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October 14, 2019

Councilmember Curren D. Price, Jr.
Chair, Economic Development Committee
Los Angeles City Council
200 North Spring Street
Los Angeles, CA 90012

Date: 10/15/19
Submitted in ED Committee
Council File No: 19-0229
Item No.: 2
Deputy: public

Dear Councilmember Price,

The Valley Industry and Commerce Association (VICA) is writing in response to the Bureau of Contract Administration (BCA) "Fair Work Week" ordinance implementation recommendations report. VICA does not oppose an ordinance requiring large retail employers to provide two weeks' scheduling notice.

Our members met with BCA staff and Council staff to reiterate that we want to be collaborative on this issue, and work with the City to implement an ordinance that works for employees and employers. In that spirit, we share the following observations, requests for clarification, and recommendations.

Implementation Recommendation (IR) 4: Definition of Covered Employer

The inclusion of temp agencies is problematic, since the purpose of temp agencies would be to provide short-term, last minute staffing coverage. As drafted, this would mean that the temp agency would effectively need to act like a retail establishment covered under the ordinance.

IR 5: Definition of Covered Employee

As drafted, the definition of covered employee covers all staff including managers, administrative, and other support staff. We recommend limiting the definition of covered employee to retail workers who are actually working retail, excluding managers, administrative or support employees, or employees who primarily travel to customer sites.

It also raises concerns about employees who are driving through the City of Los Angeles, who could fall under these requirements even if the retail employer is not based within the City of Los Angeles. We recommend limiting the definition of covered employee to employees based or working within the City of Los Angeles, or limiting the definition of covered employee to individuals who work at least four hours per week within the City of Los Angeles.

IR 6: Good Faith Estimate of Number of Hours

We are concerned that the definition of "good faith estimate of median hours" is problematically vague. Who decides whether the estimate provided is "in good faith"? Separately, is the "good faith estimate" an affirmative defense or an element of the claim?

IR 7: Requesting Scheduling Preference

We recommend clarifying what "the time of hire" means - the offer stage, when the offer is accepted, or the first date of work. We would also like to ensure that an offer of employment can be made conditional on a specific schedule. Finally, we are concerned that this section could contradict pending FEHA regulations regarding religious creed (prohibiting inquiries regarding an applicant's availability to work on certain days and times in order to ascertain an applicant's religious creed, disability, or medical condition).

IR 8: Fourteen Calendar Days' Notice

We recommend clarifying the requirement to provide access to the electronic schedule at the worksite if there is no physical worksite.

IR 9: Requesting Work Schedule Preferences

We are unclear why the employer would need to provide a decision in writing for any work schedule changes, since the schedule would be posted 14 days in advance. This unnecessary requirement seems administratively burdensome. We also request clarifying the definition of "reasonable" when requesting verifying information.

IR 10: Right to Decline Work

If an employer is required to pay predictability pay for any additional shifts, then the prohibition on disciplining an employee for refusing to change, reduce, or increase their hours makes no sense and contradicts the notion of at-will employment. The idea of predictability pay is to compensate employees for being required to work shifts they were not expecting and compensate them for the inconvenience: if an employee has the right to refuse any change, reduction or increase in their hours, then by definition that means they're willing to accept changes, and the whole point of predictability pay is removed. We would recommend removing the right to decline additional hours of work, since employees will receive compensation for the inconvenience with the required predictability pay.

We would also recommend removing the requirement to record consent in writing, as that is administratively burdensome.

IR 11: Ten-Hour Rest

Under this proposal, the employee has the right to swap shifts with another employee. We recommend ensuring that the employer does not have to pay the premium if the employees choose to swap their shifts and run afoul of this provision. The ordinance also needs to be clear whether the premium applies to the first or second shift. Finally, the rate of pay should be the hourly rate, not the "regular rate of pay."

IR 12: On Call Shifts

We would appreciate clarification on whether the required predictability pay would be half the hourly rate, or half the scheduled shift. We would also question if this applies if the employee is paid on-call at a different rate of pay. Finally, the rate of pay should be the hourly rate, not the "regular rate of pay."

IR 13: Notice of Additional Hours

We seek clarification on whether the two days to respond are in addition to the three days notification, i.e., a total of five days. We also urge an exemption for cases of emergency, when waiting five days to hire additional workers would be problematic.

IR 15: Predictability Pay

In California, employees are entitled to reporting time pay: “each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two hours nor more than four hours.” We recommend that the implementation recommendation is clarified so that predictability pay for reduced or canceled shifts only applies in cases when reporting time pay requirements do not apply.

In addition, requiring that only written requests are subject to the exception is problematic. Employees often only verbally alert employers when they need to leave early or arrive late. The exemption should apply to any employee-initiated change to their schedule. While employers can encourage written documentation, it is completely impractical to presume that employees will provide written requests/explanations and requiring this is administratively burdensome.

In the list of exemptions, we would also recommend expanding the exemption for schedule changes to additions or subtractions up to 30 minutes, a much more realistic amount of time. We recommend amending the seventh bullet point to read “existing laws and or company procedures or policies.” In addition, “regular rate of pay” should be replaced with “hourly rate of pay.”

IR 17: Record Keeping

As VICA has noted, record keeping requirements are one of our greatest concerns. Employees often communicate with their employers in a variety of ways – text message, handwritten note, email, etc. Requiring every written correspondence to be kept on file is complicated and difficult, and this is compounded by the extremely onerous staff recommendation of four-year retention of records. We strongly recommend that staff revisit what written records need to be retained, and also suggest reducing the time period to a much more reasonable one year.

In addition, this implementation recommendation would require employers to keep records from employees they may not provide (e.g., written responses, requests for changes, etc.) – many employees verbally request schedule changes, accept or reject shifts, and yet employers would be held responsible for keeping written records even if the employee may not have provided in writing.

IR 20: Penalties

We suggest that for the sake of clarity, and not penalizing employers for simple mistakes multiple times, that any penalties apply per scheduling period, rather than per day.

IR 21: Private Right of Action

The proposed ordinance has many components, and feedback from our retail members has highlighted that it will be complicated to comply with. Some of the definitions in the recommendation are extremely vague and open to interpretation, meaning that employers with the best of intentions could inadvertently fail to comply with certain aspects.

VICA is extremely concerned that a private right of action would open the door to lawsuits even if the employee has suffered no actual harm. VICA strongly encourages adequate resources for the BCA to educate, support, and enforce this ordinance. Robust enforcement would remove any need for a private right of action, and ensure that the intent of the ordinance - providing employees with a predictable schedule – is achieved.

Sincerely,



Lisa Gritzner
VICA Chair



Stuart Waldman
VICA President



Charles Crumpley
Chair, VICA Labor & Employment
Committee



Sue Bendavid
Co-Chair, VICA Labor &
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Cc. Councilmember Marqueece Harris-Dawson
Councilmember Paul Koretz
Councilmember Curren D. Price, Jr.
Councilmember Herb Wesson, Jr.
Councilmember Gilbert A. Cedillo
Councilmember David E. Ryu
Councilmember Joe Buscaino
Councilmember Monica Rodriguez



October 14, 2019

Honorable Members of the Los Angeles City Council
Economic Development Committee

RE: Requests for Amendments for Fair Work Week Report

Dear Members, Los Angeles City Council Economic Development Committee;

On behalf of the Los Angeles Area Chamber of Commerce, which represents more than 1,600 organizations and 650,000 employees in the region, I am writing to request additional clarification and amendments to the proposed recommendations by the Bureau of Contract Administration on the requested Fair Work Week Ordinance. The Los Angeles Area Chamber of Commerce is committed to working on a balanced policy that will benefit both employees and allow employers the flexibility to run successful businesses. With that in mind, we would like to request the following amendments:

1. As currently drafted, all employees including managers, administrative staff and support staff are included in the definition of employee that would be covered under this new regulation. We would recommend amending this definition to only include employees that work at least ten hours a week in Los Angeles at a retail establishment, excluding those employees that primarily travel to customer sites.
2. We would also ask for a self-scheduling exemption for employees who self-select work shifts without employer pre-approval pursuant to a mutually acceptable agreement. Employers must demonstrate that workers who are not employees are bona fide independent contractors. The provisions of this Ordinance will apply to hours scheduled and performed within the City.
3. The current proposal requires employers to provide employees with a good faith estimate of the median number of hours an employee can expect to work each week. We would request that the language be amended to include the employee's average or mean of hours, not median as businesses do not calculate employees' hours on a median basis.
4. We would request recommendation 4 be amended to include a phase in period, similar to other municipalities, to ensure full compliance by employers. Most businesses will need to put in place new policies and procedures to comply and in some cases bring on board new operating systems and programs.
5. Requiring employers to inform an employee of a decision in writing every time an employee requests work schedule limitations and changes with regard to hours, locations and on call shifts creates an incredibly administrative burden on the employer. We would recommend that recommendation 6 be amended to remove the requirement of written notice.
6. In addition, we would request that language be included that employees must request changes three weeks in advance of the expected changes to work schedules. This would ensure employers can have adequate time to consider the request prior to posting the schedule that will be affected. These work schedule preferences must be distinguished from requests to take off or call out for specific shifts.

7. Recommendation 10 requires an employer to record in writing when an employee accepts or declines changes to their schedule, this is incredibly administratively burdensome for employers and we would like this removed with the provision for employers to encourage written notification from employees.
8. The current recommendation overcomplicates the process for employees to get additional hours, we would recommend amending recommendation 13 to create a Voluntary Call List to fill shifts and allows employees to pick up additional shifts without penalty pay, similar to Oregon's model.
9. Currently, written requests by employees for a schedule change or to leave early are part of the exception to predictability pay. This is incredibly problematic because often times, employees only verbally call out or come in late/leave early, or even at times with no notice at all. This should be amended to read "any employee initiated change to their schedule." Written communication can always be encouraged, but impractical to presume that employees will provide written requests/explanations.
10. We would like to request that recommendation 15 bullet 5 be amended to be more lenient and flexible for employers that need to fill shifts in a timely manner. This is incredibly limited in how employers are allowed to fill shifts, additionally we would like to include all open shifts in this exception not just those that arise due to unanticipated customer needs.
11. Requiring an employer to keep written communications for four years for all employees anytime there is any change to a schedule, whether employee initiated, employer initiated, emergency situations, medical emergencies, etc. is a huge burden on employees and employers. Employees communicate with their employers in many different ways, and oftentimes don't communicate at all, leaving the burden on the employer to create a written trail of that exchange. We would recommend expanding the requirements to only situations where written communication was obtained and lower the threshold to under three years, consistent with other jurisdictions.
12. As stated by the Bureau of Contract Administration, these are complex and time consuming investigations and can be best done through the administrative process instead of through private right of action as stated in recommendation 21. The BCA requested an additional 21 staff members for implementation and enforcement, they are also requesting additional resources to help with employer education. We support this request and respectfully request their needs be met to ensure this new policy is implemented successfully.

The LA Chamber is here to partner with the City of Los Angeles and policy makers on holistic policies that will protect employees and also create a successful environment for businesses that are the backbone of our economy. If you have questions please contact Diana Yedoyan, Senior Manager of Public Policy, at (213) 580-7558 or dyedoyan@lachamber.com. Thank you.

Sincerely,



Maria Salinas
President & CEO