



## "Predictable Scheduling": An Undiscovered FLSA "Right"?

Insights

1.29.15

U.S. Wage and Hour Administrator David Weil reportedly has said that the Division is "looking very actively at" the question of whether workers should be legally entitled to "predictable scheduling". In recounting Dr. Weil's statements in a recent interview, *Daily Labor Report* characterized his remarks as having to do with whether an employee has an enforceable right to a predictable, stable work schedule or to some sort of advance notice of that schedule.

### **And The Source Of This "Right" Is . . . ?**

According to *DLR*, Dr. Weil sees it as being "an open question" whether such a supposed obligation falls within the purview of the current federal Fair Labor Standards Act. It would certainly be news to Division officials of the past to learn that there is any such purported question, particularly those who have expressly said that the FLSA neither regulates work schedules nor restricts an employer's utilization of its adult workforce in any other way, so long as the law's minimum-wage and overtime requirements are satisfied.

Perhaps this hints at the inclusion of some such requirement(s) in connection with a coming revival of the apparently-moribund "Right to Know" initiative, the exact nature of which has always been vague and somewhat changeable since the concept (such as it is) first surfaced in 2010. In any event, it will not be possible to evaluate any claimed legal authority for such a proposed obligation until the U.S. Labor Department actually publishes something.

### **The Bottom Line**

Of course, employers routinely choose for a host of good business reasons – including in the interests of sound employee relations – to maintain predictable schedules and to keep employees advised in advance of what their schedules are, at least where the nature of the work permits this.

But to assert that an employer may be legally *compelled* to do so under the FLSA as it stands today is an entirely-different and highly-doubtful proposition.

Employers should stay on the alert for any such USDOL proposal.