the prevalence and impact of scheduling practices in future years. For 2018, **the data suggests that retail workers covered by Fair Workweek protections tend to have more advance notice than retail workers who aren't covered**, but it is too early for us to draw definitive conclusions about the impact of Fair Workweek laws.

---

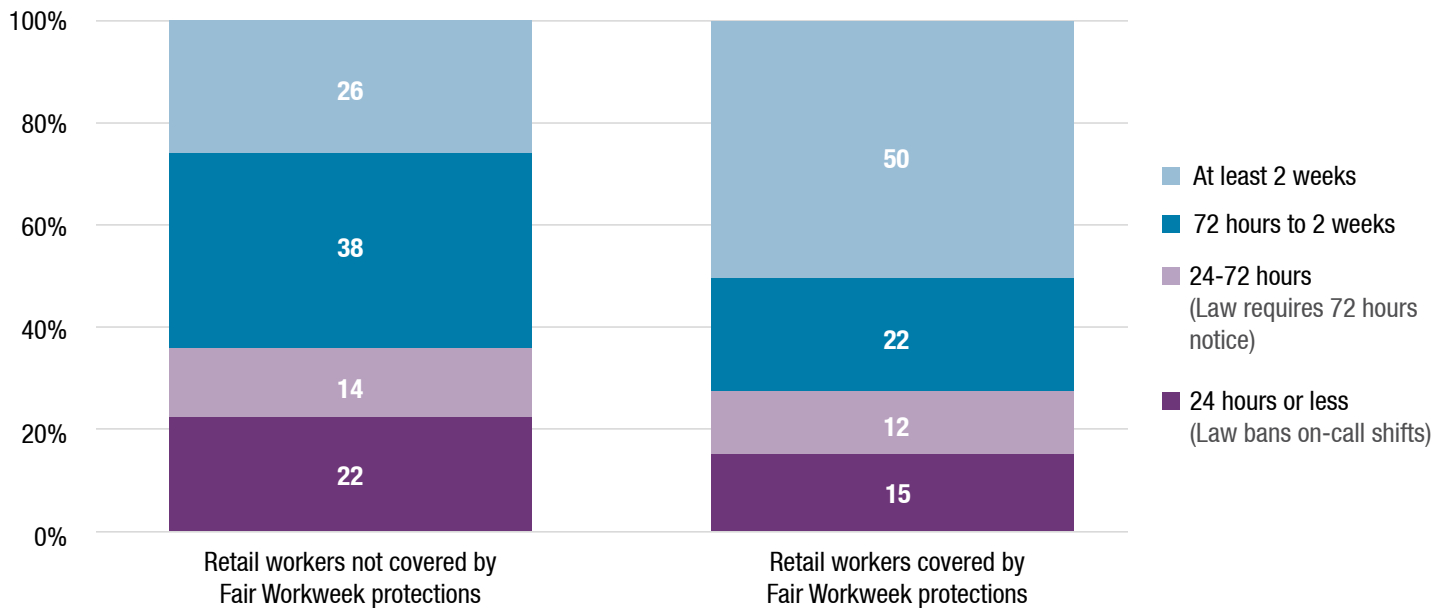
**7** Fair Workweek protections requiring 72 hours' advance notice and banning on-call shifts for retail workers cover establishments in New York City with at least 20 employees. The Unheard Third survey data allows us to approximate the group of covered retail workers by identifying respondents who reported working at retail establishments with at least 15 employees.


**8** Of the 258 respondents working in retail, 86 work at establishments in New York City with at least 15 workers. The difference between these groups in the share with at least two weeks' notice is statistically significant at the 0.05 level. Covered respondents are almost nine percentage points more likely to have at least 72 hours' advance notice, but due to the high margin of error for this small subsample, this difference was not statistically significant.

**Retail workers covered by Fair Workweek protections tend to have more advance notice than those at establishments not covered by the laws, but 15 percent of workers who are likely covered still report on-call schedules—even though this practice was banned.**

[2018, All Retail Workers] **Q:** How far in advance do you usually know what days and hours you will need to work?

ADVANCE NOTICE FOR RETAIL WORKERS THAT ARE NOT COVERED BY FAIR WORKWEEK LAWS VS. COVERED





Among workers employed in fast food and retail establishments in New York City who said they were aware of the scheduling laws, over half (54 percent) said the new laws were having a positive impact on them personally.<sup>9</sup>

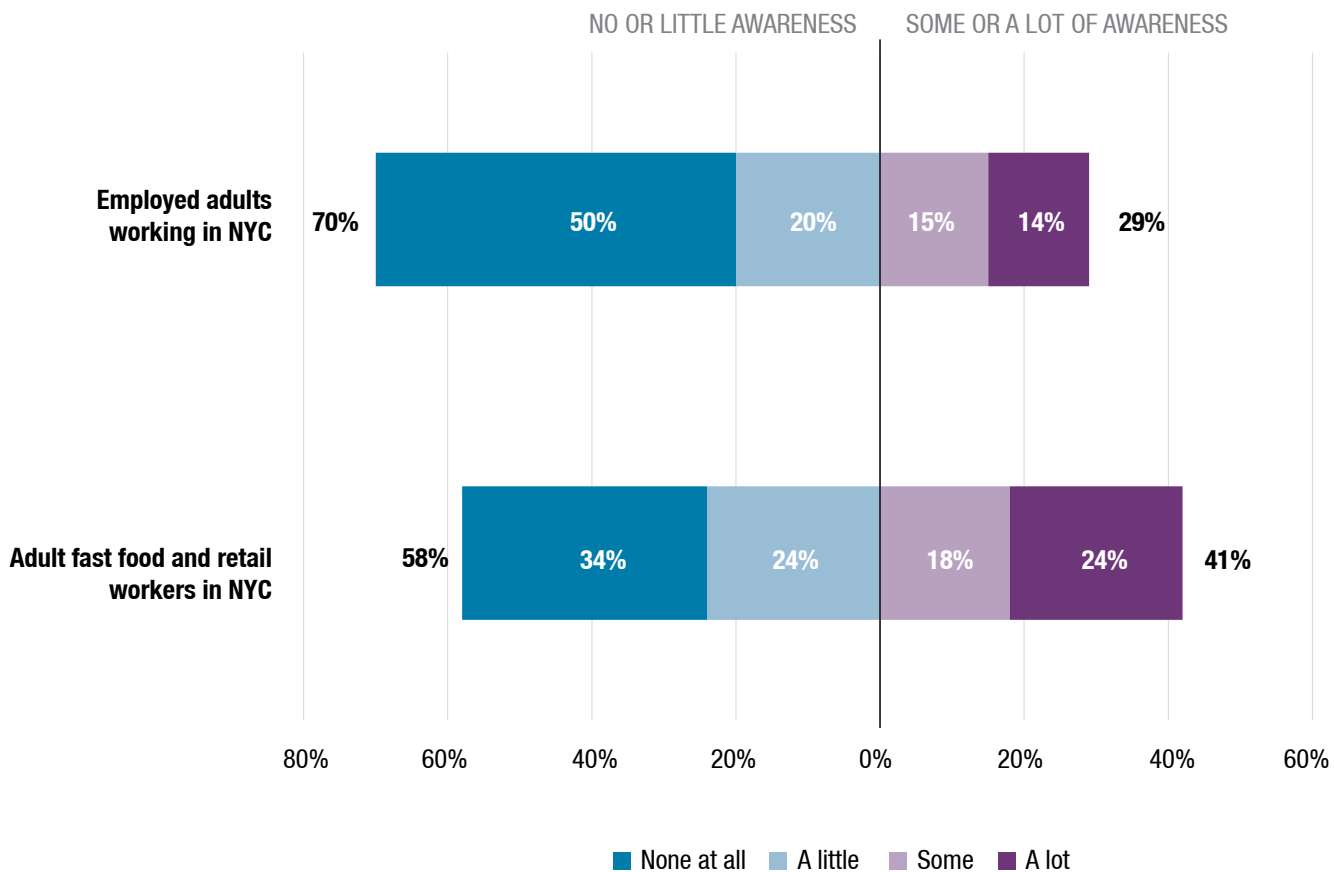
However, the majority of fast food and retail workers surveyed (58 percent) had heard little or nothing about Fair Workweek laws that had gone into effect eight months earlier. When worker protections like Fair Workweek laws are passed without adequate outreach to affected workers, it can blunt the impact of the law. Enforcement actions by the city are triggered by worker complaints, **but workers can't complain when their scheduling rights are violated if they aren't aware of these rights.** Although Fair Workweek laws expressly prohibit employer retaliation, vulnerable workers may still be reluctant to lodge complaints because of fear of reprisal.

---


<sup>9</sup> Twenty percent said the scheduling laws were having no impact on them personally, and 19 percent cited a negative impact. The figures reported are for all respondents (18 and up) who report working at fast food and retail establishments in New York City.

**At the time of our survey, roughly 8 months after Fair Workweek laws took effect in November 2017, almost 6 out of 10 retail and fast food workers had little to no awareness of these protections.**

[2018] **Q:** How much have you heard about a new law in New York City that protects fast food and retail workers from unpredictable scheduling practices like on-call shifts and short-notice scheduling changes: a lot, some, a little, or none at all?



Note: The response shares don't add up to 100% because of a small number of respondents who said "don't know" or didn't answer the question.



Another important dimension of unpredictable scheduling is whether an employee's hours fluctuate significantly from week to week. Workers depend on stable earnings to pay their bills; if you're living paycheck to paycheck and your hours unexpectedly drop from one week to the next, paying your rent on time can become a daunting task.

**Low-income workers are not only more likely to face fluctuating hours, but also have a harder time making up for the shortfall because they tend to have very little savings.<sup>10</sup>** Problems are compounded by erratic schedules that make it hard for workers to supplement their hours with a second job.

In 2018, workers living below the federal poverty level are three times as likely as high-income workers to report having fluctuating hours; they are also nearly four times as likely to have hours that change a great deal from week to week.<sup>11,12</sup>

---

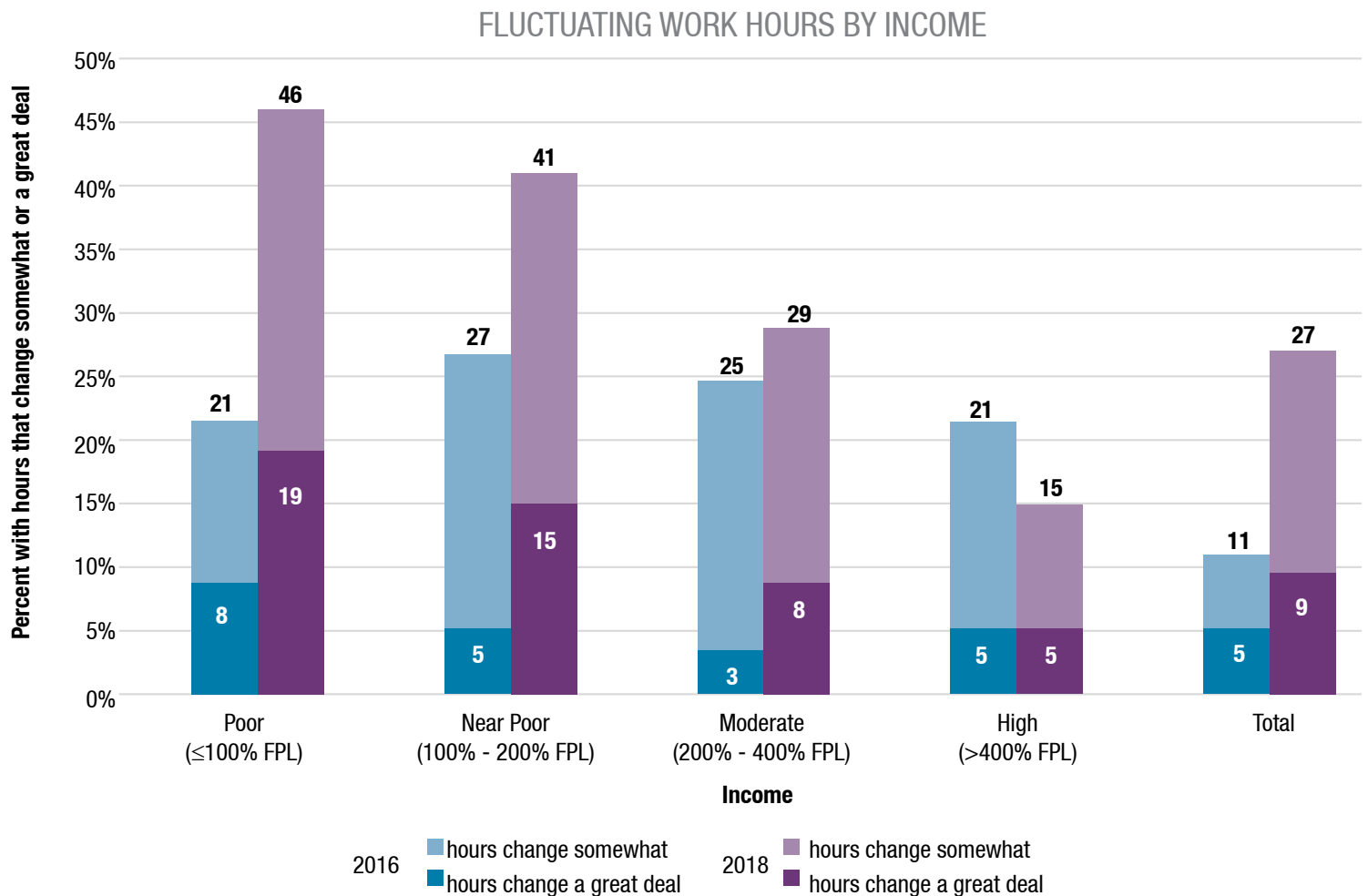
**10** Nearly half (47.3%) of low-income workers in our survey reported having less than \$500 in savings.


**11** The two percent of respondents in each year who answered “don't know” to the question on fluctuating hours are excluded from the chart on the opposite page.

**12** These differences are both statistically significant at the 0.01 level.

**In addition to limited advance notice, low-income workers also face increasing instability in the number of hours they can expect to work each week: more than 40 percent of low-income workers said their hours change somewhat or a great deal from week to week.**

[All Employed Respondents] **Q:** Do the number of hours your employer needs you to work change a great deal from week to week, somewhat from week to week, or stay about the same?





**Fluctuating hours are most common in the restaurant and retail industries**, which disproportionately employ low-income workers (because of low wages and less than full-time hours).<sup>13,14</sup> According to the 2017 American Community Survey, more than 40 percent of workers at restaurant/food service establishments and 30 percent of workers at retail establishments in New York City have incomes below 200 percent of the federal poverty level, compared to only 16 percent in other sectors.

---

**13** Sector is based on self-identification by survey respondents. Fast food workers are identified in the 2018 survey and grouped with restaurant workers in the opposite chart, but are not identified in 2016; it is likely that fast food workers associated themselves with the restaurant sector in 2016, but this cannot be verified in the data.

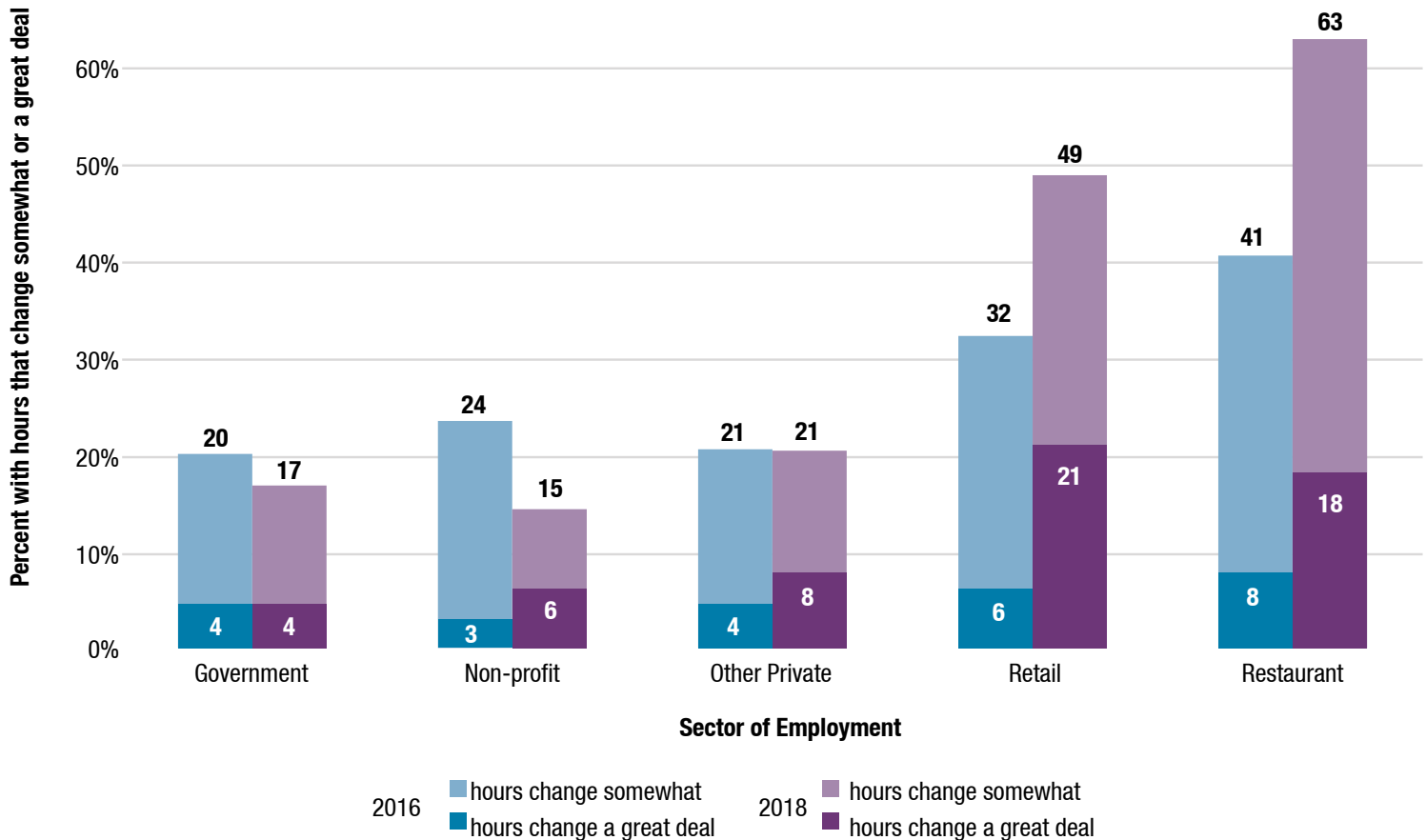
**14** The difference between retail/restaurant workers (combined) and other sectors in the share with fluctuating hours is statistically significant at the 0.01 level

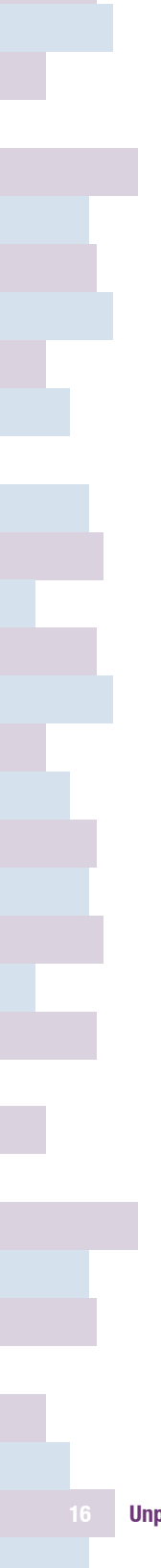


**Restaurant and retail workers are increasingly likely to have work hours that fluctuate from week-to-week. Workers in these sectors are more than twice as likely to have fluctuating hours as workers in other sectors.**

[All Employed Respondents] **Q:** Do the number of hours your employer needs you to work change a great deal from week to week, somewhat from week to week, or stay about the same?

FLUCTUATING WORK HOURS BY SECTOR





**Low-income workers with less than two weeks' advance notice are more likely to face multiple adverse employer practices (fluctuating hours, late pay, and insufficient hours).**

Full-time low-income workers are less likely to have paid leave and employer-provided health insurance than full-time, low-income workers with at least two weeks' notice. They also lag in comparison to full-time, moderate- and higher-income workers with less than two weeks' notice.

These gaps cannot be explained away by the more onerous scheduling and limited benefits associated with part-time work, since they persist among full-time workers. Note that the small share of respondents who say they receive paid family leave from their employer may, in part, reflect low awareness of the new state law that went into effect January 2018.

**Workers with short notice are more likely to be in jobs with fluctuating hours, late pay, insufficient hours, and few basic benefits like paid leave and health insurance.**

2018, Employed Respondents	Low-income ( $\leq 200\%$ FPL)		Moderate-high income ( $> 200\%$ FPL)	
<b>PAY &amp; HOURS</b>	< 2 weeks' notice (n=355)	$\geq 2$ weeks (n=189)	< 2 weeks' notice (n=160)	$\geq 2$ weeks (n=215)
Hours that change from week to week	56%***	16%	34%***	11%
Not always paid on time	27%	20%	21%***	7%
Would like to be working more hours (part-time workers only) <sup>†</sup>	64%	51%	n/a <sup>†</sup>	n/a <sup>†</sup>
2018, Full-Time Workers Only	Low-income ( $\leq 200\%$ FPL)		Moderate-high income ( $> 200\%$ FPL)	
<b>BENEFITS</b>	< 2 weeks' notice (n=184)	$\geq 2$ weeks (n=131)	< 2 weeks' notice (n=118)	$\geq 2$ weeks (n=188)
Paid sick leave	34%***	59%	53%***	85%
Paid vacation	40%*	56%	48%***	87%
Paid family leave	24%*	36%	29%***	48%
Health insurance (for yourself)	31%	42%	52%***	84%

\*\*\* Denotes a statistically significant difference between individuals with less two weeks' notice and at least notice at the 0.01 level, \* at the 0.10 level.

<sup>†</sup> Not available due to insufficient sample size.

## CONCLUSION

The recent wave of fair scheduling laws has been trumpeted by advocates adding up the numbers of workers covered by each new jurisdiction. But very little research has been done to look beyond the numbers of workers covered to see how many are actually benefiting. The early evidence presented here suggests a somewhat muted impact of Fair Workweek laws in New York City. This conclusion should be interpreted cautiously, however, because awareness of these newly implemented laws is still relatively low, and because of limited data on fast food workers.

The data does make clear that unpredictable scheduling remains a problem for many workers—including but not limited to fast food and retail workers who were targeted for protection by Fair Workweek laws. This highlights the need for stronger protections that reach all low-wage workers, not just fast food and retail workers, as well as improved outreach so that retail and fast food workers covered by Fair Workweek protections are aware of their scheduling rights.

The city and state should coordinate their efforts to establish and enforce worker protections that require employers to compensate workers for unplanned schedule changes on short notice. Coordinated regulation is critical for two reasons. First, one set of regulations shouldn't preempt others that provide stronger worker protections. And second, coordination is necessary to maintain a simple and transparent set of laws and regulations that allows employers who follow the law to thrive.

**This highlights the need for stronger protections that reach all low-wage workers, not just fast food and retail workers.**

---

## Methodology

This report analyzes data from The Unheard Third, an annual scientific survey that tracks the hardships of New York City's low-income population and their views on what would help them get ahead. The Unheard Third also surveys middle- and higher-income New Yorkers to see how their experiences and views compare to those of low-income residents, and to provide a representative sample of all New York residents ages 18 and up.

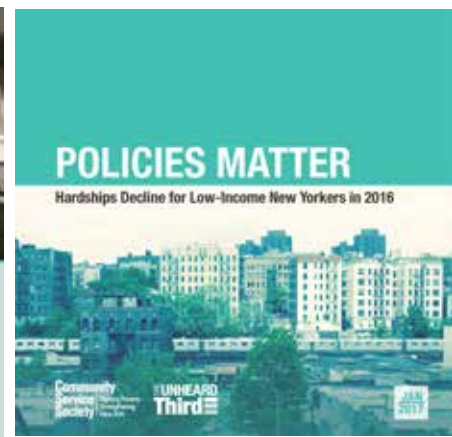
Low-income residents are defined as those with household incomes at or below 200% of the federal poverty level. This includes the poor and the near-poor between 100% and 200% of poverty. In 2018, the federal poverty guideline for a family of four was \$25,100.

The Community Service Society designed this survey in collaboration with Lake Research Partners, who administered the survey by phone using professional interviewers. The 2018 survey was conducted from July 11 to August 13, 2018, reaching a total of 1,775 New York City residents, ages 18 and up; the 2016 survey was conducted from July 5th to August 10th, 2016, reaching 1,717 adult residents. Both years include an oversample of low-income residents conducted by cell phones, and an additional oversample of 50 low-income retail workers. The data were weighted by income levels, sex, age, race, borough, party identification, and education level in order to ensure that it is broadly representative. Interviews were conducted in English, Spanish, and Chinese.

The scope for sampling error depends on both the total number of respondents and the share responding to a particular question. The margin of error for the entire low-income component is 2.9 percentage points for 2018 and 3.0 for 2016.

## Related Publications

Available at [www.cssny.org/publications](http://www.cssny.org/publications)





**The Community Service Society of New York (CSS)** is an informed, independent, and unwavering voice for positive action representing low-income New Yorkers. CSS addresses the root causes of economic disparity through research, advocacy, and innovative program models that strengthen and benefit all New Yorkers.

#### **Executive Officers**

##### **President and CEO**

David R. Jones, Esq.

##### **Executive Vice President and COO**

Steven L. Krause

#### **2018-2019 Board of Trustees**

Deborah M. Sale

##### **Chairperson**

Nicholas A. Gravante, Jr., Esq.

##### **Vice Chairperson**

Ralph da Costa Nunez, Ph.D.

##### **Treasurer**

Micah C. Lasher

##### **Secretary**

Terry Agriss

Alexander N. Barrett

Karen Y. Bitar, Esq.

Judy Chambers

Sylvia E. Di Pietro, Esq.

Richard W. Eaddy

Florence H. Frucher

Patricia Glazer

Honorable Betsy Gotbaum

Khaled Haram

Joseph J. Haslip

Michael Horodniceanu, Ph.D.

Magda Jimenez Train, Esq.

Khary Lazarre-White, Esq.

Mark E. Lieberman

Rosalie Margolis, Esq.

Robert O. McCabe

Joyce L. Miller

Geoffrey Newman

Carol L. O'Neale

Reagan Kelley Orillac

David J. Pollak

Margarita Rosa, Esq.

Donald W. Savelson, Esq.

Marla Eisland Sprie, Esq.

Ken Sunshine

Phyllis Taylor, Esq.

Jeffery J. Weaver

Jerry Webman

Abby M. Wenzel, Esq.

Mark A. Willis

#### **Honorary Life Trustees**

Stephen R. Aiello, Ph.D.

Honorable David N. Dinkins

Marian S. Heiskell



**Community  
Service  
Society** | Fighting Poverty  
Strengthening  
New York

633 Third Ave, 10th FL  
New York, NY 10017  
PH 212.254.8900  
[www.cssny.org](http://www.cssny.org)