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INTRODUCTION

America has long prided itself on being a nation of mobility. A nation where if you just work hard enough, you can and will get ahead.<sup>1</sup> Indeed, many Americans hold this Horatio Algeresque self-image dear,<sup>2</sup> and public policy is often formed based on the idea that work is the ticket to upward economic mobility.<sup>3</sup>

How mothers, and particularly poor single mothers, fit into this legend has evolved over time. For many years, there was an exception to the emphasis on work for woman who were raising young children. Indeed, when the first cash welfare program was created in 1935 (as Aid to Dependent Children (ADC)), it was sold as a federal solution to allow poor single mothers to take care of their children full-time, rather than feel pressured to work.<sup>4</sup> Before this federal program, charities and then states ran Mothers' Pension programs that were designed to help these mothers so that they could raise their children.<sup>5</sup>

Over time, however, a confluence of factors involving race, class, and a changing economy meant that support for ADC (later renamed Aid to Dependent

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1. John Swansburg, *The Self-Made Man*, SLATE (Sept. 29, 2014), [http://www.slate.com/articles/news\\_and\\_politics/history/2014/09/the\\_self\\_made\\_man\\_history\\_of\\_a\\_myth\\_from\\_ben\\_franklin\\_to\\_andrew\\_carnegie.html](http://www.slate.com/articles/news_and_politics/history/2014/09/the_self_made_man_history_of_a_myth_from_ben_franklin_to_andrew_carnegie.html).

2. Roughly half of all Americans believe that people who are poor are poor because they do not work hard enough. *Emerging and Developing Countries Much More Optimistic than Rich Countries about the Future*, PEW RESEARCH CTR. (Oct. 9, 2014), <https://www.pewresearch.org/global/2014/10/09/emerging-and-developing-economies-much-more-optimistic-than-rich-countries-about-the-future/> ("Fifty-seven percent of Americans *disagree* with the statement 'Success in life is pretty much determined by forces outside our control,' a considerably higher percentage than the global median of 38%."). See also Roberto A. Ferdman, *One in Four Americans Think Poor People Don't Work Hard Enough*, WASH. POST (Oct. 9, 2014), <https://www.washingtonpost.com/news/wonk/wp/2014/10/09/one-in-four-americans-think-poor-people-dont-work-hard-enough/>.

3. See Anne L. Alstott, *The Earned Income Tax Credit and the Limitations of Tax-Based Welfare Reform*, 108 HARV. L. REV. 533, 538–39 (1995) ("In the current political climate, then, work and responsibility are 'in' and traditional welfare is 'out.'"); Vicki Lens, *Public Voices and Public Policy: Changing the Societal Discourse on "Welfare,"* 29 J. SOC. & SOC. WELFARE 137, 144–46 (2002) (describing how the use of certain language, such as "welfare" and "dependency" invoke images of laziness and reinforce previously held beliefs regarding poverty and people in poverty).

4. GWENDOLYN MINK, WELFARE'S END 1 (1998).

5. See KATHRYN J. EDIN & H. LUKE SHAEFER, \$2.00 A DAY: LIVING ON ALMOST NOTHING IN AMERICA 11 (2015) (explaining that "welfare's birth" began with many states' adoption of "mother's aid" programs).

Families and Children—(AFDC)) waned.<sup>6</sup> By the mid-1970s, President Ronald Reagan made welfare reform a major campaign issue.<sup>7</sup> He portrayed mothers on welfare as crooks of a sort, sitting around eating lobster, driving fancy cars, and spending money on the backs of tax payers while not having to work.<sup>8</sup> Indeed, he “brought the image of the infamous, though disproven, welfare queen into the American consciousness.”<sup>9</sup>

When Reagan became President, he was not, ultimately, successful in making major changes to the cash welfare system, despite his calls for significant reform.<sup>10</sup> However, his campaign against welfare was not lost, and it surfaced repeatedly before welfare was finally reformed under President Bill Clinton in 1996.<sup>11</sup> One of the major changes to the cash welfare system in 1996 was that it was transformed from an entitlement program to a program with time limits and work requirements. Clinton had campaigned on welfare reform, and when it was finally passed, he said, “Today the Congress will vote on legislation that gives us a chance . . . to transform a broken system that traps too many people in a cycle of dependence to one that emphasizes work and independence, to give people on welfare a chance to draw a paycheck, not a welfare check.”<sup>12</sup> More recently, the Trump administration has been promoting work requirements for a range of other public benefit programs such as Medicaid and the Supplemental Nutrition Assistance Program (SNAP) (formally known as food stamps).<sup>13</sup>

Clinton’s welfare reform program did indeed move scores of single mothers off of welfare and into the workforce. In 1993, 58 percent of low-income single mothers were employed, but this number rose to almost 75 percent by 2000.<sup>14</sup> As the great recession took hold, this number dropped off a bit,<sup>15</sup> but the majority of low-income single mothers continue to work.<sup>16</sup> My research, as well as that of others, has found that low-income single mothers generally *want* to work.<sup>17</sup> But for

6. For a more complete historical view on the transformation of welfare over time, see generally REBECCA M. BLANK, *IT TAKES A NATION: A NEW AGENDA TO FIGHTING POVERTY* 220–51 (1997) (describing in detail the story of welfare reform); Alstott, *supra* note 3, at 536–40; Lens, *supra* note 3, at 137–46 (discussing the politicized language that comprised the discourse on welfare reform).

7. EDIN & SHAEFER, *supra* note 5, at 15.

8. *Id.*

9. Sara Sternberg Greene, *The Bootstrap Trap*, 67 DUKE L.J. 233, 248 (2017).

10. EDIN & SHAEFER, *supra* note 5, at 17.

11. See MINK, *supra* note 4, at 43 (discussing how “[t]he decades-old welfare reform campaign culminated in 1966 with the repeal of the AFDC”).

12. President William J. Clinton, Remarks on Welfare Reform Legislation and an Exchange with Reporters (July 31, 1996), in 32 WEEKLY COMP. PRES. DOC. 1379, 1379 (1996).

13. Brittany De Lea, *Trump 2020 Budget Calls for Stricter Work Requirements, Welfare Reform*, FOX BUS. (Mar. 11, 2019), <https://www.foxbusiness.com/politics/trump-2020-budget-calls-for-stricter-work-requirements-for-welfare-programs>.

14. EDIN & SHAEFER, *supra* note 5, at 29–30.

15. *Id.* at 29.

16. Amanda Freeman, *Single Moms and Welfare Woes: A Higher-Education Dilemma*, ATLANTIC (AUG. 18 2015), <https://www.theatlantic.com/education/archive/2015/08/why-single-moms-struggle-with-college/401582/> (“Although most poor, single mothers today are employed, many of them are working in low-wage jobs, often in positions without benefits.”).

17. See KATHRYN EDIN & LAURA LEIN, MAKING ENDS MEET: HOW SINGLE MOTHERS SURVIVE

many low-income working Americans, particularly single mothers, structural barriers mean that despite working, their work does not allow them to escape poverty.<sup>18</sup> The American cultural ideal that if one just works hard enough, one can succeed, is an unattainable myth to most of these low-income working mothers. Indeed, study after study shows that for those living and working in poverty, the chances of economic mobility are slim.<sup>19</sup> The vast majority of the working poor will remain poor or near poor—crossing socioeconomic lines is merely a pipedream.<sup>20</sup>

Many scholars have examined the lack of opportunity for upward mobility in the United States, focusing on a range of factors varying from the neighborhood, to the minimum wage, to the decline of unions.<sup>21</sup> All of these factors are important. In this Essay, however, I focus on two workplace issues that have garnered relatively little attention, but are significant barriers to upward mobility, particularly for low-income, single, working mothers. These barriers do not just prevent upward mobility for these mothers, but in many cases can result in swift downward mobility and job instability or loss.

I first discuss the problem of non-standard work hours, defined as work times outside of Monday through Friday, 8 am through 6 pm. The number of jobs requiring non-standard hours is increasing,<sup>22</sup> and the jobs that require non-standard hours are skewed toward low-wage “pink collar” jobs occupied by poor women.<sup>23</sup> Second, I discuss the problem of so-called “on-call scheduling,” where

WELFARE AND LOW WAGE WORK 76–78 (1997) (finding that the majority of mothers they studied wanted to work and had plans to leave welfare as soon as they felt they were able); Sara Sternberg Greene, *The Broken Safety Net: A Study of Earned Income Tax Credit Recipients and a Proposal for Repair*, 88 NYU L. REV. 515, 539–541 (2013) (finding that EITC recipients liked working and did not want to go back to receiving welfare).

18. See generally Matthew Desmond, *Americans Want to Believe Jobs Are the Solution to Poverty. They're Not*. N.Y. TIMES MAG. (Sept. 11, 2018), <https://www.nytimes.com/2018/09/11/magazine/americans-jobs-poverty-homeless.html>; EDIN & SHAEFER, *supra* note 5.

19. See, e.g., Todd Gabe et al., FED. RESERVE BANK OF N.Y., *Can Low-Wage Workers Find Better Jobs?* (2018), [https://www.newyorkfed.org/medialibrary/media/research/staff\\_reports/sr846.pdf](https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr846.pdf).

20. See generally Michael Hout, *Americans' Occupational Status Reflects the Status of Both of Their Parents*, 115 PNAS 9527 (2018); Desmond, *supra* note 18.

21. See, e.g., Peter Bergman et al., *Creating Moves to Opportunity: Experimental Evidence on Barriers to Neighborhood Choice* (Nat'l Bureau of Econ. Research, Working Paper No. 26164, 2019), [https://opportunityinsights.org/wp-content/uploads/2019/08/cmto\\_paper.pdf](https://opportunityinsights.org/wp-content/uploads/2019/08/cmto_paper.pdf); Desmond, *supra* note 18; Hout, *supra* note 20.

22. ADITI SEN & CONNIE RAZA, CTR. FOR POPULAR DEMOCRACY, HOUR BY HOUR: WOMEN IN TODAY'S WORKWEEK 1–5 (2015), [https://populardemocracy.org/sites/default/files/HourbyHour\\_final.pdf](https://populardemocracy.org/sites/default/files/HourbyHour_final.pdf); CTR. FOR LAW & SOC. POL'Y ET AL., TACKLING UNSTABLE AND UNPREDICTABLE WORK SCHEDULES 1–3 (2014), <https://www.clasp.org/sites/default/files/public/resources-and-publications/publication-1/Tackling-Unstable-and-Unpredictable-Work-Schedules-3-7-2014-FINAL-1.pdf>.

23. See MARIA E. ENCHAUTEGUI, NONSTANDARD WORK SCHEDULES AND THE WELL-BEING OF LOW-INCOME FAMILIES 6 (2013), <https://www.urban.org/sites/default/files/publication/32696/412877-Nonstandard-Work-Schedules-and-the-Well-being-of-Low-Income-Families.PDF> (discussing the commonality of nonstandard hours in the U.S. workforce, particularly among low-wage workers); Charlotte Alexander et al., *Stabilizing Low Wage Work*, 50 HARV. C.R.-C.L. L. REV. 1, 8 (2015) (discussing the prevalence of nonstandard hours in the workforce, especially in the service industry); Julia Henly et al., *Nonstandard Work Schedules: Employer- and Employee-Driven Flexibility in Retail Jobs*, 80 SOC. SERV.

workers are not told their work schedules more than a week in advance and their hours vary both in number and timing week-to-week. Like non-standard hours, many of the jobs that require on-call scheduling are the very low-wage jobs that poor single mothers tend to occupy.<sup>24</sup> I connect these labor market realities to the problem of childcare for mothers by examining the existing social safety net for parents working these types of jobs. I show that the safety net is almost non-existent when it comes to childcare specific to nonstandard and varying hours. Thus, mothers often find themselves in a position where they are forced to put their families at risk in order to be able to put food on the table or pay the next rent check.

### I. WORK BARRIERS

Today, roughly 41.7 million workers, or nearly a third of the American workforce earn less than \$12.00 per hour.<sup>25</sup> Images of a teenager working as a camp counselor during the summer or working at a pizza joint after school may come to mind. However, of the two-thirds of low-wage workers who are women, 70 percent are at least twenty-five years old and 80 percent have a high school degree or higher.<sup>26</sup> More than six million low wage workers are parents; three-quarters of these parents are mothers, half of whom are single mothers.<sup>27</sup>

Many of these workers fall into the category of the working poor—defined by the Bureau of Labor Statistics as someone below the poverty line who spent at least half the year either working or looking for employment.<sup>28</sup> In 2016, roughly 7.6 million Americans were part of the working poor, and the majority of them were women.<sup>29</sup> And while single mother headed households make up less than a quarter of all working families, 40 percent of low-income working families are headed by a single mother.<sup>30</sup> As I discuss below, for these single mothers, non-standard hours and on-call, variable work hours are common, yet create significant barriers to work stability and the potential for upward mobility.

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REV. 609, 610 (2006) (“The growth of the U.S. service economy has fueled an increasing demand for evening, weekend, and variable-hour workers . . .”).

24. On-call scheduling is also sometimes referred to as Just in Time scheduling, but the concepts are essentially the same. NANCY CAUTHEN, DEMOS, SCHEDULING HOURLY WORKERS 3–5 (2011), [https://www.demos.org/sites/default/files/publications/Scheduling\\_Hourly\\_Workers\\_Demos.pdf](https://www.demos.org/sites/default/files/publications/Scheduling_Hourly_Workers_Demos.pdf).

25. Desmond, *supra* note 18.

26. JULIE VOGTMAN & KAREN SCHULMAN, SET UP TO FAIL: WHEN LOW WAGE WORK JEOPARDIZES PARENTS’ AND CHILDREN’S SUCCESS 3 (2016), <https://nwlc.org/wp-content/uploads/2016/01/FINAL-Set-Up-To-Fail-When-Low-Wage-Work-Jeopardizes-Parents%E2%80%99-and-Children%E2%80%99s-Success.pdf>.

27. *Id.*

28. Desmond, *supra* note 18.

29. *Id.*

30. Bryce Covert, *Working Single Mothers Disproportionately Likely to be Poor*, THINKPROGRESS (Feb. 19, 2014, 2:02 PM), <https://thinkprogress.org/working-single-mothers-are-disproportionately-likely-to-be-poor-128d1967b795/>.

## A. Non-Standard Hours

Much of the research and scholarly writing about work and economic mobility focuses on the quantity of work available, worker compensation, and barriers to employment.<sup>31</sup> Few scholars have focused on the specifics of which hours of work are available, and how this might contribute to job loss and other problems for low-wage workers. Yet many low-income single mothers are required to work non-standard hours, defined as times outside of Monday through Friday 8 am through 6 pm.<sup>32</sup> Indeed, 43 percent of children in the United States have at least one parent who works non-standard hours.<sup>33</sup> This translates to over thirty-one million children,<sup>34</sup> and at least 6.7 million of these children live with a single parent.<sup>35</sup> And low-income workers are disproportionately likely to be required to work non-standard hours.<sup>36</sup> While 20 percent of all Americans work non-standard hours,<sup>37</sup> one survey of low-income working parents found that a full two-thirds indicated that they were required to work non-standard hours,<sup>38</sup> and in another smaller study, 90 percent of parents interviewed reported working non-standard hours.<sup>39</sup> Further, the number of workers required to work these non-standard hours is increasing.<sup>40</sup>

For single mothers working non-standard hours, finding childcare that is available during those hours can be difficult. Based on the 2012 National Survey of Early Care and Education, only an estimated 8 percent of center-based providers and 34 percent of listed home-based providers offered care during nonstandard hours.<sup>41</sup> We can see how these limits in childcare availability affect working mothers through insights of a qualitative study of low-income working mothers.<sup>42</sup> Mothers in this study described how trying to juggle finding childcare with maintaining work frequently puts them on the edge of job loss. One said:

My work is just hanging on a thread because of my work schedule is not consistent and because of that I have sometimes failed to find someone to watch the children.

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31. ENCHAUTEGUI, *supra* note 23, at 1.

32. DIONNE DOBBINS ET AL., CHILD CARE AWARE OF AMERICA, IT'S ABOUT TIME! 2 (2019), <https://cdn2.hubspot.net/hubfs/3957809/NSH%20Report%202019.pdf>.

33. *Id.* at 4.

34. *Id.*

35. *Id.* at 7.

36. ENCHAUTEGUI, *supra* note 23, at 6.

37. *Id.*; DOBBINS ET AL., *supra* note 32, at 5.

38. Heather Sandstrom, *Why Parents' Nonstandard Work Schedules Matter for Children: Is It the Hours or the Instability?*, URB. INST.: URB. WIRE (Aug. 31, 2015) <https://www.urban.org/urban-wire/why-parents-nonstandard-work-schedules-matter-children-it-hours-or-instability>.

39. Proscovia Ojambo, *Childcare Challenges: Impact on Low-Income Working Single Mothers in Minnesota; A Qualitative Study* 39 (2015) (unpublished manuscript) [https://sophia.stkate.edu/cgi/viewcontent.cgi?article=1502&context=msw\\_papers](https://sophia.stkate.edu/cgi/viewcontent.cgi?article=1502&context=msw_papers).

40. ENCHAUTEGUI, *supra* note 23, at 6.

41. For this study, non-standard hours were defined as after 7 pm on weekdays, overnight, or on the weekend. Gabrielle Rodriguez, *An Increasing Number of Parents Seek Child Care During Non-Standard Hours*, NAT'L WOMEN'S LAW CTR.: BLOG (Mar. 15, 2018), <https://nwlc.org/blog/an-increasing-number-of-parents-seek-child-care-during-non-standard-hours/>.

42. See generally Ojambo, *supra* note 39.

I have missed work several times due to the hardships of not being to find a babysitter at night. I cannot leave the children alone so when I do not go to work I don't get paid. I have been given a warning for missing and I know I will just end up being fired."<sup>43</sup>

Another respondent said, "I work the odd hours of the day and it is no fun. My children are little and so I must call to beg someone to watch them when I am working."<sup>44</sup> Some mothers are able to cobble together enough care to make non-standard hours work. But since so few licensed centers offer care during these non-standard hours, the care is often a combination of non-licensed care workers, family, and friends.<sup>45</sup> Research suggests that unlicensed child care situations tend to be lower quality than licensed child care facilities, yet single parents working non-standard hours often have no choice but to use non-licensed care. And cobbled together care is more likely to fall through than licensed, regulated care. When it does fall through, there is little hope of finding backup during these non-standard hours. Thus, many of these mothers are just one child care emergency away from losing their jobs. Even if their boss does not fire them due to child care emergencies, advancing upwardly in a job when last minute work cancellations are frequent may be difficult.

## B. On-Call and Variable Work Hours

Two other common aspects of many low-wage jobs are the lack notice workers receive as to their schedules and the high degree of variability of hours workers receive from week to week. Indeed, many low-wage workers are not told what hours and days they are needed to work until the very last minute. In one survey, 41 percent of low-wage workers reported being informed of their work schedule one week or less in advance.<sup>46</sup> Another survey of hourly workers in large retailers found similar results: 60 percent reported having less than two weeks' notice of their work schedule.<sup>47</sup> One working single mother whose job required inconsistent hours discussed these difficulties: "They can change our schedule up to two days in advance. So I can arrange my whole week of who's picking up and who's dropping off, and then Friday they are like, 'here is another whole new schedule.'"<sup>48</sup>

Perhaps even worse for single mothers are "on-call" work requirements. Through such arrangements, employers are shifting the risk of variable customer demand from themselves to their employees. On-call shifts mean that the worker must be available to work, but then finds out just before the shift if she is actually

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43. *Id.* at 39.

44. *Id.* at 36.

45. VOGTMAN & SCHULMAN, *supra* note 26, at 18.

46. S.J. LAMBERT ET AL., UNIV. OF CHI., EMP'T INSTABILITY, FAMILY WELL-BEING, & SOC. POL'Y NETWORK (EINet), PRECARIOUS WORK SCHEDULES AMONG EARLY-CAREER EMPLOYEES IN THE US: A NATIONAL SNAPSHOT 17 (2014).

47. Daniel Schneider & Kristen Harknet, Schedule Instability and Unpredictability and Worker and Family Health and Wellbeing 25 (Sept. 2016) (Washington Center for Equitable Growth Working Paper Series), <https://equitablegrowth.org/wp-content/uploads/2016/09/0926-Schneider-Harknett-WP.pdf>.

48. VOGTMAN & SCHULMAN, *supra* note 26, at 6.

needed. If the worker is not needed, she is not paid. And sometimes, the worker comes in to work and then is sent home if it is not busy (or if it is very busy she might be told she must extend her shift).<sup>49</sup> Studies suggest this is a common work arrangement for low-wage workers: In one study 60 percent of low wage workers reported having variable hours each week at work, and in another 75 percent reported fluctuations in the number of hours they worked per week over the last month. In the case of single parents, they must arrange for (and pay for) child care during these times because they *might* be needed at work. But then often they either do not have to go at all or are sent home early, often *losing* money because they are paying for care during times they are not working and not getting paid.

## II. CHILD CARE CHALLENGES

In many low-wage jobs, there are “no fault” attendance policies: any unplanned absence, no matter the reason, results in a sanction.<sup>50</sup> Too many sanctions can result in hours being cut or job loss.<sup>51</sup> Even if a parent is able to get a co-worker to cover her shift, the switch is often denied because it puts the other worker too close to 40 hours, in which case the company would have to pay overtime.<sup>52</sup> Yet the availability of childcare is extremely limited during non-standard hours. As mentioned above, only an estimated 8 percent of center-based providers and 34 percent of listed home-based providers provide care during nonstandard hours.<sup>53</sup> Another similar study found that only 26 percent of family child care and 9 percent of center-based care provided care during evenings or weekends.<sup>54</sup> In addition to the already minute options, parents who are low-income often have further constraints on their choice of childcare. Some of them do not have cars, for example, so they may have to limit their choice of child care arrangements to those they can walk to or take public transportation to.<sup>55</sup> Further, there may be language barriers preventing some parents from accessing information about various child care options.<sup>56</sup>

Since licensed childcare centers that are open during non-standard hours and/or allow varying hours are rare, mothers are left to piece together care from family and friends, non-licensed care situations, and sometimes their own older children.<sup>57</sup> Indeed, several studies have documented that parents who work non-standard hours are more likely to use a non-licensed friend, family, and neighbor care for their children.<sup>58</sup> Unlicensed home care situations are not regulated, and

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49. *Id.* at 7.

50. *Id.*

51. *Id.*

52. *Id.*

53. Rodriguez, *supra* note 41.

54. VOGTMAN & SCHULMAN, *supra* note 26, at 6.

55. *Id.* at 18.

56. *Id.*

57. *Id.*

58. JULIA R. HENLY ET AL., URB. INST., DETERMINANTS OF SUBSIDY STABILITY AND CHILD CARE CONTINUITY DETERMINANTS OF SUBSIDY STABILITY 6 (2015), <https://www.urban.org/sites/default/files/publication/65686/2000350-Determinants-of-Subsidy-Stability-and-Child-Care-Continuity.pdf>.

are, on average, less safe and of lower quality than licensed care centers.<sup>59</sup> Yet an abundance of research suggests that the quality of early child care is critical to children's development.<sup>60</sup> Thus, many parents working non-standard and varying hours are unable to access quality, safe care. It is simply unavailable.<sup>61</sup> Parents are forced to rely on largely unregulated care situations, putting their children at risk, yet they feel they have no alternatives. One mother said:

When my child was very little I took him to an in home childcare that . . . seemed to have some flexibility as far as hours are concerned but one problem with it was children were not stimulated enough. My child would be left in a crib by himself for long hours and one time I suspected my child was being abused.<sup>62</sup>

Cost is also an important factor for low-income working mothers. The main federal program designed to provide assistance with childcare for low-income families is the Child Care and Development Block Grant (CCDBG).<sup>63</sup> This program provides funding to states, in the form of block grants, to help families find affordable care. However, the CCDBG does not come close to meeting the needs of all eligible children—only one in seven eligible children receive assistance through CCDBG and related programs.<sup>64</sup> The number of children receiving help through the block grant program has in fact been declining for several years. In fiscal year 2016, only 1.37 million children per month received help through the program, the lowest enrollment in the program's history.<sup>65</sup>

Requirements to receive a subsidy vary by state, but they often regulate the number of hours a parent must work in order to access the subsidy. For parents who work unpredictable hours, they can quickly lose their subsidy if their hours dip below the minimum. Then, they must begin the arduous process of reapplying, and many may not apply at all because they know either the type of care open to them is not eligible for subsidies, or their hours will not meet the requirements. Indeed, one study found that only 20 percent of mothers who worked nonstandard hours received a subsidy at some point, compared to 32.9 percent of mothers who worked standard schedules.<sup>66</sup> Further, for the mothers

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59. Julia Wrigley & Joanna Dreby, *Fatalities and the Organization of Child Care in the United States, 1985-2003*, AM. SOC. REV. 738 (2005).

60. Elaine A. Donoghue & Council on Early Childhood, *Quality Early Education and Childcare from Birth to Kindergarten*, 140 PEDIATRICS 2 (2017) (finding high quality care in the early years improves physical and cognitive outcomes for children and can result in enhanced school readiness and that children exposed to poor-quality environments "are more likely to have unmet socioemotional needs and be less prepared for school demands").

61. DOBBINS ET AL., *supra* note 32, at 8.

62. Ojambo, *supra* note 39 at 42.

63. REBECCA ULRICH ET AL., CLASP, *INEQUITABLE ACCESS TO CHILD CARE SUBSIDIES 2* (2019), [https://www.clasp.org/sites/default/files/publications/2019/04/2019\\_inequitableaccess.pdf](https://www.clasp.org/sites/default/files/publications/2019/04/2019_inequitableaccess.pdf).

64. LINDA GIANNARELLI ET AL., URBAN INST., *WHAT IF WE EXPANDED CHILD CARE SUBSIDIES? 2* (2019), [https://www.urban.org/sites/default/files/publication/100284/what\\_if\\_we\\_expanded\\_child\\_care\\_subsidies\\_6.pdf](https://www.urban.org/sites/default/files/publication/100284/what_if_we_expanded_child_care_subsidies_6.pdf).

65. ULRICH ET AL., *supra* note 63, at 3.

66. ANGELA RACHIDI, *MOTHERS AT WORK: NONSTANDARD-HOUR WORK SCHEDULES AND CHILDCARE FOR LOW-INCOME FAMILIES 6* (2018), <https://www.aei.org/research-products/report/mothers-at-work-nonstandard-hour-work-schedules-and-childcare-for-low-income-families/>.



who work non-standard and unexpected hours and do receive subsidies, research shows that they have higher rates of exiting subsidy programs than parents who worked standard hours.<sup>67</sup> This is not surprising given the instability of many of these jobs. Yet without a subsidy, the choices are very limited, and parents struggle knowing they are putting their children at risk in care settings that are low quality. One mother bemoaned:

There is no reliability here, because the childcare setting is unregulated, my children are exposed to all sorts of unhealthy conditions such as smoking in the home, domestic violence and using language that is unfriendly to young children. There are also too many changes for the children and too many changes for me; children grow to become secure people later in life if there is stability in their lives. We know that and they know that; it is very unfortunate that anyone and especially a child have to go through all this!<sup>68</sup>

### III. WORKING TO SUCCEED?

One way to attack the problem of non-standard hours and on-call scheduling is through workplace regulation. Efforts in this domain have already begun. Indeed, eleven states and the District of Columbia have recently introduced fair scheduling bills. These laws vary considerably. In some states, these laws cover only very large employers, while in other states, they apply to employers with five or more workers.<sup>69</sup> Some states require a minimal number of hours of pay (one or two) when an employee is on call, and in other states half or more of the hours must be paid when an employer cancels or shortens an employee's shift.<sup>70</sup> In San Francisco, a "Retailer Workers Bill of Rights" was passed, requiring large retail and restaurant employers to provide their employees with their schedules at least two weeks in advance, and also compensate employees to some degree for schedule changes or on-call shifts.<sup>71</sup> In Oregon, as of 2017, employers must give employees an estimate of their median number of hours to be worked in a month, seven days' notice of their work schedules, some input into their schedule, and compensation for schedule changes.<sup>72</sup> In New York City, employers are required to give employees their work schedules at least fourteen days in advance, and if changes are made to those schedules in those two weeks, employees must be paid between \$10 and \$75 per change. Many other states and localities have or are passing similar laws.<sup>73</sup>

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67. HENLY ET AL., *supra* note 58, at XII.

68. Ojambo, *supra* note 39, at 39.

69. ALISON DICKSON ET AL., PROJECT FOR MIDDLE CLASS RENEWAL, SCHEDULING STABILITY: THE LANDSCAPE OF WORK SCHEDULES AND POTENTIAL GAINS FROM FAIRER WORKWEEKS IN ILLINOIS AND CHICAGO 32 (2018), <https://ler.illinois.edu/wp-content/uploads/2018/04/Scheduling-Stability-final-embedded-text.pdf>.

70. *Id.*

71. JULIE VOGTMAN ET AL., NAT'L WOMEN'S LAW CTR., SET UP TO FAIL: WHEN LOW WAGE WORK JEOPARDIZES PARENTS' AND CHILDREN'S SUCCESS 23 (2016), <https://nwlc.org/wp-content/uploads/2016/01/FINAL-Set-Up-To-Fail-When-Low-Wage-Work-Jeopardizes-Parents%E2%80%99-and-Children%E2%80%99s-Success.pdf>.

72. DOBBINS ET AL., *supra* note 32, at 9.

73. *Id.*

These laws and regulations will certainly improve conditions for working single mothers, but they do not change the fundamental problem that there is little licensed, quality childcare available at non-standard times and for variable schedules. An intervention aimed at childcare is needed. The timing is ripe—several prominent politicians and presidential candidates have proposed plans to increase affordable childcare.<sup>74</sup> Many of the plans focus on the need to provide care to a wider range of income levels given how expensive childcare is,<sup>75</sup> and several of the plans also focus on the quality of care available.<sup>76</sup> Some of the plans propose new state/federal partnership programs for childcare altogether, while others propose to expand child care tax credits to families, and yet others build on the existing CCDBG program.<sup>77</sup>

Few of the existing child care proposals directly address non-standard hours and unstable work schedules. However, in March of 2019 Senators Amy Klobuchar and Dan Sullivan introduced the Child Care Workforce and Facilities Act to “address the national shortage of affordable, quality child care, especially in rural communities.”<sup>78</sup> The plan would require the Department of Health and Human Services to provide grants to states that could be used in several different ways, including, for example, renovating existing child care facilities, expanding child care options in areas of need, and training caregivers.<sup>79</sup> Notably, the bill for this plan requires that applicants for the grants address the question of “how their projects would increase the availability and affordability of quality child care, including during nontraditional hours.”<sup>80</sup>

The reauthorization of the CCDBG also required states to describe how they would increase the supply and improve the quality of child care to several specific populations, including children who need care during non-standard hours.<sup>81</sup> However, states have been slow to implement the reauthorization changes, in part because the funding to do so is inadequate.<sup>82</sup> Indeed, only five states added,

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74. See, e.g., OFFICE OF SENATOR ELIZABETH WARREN, UNIVERSAL CHILD CARE AND EARLY LEARNING ACT (2019), [https://www.warren.senate.gov/imo/media/doc/Universal\\_Child\\_Care\\_Policy\\_Brief\\_2019.pdf](https://www.warren.senate.gov/imo/media/doc/Universal_Child_Care_Policy_Brief_2019.pdf); Anna North, *We Asked All the 2020 Democrats How They'd Fix Child Care. Here's What They Said*, VOX (July 5, 2019), <https://www.vox.com/2019/5/22/18302875/2020-election-democrats-child-care-kids-president>. See also GIANNARELLI ET AL., *supra* note 64, at 1.

75. For example, Elizabeth Warren's plan caps families' contribution to federally subsidized child care at 7 percent of income for all families. OFFICE OF SENATOR ELIZABETH WARREN, *supra* note 74, at 3.

76. North, *supra* note 74.

77. *Id.*

78. BRAINERD DISPATCH, PETERSON INTRODUCE BILLS TO ADDRESS NATIONAL CHILD CARE SHORTAGE (2019), <https://www.klobuchar.senate.gov/public/index.cfm/2019/3/klobuchar-peterson-introduce-bills-to-address-national-child-care-shortage>.

79. Childcare Workforce and Facilities Act of 2019, S. 605, 116th Cong. (2019); North, *supra* note 74.

80. DISPATCH, *supra* note 78.

81. NAT'L WOMEN'S LAW CTR., HELPING PARENTS IN LOW-WAGE JOBS ACCESS AFFORDABLE CHILD CARE 2 (2018), <https://nwlc.org/wp-content/uploads/2018/08/CCDBG-Reauthorization-and-Low-Wage-Workers.pdf>.

82. KAREN SCHULMAN, NAT'L WOMEN'S LAW CTR. THE CHILD CARE AND DEVELOPMENT BLOCK GRANT ACT OF 2014: UNEVEN STATE IMPLEMENTATION OF KEY POLICIES 1 (2017), <https://nwlc.org/wp-content/uploads/2017/09/NWLC-report-on-state-implementation-of-CCDBG-reauthorization.pdf>.

increased, or expanded care for specialized types of care, including non-standard hours.<sup>83</sup> Overall, these nods to the need to increase care during non-traditional hours and invitations to states to think through these challenges is certainly a start. However, specific plans and funding for such changes are lacking. More can certainly be done.

I suggest a two-pronged approach. First, there should be an aggressive policy at the federal level to increase incentives for high-quality, licensed centers that accept child care subsidies to provide care during non-standard hours and care for families who need care for varying schedules. A new program, administered by the states, should be created. The program should tie federal money to specific instructions and requirements that incentivize offering non-traditional care. The program could include tax incentives or cash grants to centers willing to increase (or maintain) the availability of care during non-standard hours. Further, the programs could pay (in full) for a certain number of full time slots, but then require the centers to hold those slots open for drop in care for families who need inconsistent care due to work schedules. The centers would be paid the full cost of those slots plus whatever money they receive from these families (or their subsidies) for the care they use. Thus, centers would receive double pay for the times when families use these slots, and would be guaranteed at least full pay for these slots during all operating hours.

Second, efforts should also be made to focus on unlicensed family care situations since so many mothers who work non-traditional hours and on call schedules rely on such care. Whether providers are family members, friends, or small in-home care providers, a program should be created to provide these caregivers with free (or perhaps even pay them to attend) trainings focused on safety and quality of care. Such providers could even be awarded financial incentives if they allow inspectors to come to their facilities (or home) to suggest safety and quality changes. States could also loosen requirements for care situations allowed to receive vouchers, particularly if caregivers agree to accept specific trainings. This, in turn, may make child care more affordable, more available, and of higher quality for single mothers working non-traditional schedules.

All of the potential programs I propose would require creative funding sources in order to be implemented. However, the long-term payoff would more than make-up for the costs of these programs. Such programs would likely lower the number of families headed by single mothers needing extensive support while the mother is out of work because they would allow more mothers to hold on to their jobs and/or accept jobs with non-traditional hours. Further, providing high-quality care to children in their early years has been shown to improve outcomes for children in school.<sup>84</sup> Providing such care would potentially reduce the need for costly measures aimed at helping children who are behind later in school because they were in low quality care during their early years.

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83- *Id.* at 2.

84. Elaine A. Donoghue & Council on Early Childhood, *supra* note 60, at 1.

## CONCLUSION

Americans want to believe that the United States is a land of opportunity. In fact, many do indeed believe that if you just work hard enough, you will get ahead. But for some groups, like single mothers, structural barriers persist such that many mothers are essentially working to fail. No amount of hard work will allow them to become upwardly mobile. For low-income single mothers who work, two important barriers to upward mobility are the increasing demand for them to work non-traditional hours and the demand for them to work on-call schedules. Currently, the safety net for these mothers is almost non-existent, and they are balancing on an incredibly narrow tightrope where one misstep can cause them to fall with little chance of an easy recover. But there is more than can be done, and through federal intervention, these mothers and their children can be given a chance. As we enter into a presidential election where for the first time child care has been a significant topic of debate and public interest, the time is ripe for change.