

# REPORT OF THE CHIEF LEGISLATIVE ANALYST

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DATE: June 21, 2019

TO: Honorable Members of the Economic Development Committee

FROM: Sharon M. Tso   
Chief Legislative Analyst

Council File No: 19-0229  
Assignment No: 19-04-0329

## **Proposed Los Angeles Fair Work Week Policy**

### **SUMMARY**

On March 1, 2019, a Motion (Price-Wesson-Koretz-Ryu-Harris-Dawson; C.F. 19-0029) was introduced instructing this Office to report with a review of Fair Work Week Policies in other cities, and for the Office of Wage Standards in the Bureau of Contract Administration to report on enforcement costs and procedures for a Los Angeles Fair Work Week Policy (Attachment 2).

Additionally, the Motion requested the City Attorney to prepare a draft Fair Work Week Ordinance that would require retail businesses in Los Angeles, with 300 or more employees globally, to provide workers with: 1) 14 days advanced notice of their work schedule; 2) the right to a 10-hour rest between shifts; 3) a good faith estimate of weekly work hours at time of hire, including potential opportunities for full-time work and predictability pay; 4) the right to request schedule changes and ability to decline hours before and after schedule posting; and 5) anti-retaliation protections for employees exercising their rights under the ordinance.

This report provides a review of fair work week policies adopted by San Francisco, CA; San Jose, CA; Emeryville, CA; Seattle, WA; and New York, NY (Attachment 1). The policies have all been adopted within the last five years and are similar to each other in the protections available to employees and the consequences to employers who violate such protections. Some of these protections include advance notice of work schedule with compensation for schedule changes, right to rest between shifts, additional work hours offered to part-time employees before hiring new employees, and protection from retaliation. Employers are required to post notices relative to employee rights.

In addition, all policies reviewed require that employers offer additional hours of work to existing part-time employees prior to hiring new employees, a two-week or 14-day predictability schedule, a specific right to work rest period, specified penalties for violators, and in some cases compensation to affected employees. Some of these policies differ with respect to the type of industry they target and the number of employees.

We note that remedies are available under all policies, and employers are required to compensate employees for any violations of fair work week policies, including retaliation. In addition to such remedies, the ordinances also require employers to pay fines to the governmental jurisdiction issuing the citations if found to be in violation.

### **Motion ((Price-Wesson-Koretz-Ryu-Harris-Dawson))**

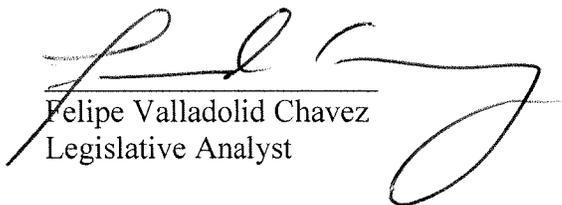
The motion requests that the City Attorney draft an Ordinance that would apply to retail businesses with 300 employees, or more, globally, specifies that the number of days for advanced notice of a work schedule is 14, and that the rest period between shifts is 10 hours. However, it does not provide specific requirements with regard to predictability pay or specify the benefit to part-time employees.

Should the Council wish to pursue implementation of this policy, it is recommended that: 1) the Office of Wage Standards (BCA) be instructed to report with recommendations to implement a Fair Work Week Policy, including the types and of protections for employees available in the cities reviewed by this Office and enforcement procedures and costs; and 2) that the City Attorney be requested to draft a Fair Work Week Ordinance, as specified in Motion (Price-Wesson-et al).

#### RECOMMENDATIONS

Should the City Council wish to continue to pursue implementation of the Fair Work Week Policy, it is recommended that the following actions be adopted:

- 1) Instruct the Office of Wage Standards Bureau of Contract Administration (BCA) to report with recommendations to implement a Fair Work Week Policy, including the types of protections for employees available in the cities reviewed by this Office, procedures for implementation, a penalty system, and program and enforcement costs; and
- 2) Request the City Attorney, with the assistance of the CLA and BCA, to prepare and present a draft Fair Work Week Ordinance, as described in Motion (Price-Wesson, et al; C.F. 19-0229).



Felipe Valladolid Chavez  
Legislative Analyst

Attachments: 1) Review of Fair Work Week Policies  
2) Motion (Price-Wesson-Koretz-Harris-Dawson-Cedillo-Ryu)

SAN FRANCISCO, CA

On November 24, 2014, the City and County of San Francisco enacted two ordinances that collectively have been referred to as the Formula Retail Employee Rights Ordinance (“the Ordinances”).

1. Predictable Scheduling and Fair Treatment for Formula Retail Employees

This ordinance requires formula retail establishments to provide employees with two weeks notice of work schedules, notice of changes to work schedules, and compensation for schedule changes made on less than seven days notice and for unused on-call shifts. Additionally, part-time employees are provided with access to time off and are eligible for promotions.

2. Hours Retention Protections for Formula Retail Employees

This ordinance requires formula retail establishments to offer additional hours of work when available to current part-time employees, and requires successor employers to retain employees for 90 days upon a change in control of the business.

The ordinances apply to employers that own or operate a Formula Retail Establishment, defined as an employer with 20 or more employees. In San Francisco, a formula establishment is a business with at least 40 locations worldwide. Some examples of these establishments include amusement game arcade, bars, liquor store, movie theatre, restaurants and some financial institutions. Employers are required to post a notice informing its employees of their rights under the ordinances. Affected employees are entitled to payment of lost wages, and reinstatement in employment.

The city attorney may also file civil action against an employer. The affected employee is entitled to reasonable fees and costs. Employers may face an administrative penalty of \$50 for each violation per day. Lastly, the city may also recover cost of enforcement.

SAN JOSE, CA

In 2016, San Jose voters passed the “Opportunity to Work” Ordinance (ordinance) which became effective March 13, 2017. The ordinance requires private business and nonprofit employers with 36 or more employees to offer hours of work to existing qualified part-time employees before hiring new staff, to keep records of compliance with the ordinance, and to refrain from retaliation against any employee who exercises their rights under the ordinance. Chain businesses and franchisees must count the total number of employees at every location whether or not located within city limits. Employers are not required to offer additional work hours if it would cause the employee to incur overtime. Lastly, employers are required to post a notice of the employee rights under the ordinance.

The Office of Equality Assurance is authorized to issue administrative citations for violations. Remedies for employees include back wages, civil penalties in the amount of \$50 per day to each employee affected, and attorney’s fees and costs. The first violation would constitute a warning. Employers are prohibited from retaliating and may face additional charges. In a case of retaliation, affected employees have 90 days to take action against an employer.

EMERYVILLE, CA

On October 17, 2017, the City of Emeryville adopted the “Fair Workweek Employment Standards” Ordinance. This ordinance applies to firms with 56 or more employees globally. Employers are required to provide a good faith estimate of a work schedule and employees may request changes prior to starting employment. The employer must also provide at least two weeks advance notice of

schedules and provide notice of any changes. Employers must offer predictability pay<sup>1</sup> for changes made to the schedule, and offer additional hours of work to existing part-time employees before hiring new staff. Employees have the right to request changes to the work schedule before starting employment, decline any previously unscheduled hours if given less than 14 days notice, and decline work hours within eleven hours from previous shift (right to rest). Lastly, the employer is required to post these employee rights.

Employers found in violation may be subject to a \$1,000 penalty for retaliation and \$500 for any violation of the provisions mentioned above. Remedies for violations include predictability pay back plus \$50 to each affected employee per day, interest for all unpaid wages from date affected, administrative costs for the city, and additional \$50 per each subsequent violation per day.

#### SEATTLE, WA

The Seattle Secure Scheduling Ordinance became effective July 1, 2017. The ordinance applies to retail and food service establishments with 500 or more employees worldwide; and full service restaurants with 500 or more employees and at least 40 full-service restaurant locations worldwide. Such employers are required to provide as follows:

- A written good faith estimate of the employee's work schedule at time of hire.
- Opportunity for employee to provide input with respect to their work schedule.
- Minimum 10-hour right to rest between.
  - Compensation for hours worked that are less than 10 hours apart.
- Written work schedule at least 14 calendar days before the first day of the work schedule.
- Offer additional hours to existing employees before hiring new staff.
- Post notice of secure scheduling employee rights and employer requirements.

Affected employees may be entitled to compensation, liquidated damages, penalties payable to aggrieved parties, fines, and interest. Employers found to be in violation of the above provisions are subject to penalties ranging between \$500 and \$1,000 for first violations and higher amounts for subsequent violations.

#### NEW YORK, NY

The City of New York enacted the Fair Workweek Law on November 1, 2017 and became effective November 26, 2017. The ordinance applies to fast food establishments that primarily serve food and beverages with 30 or more establishments nationally. Employers must provide as follows:

- Good faith estimate and first work schedules in writing on or before first day of work.
- 14 days advance notice of work schedule.
- Written worker consent for any additions to a written schedule within 14 days of the start of the shift.
- Predictability pay- premium pay for all schedule changes with less than 14 days notice
- Written employee consent plus \$100 premium to work "clopening" shifts (employees who close for business and open the next day).
- Offer existing employees newly available shifts before employer hires employees.
- Post notices relative to predictable work schedules and the right of employee's to make contributions to nonprofits through employer in English and any other language where at least 5 percent of employees speak such language.

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<sup>1</sup> Predictability pay refers to premium pay to employees when employers are penalized for making last-minute changes to a work schedule.

Remedies available to employees by employers found in violation include:

- Compensatory damages
- Payment of back pay for any loss resulting from violation of the above provisions ranging from \$200 to \$2,500.

Specific penalties to employers found in violation include \$500 for the first violation and any subsequent violation that occurs within two years of any previous violation, up to \$750 for the second violation, and up to \$1,000 for each subsequent violation. These penalties are imposed on a per-employee and per-occurrence basis.

## ECONOMIC DEVELOPMENT

## MOTION

## Fair Work Week LA

The Los Angeles economy has a robust retail sector employing 147,000 Angelenos. In 2018 the UCLA Labor Center and LAANE released a study "Hour Crisis: Unstable Schedules in the Los Angeles Retail Sector." The study highlights that retail workers have unpredictable, last-minute, and fluctuating workweeks over which they have no control, leading to income insecurity, and making it difficult to predict their income, make time for school, or care for children.

Of retail workers surveyed, 77% get less than one weeks' notice of their schedule. This makes it difficult to arrange things like childcare or class. Of retail workers who need childcare, 45% can not use existing centers because of their schedules. Of student retail workers, 43% had to miss class due to a scheduling conflict.

Many of these workers are also part-time and face underemployment. Rather than offering additional hours to existing employees, some businesses choose to hire additional part-time workers. It would benefit workers to receive a good faith estimate of weekly work hours at time of hire. Workers should also be able to make hour requests and adjust availability without fear of termination, reduction in hours, or other retaliation.

Additionally, workers should be able to rest between shifts. "Clopening" when a worker closes a store and then opens it the next day, results in workers having less than 10 hours rest between shifts – 44% of retail workers have experienced this. When workers do not have adequate time between shifts they are unable to care for themselves and their families.

Cities and states across the country are responding to the call for a family-sustaining workweek. Seattle, San Francisco, New York, and Oregon have passed policies that protect working families by ensuring stable and predictable work hours, opportunities to work more, healthier workweeks with adequate rest, and a greater voice in when and how much they work. Los Angeles should build upon this and ensure our workers are entitled to a fair work week.

WE THEREFORE MOVE, that the Los Angeles City Council request the City Attorney to draft a Fair Work Week ordinance that would require all retail businesses in Los Angeles with 300 or more employees globally, to provide workers with 14 days' notice of their schedule, right to rest between shifts of 10 hours, a good faith estimate of weekly work hours at time of hire including potential opportunities for full-time work and predictability pay, right to request schedule changes and ability to decline hours before and after schedule posting, and anti-retaliation protections for employees exercising their rights under the ordinance.

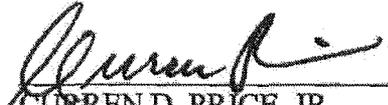
WE FURTHER MOVE, that the City Council instruct the Chief Legislative Analyst to report with an analysis of other cities' Fair Work Week policies.

WE FURTHER MOVE, that the City Council instruct the Office of Wage Standards in the Bureau of Contract Administration to report on enforcement costs and procedures for a Los Angeles Fair Work Week policy.

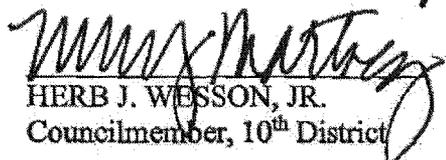
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ORIGINAL

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