

## **Communication from Public**

**Name:** Valley Industry and Commerca Assoc.  
**Date Submitted:** 10/14/2019 05:17 PM  
**Council File No:** 19-0229  
**Comments for Public Posting:** See attachment



October 14, 2019

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

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 &  
Employment Committee



Todd Schwartz  
Co-Chair, VICA Labor &  
Employment Committee

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

## Communication from Public

**Name:**

**Date Submitted:** 10/14/2019 05:25 PM

**Council File No:** 19-0229

**Comments for Public Posting:** Los Angeles Council President Herb Wesson 200 North Spring Street, Room 430 Los Angeles, CA 90012 October 14, 2019 RE: Fair Workweek Policy; Council File 19-0229 Dear Council President Wesson and Members of the Los Angeles City Council: On behalf of LAANE, we wish to express our strong support of the Fair Work Week Ordinance and the recommendations outlined by the Bureau of Contract Administration. Over 70,000 retail workers in Los Angeles deserve access to good quality jobs and scheduling stability that affords them a high quality of life and positive work-life balance. We wish to thank the Council sponsors of the policy, the Bureau of Contract Administration, and the City Attorney's office for their due diligence in outlining the policy and enforcement. Retail workers play an important role in customer experiences - they give us advice on what clothes we purchase, answer questions about food ingredients, and much more. However, retail workers are among the least well-off in the Los Angeles Economy. The UCLA Labor Center released a report earlier this year called "Hour Crisis" which showed, among other details, that 8 in 10 retail workers in Los Angeles do not have a set weekly schedule, while 77 percent of workers receive their schedules no more than one week in advance. Studies have highlighted the deleterious impacts of unfair scheduling practices not just on workers' income, but on their health and well-being, their children's long-term outcomes, and more. Research has shown that by adopting fair scheduling policies, companies also benefit. A pilot project that was implemented at 28 GAP stores in large cities across the country from 2015-2016 showed that stores' return on investment was high, with median sales increasing by as much as 7 percent. This results in millions of dollars of new revenue for retail companies. We strongly support the recommendations of the Bureau of Contract Administration, and that City Council agree to provide fair and just scheduling for their employees by passing a policy which ensures that retail workers in the city: 1. Will receive a good faith estimate of their work schedule upon hiring or upon request; 2. Will receive at least two weeks' notice of their schedules; 3. Are not forced to work "clopening" shifts (i.e. shifts with a break of less than 10 hours before closing and opening) or to remain "on-call" for shifts; 4. Will not be retaliated against for requesting a change in their shift

or declining unscheduled hours; 5. Will receive additional compensation for last minute changes to their schedules; and 6. Will be offered additional hours at their place of employment before employers hire additional part-time workers or use subcontracted labor. We also believe that the ordinance should include robust record-keeping and enforcement provisions. For these, as well as many more reasons, and on behalf of retail workers everywhere, we strongly support this process moving forward. Thank you for your consideration in this matter. In solidarity, Nelson Motto Fair Workweek LA, Director

Los Angeles Council President Herb Wesson  
200 North Spring Street, Room 430  
Los Angeles, CA 90012

October 14, 2019

RE: Fair Workweek Policy; Council File 19-0229

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Retail workers play an important role in customer experiences - they give us advice on what clothes we purchase, answer questions about food ingredients, and much more. However, retail workers are among the least well-off in the Los Angeles Economy. The UCLA Labor Center released a report earlier this year called "Hour Crisis" which showed, among other details, that 8 in 10 retail workers in Los Angeles do not have a set weekly schedule, while 77 percent of workers receive their schedules no more than one week in advance.<sup>1</sup> Studies have highlighted the deleterious impacts of unfair scheduling practices not just on workers' income, but on their health and well-being, their children's long-term outcomes, and more.

Research has shown that by adopting fair scheduling policies, companies also benefit. A pilot project that was implemented at 28 GAP stores in large cities across the country from 2015-2016 showed that stores' return on investment was high, with median sales increasing by as much as 7 percent.<sup>2</sup> This results in millions of dollars of new revenue for retail companies.

We strongly support the recommendations of the Bureau of Contract Administration, and that City Council agree to provide fair and just scheduling for their employees by passing a policy which ensures that retail workers in the city:

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<sup>1</sup> <https://www.labor.ucla.edu/publication/hourcrisisreport/>

<sup>2</sup> <https://worklifelaw.org/publications/Stable-Scheduling-Study-Report.pdf>

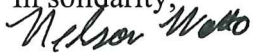


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Thank you for your consideration in this matter.

In solidarity,



Nelson Motto

Fair Workweek LA, Director

## Communication from Public

**Name:** UFCW Local 770

**Date Submitted:** 10/14/2019 03:07 PM

**Council File No:** 19-0229

**Comments for Public Posting:** Attached please find UFCW Local 770's letter of support for the above referenced file. Thank you for your consideration in this matter.



**UNITED FOOD  
AND COMMERCIAL  
WORKERS UNION**

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UFCW770.org

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Santa Barbara  
Santa Clarita

October 14, 2019

Los Angeles Council President Herb Wesson  
Los Angeles City Hall  
200 North Spring Street, Room 430  
Los Angeles, CA 90012

RE: Fair Workweek Policy; Council File 19-0229

Dear Council President Wesson and Members of the Los Angeles City Council:

On behalf of the 32,000 UFCW Local 770 members, we wish to express our strong support of the Fair Work Week Ordinance and the recommendations outlined by the Bureau of Contract Administration. Over 70,000 retail workers in Los Angeles deserve access to good quality jobs and scheduling stability that affords them a high quality of life and positive work-life balance. We wish to thank the Council sponsors of the policy, the Bureau of Contract Administration, and the City Attorney's office for their due diligence in outlining the policy and enforcement.

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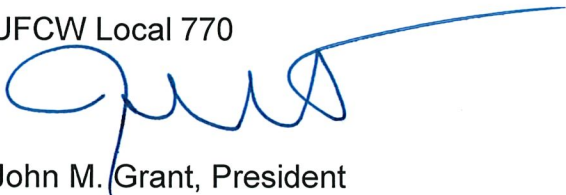
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Thank you for your consideration in this matter.

In solidarity,

UFCW Local 770



John M. Grant, President

JMG:le