Communication from Public

Name: Steve McCarthy
Date Submitted: 02/18/2022 01:50 PM
Council File No: 19-0229
Comments for Public Posting: The California Retailers Association (CRA) regrettably must oppose the scheduling ordinance (Council File 19-0229). If enacted in its current form, this ordinance would be among the most restrictive in the country to the detriment of both employers and employees. The California Retailers Association is the only statewide trade association representing all segments of the retail industry including general merchandise, department stores, mass merchandisers, restaurants, convenience stores, supermarkets and grocery stores, chain drug, and specialty retail such as auto, vision, jewelry, hardware and home stores. CRA works on behalf of California's retail industry, which prior to the pandemic operated over 400,000 retail establishments with a gross domestic product of $330 billion annually and employs over 3 million people—one fourth of California's total employment. CRA has numerous concerns with this measure. As this ordinance has not moved in two years and retailers and other businesses continue to grapple with COVID-related regulations, supply chain challenges, and worker shortages, we hope that the Council will take time for through consideration of this policy rather than rush to a conclusion. Even when the pandemic does finally recede many of these challenges will remain for some time, so this policy has the effect of heaping substantial new compliance hurdles on top of what is still an extraordinary period. Our chief concerns include: Private right of action. The ordinance allows an aggrieved employee "or any other person or entity acting on behalf of the public" to bring civil action to enforce the Fair Work Week Ordinance. Further it would require the employer to pay attorney costs and fees in addition to fines and compensation of employee(s). Given the complexity of this ordinance and its numerous ill-defined terms, this provision is an invitation to predatory lawsuits. The nuances of implementing a scheduling ordinance are best left to an administrative process rather than a courtroom. Open-ended penalty structure. Currently the ordinance would allow up to $500 per violation and $50 per day. Therefore, a company operating in good faith with an ongoing practice that is later deemed to be non-compliant could face fines many times higher than those provided for the violation itself. This penalty structure further serves as a disincentive to faster resolution of cases and compensation of employees. Penalties should bear a

reasonable relationship to the nature of the violation. CRA requests a limit on daily or any other cumulative penalties that is no more than that for the violations themselves. Mandatory written communication. In multiple provisions the draft ordinance specifically requires written notices or communications. Scheduling apps and other electronic communications have improved convenience for employer and employee, but their use would be severely limited by these provisions. This ordinance should allow for electronic or written communications between employee and employer and for records of electronic communications to be kept electronically. Similar ordinances in Chicago, New York, Philadelphia, San Francisco, and Seattle define the term "written" or "writing" to allow for electronic format. Exception for factors out of employer control. We are deeply concerned about the elimination of the exception from predictability pay for employee cancellations or unanticipated business conditions. We are not aware of any other scheduling ordinance that does not allow an exception where the employee cancels a shift. Furthermore, as the early stages of the pandemic showed so clearly, when the world changes it has a direct impact on consumers and on stores. Store owners do not necessarily know 14 days in advance when a surge or drastic decline in purchasing is going to occur, whether it's a global event like a pandemic or a local incident such as emergency road construction. This exception should be restored. It should also be expanded to include exceptions allowed in other jurisdictions including: • When the employee is on paid time off or a leave of absence. • When hours are eliminated due to employee termination. • When hours are subtracted for disciplinary reasons (pursuant to a multi-day suspension and provided the disciplinary action is in writing). • Where the company cannot operate due to threats to colleagues or property, public utility failure, fire, flood, other natural disasters, public transportation shutdown, declared state of emergency, and/or severe weather conditions that disrupt transportation or pose a threat to safety. Defining an employee within the City. This proposal defines an employee as anyone who works within City boundaries for two or more hours a week. This definition is impractical. See our letter sent to councilmembers for the remaining comments.

February 18, 2022

Los Angeles City Council
200 N. Spring Street
Los Angeles, CA 90012

Re: Council File 19-0229 – Retail Scheduling Ordinance

Dear Honorable Councilmembers:

The California Retailers Association (CRA) regrettably must oppose the scheduling ordinance (Council File 19-0229). If enacted in its current form, this ordinance would be among the most restrictive in the country to the detriment of both employers and employees.

The California Retailers Association is the only statewide trade association representing all segments of the retail industry including general merchandise, department stores, mass merchandisers, restaurants, convenience stores, supermarkets and grocery stores, chain drug, and specialty retail such as auto, vision, jewelry, hardware and home stores. CRA works on behalf of California's retail industry, which prior to the pandemic operated over 400,000 retail establishments with a gross domestic product of $330 billion annually and employs over 3 million people—one fourth of California's total employment.

CRA has numerous concerns with this measure. As this ordinance has not moved in two years and retailers and other businesses continue to grapple with COVID-related regulations, supply chain challenges, and worker shortages, we hope that the Council will take time for through consideration of this policy rather than rush to a conclusion. Even when the pandemic does finally recede many of these challenges will remain for some time, so this policy has the effect of heaping substantial new compliance hurdles on top of what is still an extraordinary period.

Our chief concerns include:

Private right of action. The ordinance allows an aggrieved employee "or any other person or entity acting on behalf of the public" to bring civil action to enforce the Fair Work Week Ordinance. Further it would require the employer to pay attorney costs and fees in addition to fines and compensation of employee(s). Given the complexity of this ordinance and its numerous ill-defined terms, this provision is an invitation to predatory lawsuits. The nuances of implementing a scheduling ordinance are best left to an administrative process rather than a courtroom.

Open-ended penalty structure. Currently the ordinance would allow up to $500 per violation and $50 per day. Therefore, a company operating in good faith with an ongoing practice that is later deemed to be non-compliant could face fines many times higher than those provided for the violation itself. This penalty structure further serves as a disincentive to faster resolution of cases and compensation of employees. Penalties should bear a reasonable relationship to the nature of the violation. CRA requests a limit on daily or any other cumulative penalties that is no more than that for the violations themselves.

Mandatory written communication. In multiple provisions the draft ordinance specifically requires written notices or communications. Scheduling apps and other electronic communications have improved convenience for employer and employee, but their use would be severely limited by these provisions. This ordinance should allow for electronic or written communications between employee and employer and for records of electronic communications to be kept electronically. Similar ordinances in Chicago, New York, Philadelphia, San Francisco, and Seattle define the term "written" or "writing" to allow for electronic format.

Exception for factors out of employer control. We are deeply concerned about the elimination of the exception from predictability pay for employee cancellations or unanticipated business conditions. We are not aware of any other scheduling ordinance that does not allow an exception where the employee cancels a shift. Furthermore, as the early stages of the pandemic showed so clearly, when the world changes it has a direct impact on consumers and on stores. Store owners do not necessarily know 14 days in advance when a surge or drastic decline in purchasing is going to occur, whether it's a global event like a pandemic or a local incident such as emergency road construction. This exception should be restored. It should also be expanded to include exceptions allowed in other jurisdictions including:

- When the employee is on paid time off or a leave of absence.
- When hours are eliminated due to employee termination.
- When hours are subtracted for disciplinary reasons (pursuant to a multi-day suspension and provided the disciplinary action is in writing).
- Where the company cannot operate due to threats to colleagues or property, public utility failure, fire, flood, other natural disasters, public transportation shutdown, declared state of emergency, and/or severe weather conditions that disrupt transportation or pose a threat to safety.

Defining an employee within the City. This proposal defines an employee as anyone who works within City boundaries for two or more hours a week. This definition is impractical. To implement it, stores located in the County of Los Angeles or another city within the County, and possibly even in neighboring counties, would have to track employees working outside the store (loss prevention, service, delivery, etc.) to determine when they are working within City of Los Angeles boundaries and for how long. A more reasonable approach is reflected in the Seattle ordinance which defines an employee as working 50% of time at a physical location within the City's geographic boundaries.

Grace period is too short. The 15-minute grace period before charging predictability pay is too short. It is not reasonable to charge predictability pay if an employee is asked to stay another 20-30 minutes. CRA requests at least a 60-minute grace period before predictability pay is required.

Implementation period. We understand and appreciate that amendments will delay the effective date of the ordinance until January 1. Under ordinary circumstances we would request at least one year to implement this kind of policy, which will require re-writing of internal policies, retraining team members and management, and in some cases hiring of vendors and re-writing of scheduling software. But as discussed earlier these are not ordinary times. Retailers request at a minimum that this ordinance be effective no earlier than July 1, 2023.

We appreciate your consideration of our concerns. If you have any questions, please feel free to contact Steve McCarthy at steve@calretailers.com.

Sincerely,

Steve McCarthy
Vice President, Public Policy