

Communication from Public

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Council File No: 19-0229

Comments for Public Posting: On behalf of Public Counsel, I would like to submit the attached letter in support of the Fair Work Week Ordinance. We are in strong favor of this policy.



The nation's largest pro bono law firm

February 1, 2022 Sent via email

Los Angeles City Council
200 North Spring Street
Los Angeles, CA 90012

To: Council President Nury Martinez and
Economic Development & Jobs Committee Chair Curren D. Price

CC: LA City Councilmembers

RE: Los Angeles Fair Work Week Ordinance (Council File 19-0229)

Dear Los Angeles City Council:

On behalf of Public Counsel, we write to express our strong support for the LA Fair Workweek Ordinance (FWW). In addition to thanking you for your continued support of FWW, we wish to underscore the importance of this measure for Los Angeles' hourly retail workers, especially parents and caregivers.

Unstable and unpredictable work scheduling practices take a brutal toll on low-wage working parents and caregivers, who are disproportionately women of color. "Just-in-time" scheduling and similar practices deprive workers and caregivers of the dignity of being able to plan their lives or budgets, leading to variable week-to-week paychecks, difficulty securing child care, and barriers to pursuing education, training, or additional part-time or full-time work.¹ While unfair scheduling exists across industries, it is especially common in the retail sector, which employs a high percentage of women workers.² With over 140,000 workers—the majority of whom are women of color—the retail industry is the second largest employer in Los Angeles.³ Nationwide, studies estimate 40 percent of hourly workers know their schedules less than a week in advance, and one in six knows their schedule a day before.⁴ In Los Angeles, eight out of 10 retail workers have no set schedule, and 77 percent of retail workers receive a week or less notice of their schedule.⁵

¹ Claire Cain Miller, *How Unpredictable Work Hours Turn Families Upside Down*, N.Y. TIMES (Oct. 16, 2019).

² Katherine Guyot & Richard Reeves, *Unpredictable work hours and volatile incomes are long-term risks for American workers*, BROOKINGS (Aug. 18, 2020), <https://www.brookings.edu/blog/up-front/2020/08/18/unpredictable-work-hours-and-volatile-incomes-are-long-term-risks-for-american-workers/>.

³ *Hour Crisis: Unstable Schedules in the Los Angeles Retail Sector*, UCLA LABOR CTR., https://escholarship.org/content/qt7xn741zz/qt7xn741zz_noSplash_640ccdd55b1639b976941c48186f391e.pdf?t=qh0dn4 (hereinafter "Hour Crisis").

⁴ Susan J. Lambert, Julia R. Henly & Jaeseung Kim, *Precarious Work Schedules as a Source of Economic Insecurity and Institutional Distrust*, 5 RUSSELL SAGE FOUND. J. 218 (2019).

⁵ Hour Crisis, *supra* note 3.

As attorneys who have helped serve thousands of low-wage workers in the Los Angeles area, we know that the FWW ordinance is needed now more than ever. During the pandemic, retail and grocery workers risked their lives to deliver food and necessary services to our community. Yet, as retail establishments raked in record profits, retail workers faced the same unpredictable paychecks and low salaries.⁶ COVID-19 exacerbated preexisting gender and racial inequities in the retail workforce, as the pandemic increased the burden on working women. As children switched to remote schooling, women faced the brunt of juggling caregiving responsibilities and supporting their families, causing many women to drop out of the workforce entirely.⁷ It is high time for Los Angeles to enact reforms like FWW to support the essential workers who have supported us for the past two years.

Enactment of a comprehensive Fair Workweek reforms are critical to address longstanding, intersectional gender, racial, and socioeconomic inequities in our City's workforce.

A. Unfair Scheduling Disproportionately Impacts Working Women

The burden of unfair scheduling falls heaviest on women, who are the majority of workers in the retail and service sectors and are more likely to be the primary caretakers of children.⁸ Women of color are especially impacted by volatile scheduling: a survey by the Harvard Shift Project found that workers of color were 30 percent more likely than white workers to have last-minute shift cancellations, and that Black and Latinx women had the most precarious schedules.⁹

Erratic scheduling places women in an untenable position: scramble to find child care on less than a day's notice, or lose hours desperately needed to put food on the table. Women with caregiving responsibilities are passed over for promotions, disciplined, or fired for refusing to work shifts that interfere with caregiving. Income instability is particularly challenging for workers with subsidized childcare, as income fluctuations can push workers below the Family & Medical Leave and child care income eligibility requirements.¹⁰ Just-in-time scheduling, combined with caregiving responsibilities, contributes to the national gender wage gap,¹¹ strains family relationships, and impacts early childhood development by limiting parental involvement with young children.¹²

⁶ See Lola Loustaunau et al., *No Choice But to Be Essential: Expanding Dimensions of Precarity During COVID-19*, SOC. PERSPECTIVES (April 13, 2021).

⁷ Julie Kashen et al., *How COVID-19 Sent Women's Workforce Progress Backward*, CTR. FOR AM. PROGRESS (Oct. 30, 2020), <https://www.americanprogress.org/article/covid-19-sent-womens-workforce-progress-backward/>

⁸ Claudia Goldin, *Hours Flexibility and the Gender Gap in Pay*, CTR. FOR AM. PROGRESS (Apr. 2015).

⁹ Daniel Schneider & Kristen Harknett, *It's About Time: How Work Schedule Instability Matters for Workers, Families, and Racial Inequality*, SHIFT PROJECT (2019).

¹⁰ Juaged lie Vogtman & Karen Shulman, *Set Up to Fail: When Low-Wage Work Jeopardizes Parents' and Children's Success*, NAT'L WOMEN'S L. CTR. (Jan. 2016).

¹¹ Claire Wing-Nelson, *Part-Time Workers Are Paid Less, Have Less Access to Benefits- and Most Are Women*, NAT'L WOMEN'S L. CTR (Feb. 26, 2020), <https://nwlc.org/wp-content/uploads/2020/02/Part-Time-Workers-Factsheet-2.26.20.pdf>.

¹² See generally Liz Watson, Lauren Frohlich, & Elizabeth Johnston, *Collateral Damage: Scheduling Challenges for Workers in Low-Wage Jobs and Their Consequences*, NAT'L WOMEN'S L. CTR. (Apr. 2014).

Specifically, Los Angeles' FWW ordinance will help working women and families by:

- **Reducing Economic Instability:** Unpredictable schedules result in unpredictable and unstable incomes, making it difficult for families to budget and pay the bills.¹³ An unpredictable work schedule with paychecks that fluctuate week to week make it impossible for a worker to ensure that they can provide themselves and their families with basic needs. Individuals and families living on low wages have to choose between paying rent and purchasing food or medications. As women make up the majority of workers in the retail industry, unpredictable paychecks exacerbate the gender pay gap.
- **Improving Health Outcomes:** As the pandemic stretches on into a third year, it is imperative that working women have the ability to adjust their schedules as they, and their families, get sick. With unpredictable schedules, workers are more likely to fall sick and spread sickness to fellow employees, exacerbating the public health crisis. Unstable schedules mean that workers cannot schedule needed doctors' appointments, care for their families, or even take sick time at risk of retaliation. And research has consistently found that unstable schedules is associated with chronic stress and the development of hypertension, obesity, type 2 diabetes, cardiovascular disease, and sleep disorders.¹⁴ Another study found that irregular work schedules are also associated with a statistically significant increased risk of preterm delivery and low birth weight.¹⁵
- **Increasing Access to Quality Childcare:** Low-wage workers are more likely to be single parents,¹⁶ more likely to have children with disabilities,¹⁷ and are more likely to care for elderly or sick relatives.¹⁸ At the same time, they are far less likely to have the resources to pay for child and elder care than other workers, and they are far less likely to have paid sick and vacation days. Scheduling instability and unpredictability compound the challenges that parents working in retail have with securing child care. With work schedules and fluctuating income levels, many parents have no choice but to find child care at the last minute, forcing parents to make inconsistent and poorer quality childcare arrangements.¹⁹

¹³ *Unpredictable, Unsustainable: The Impact of Employers' Scheduling Practices in D.C.*, DC FISCAL POLICY INST. (June 11, 2015).

¹⁴ Daniel Schneider & Kristen Harknett, *Consequences of Routine Work Schedule Instability for Worker Health & Wellbeing*, AM. SOC. REV. (2019).

¹⁵ *It Shouldn't Be A Heavy Lift: Fair Treatment for Pregnant Workers*, NWLC & A BETTER BALANCE (2013), https://www.nwlc.org/sites/default/files/pdfs/pregnant_workers.pdf.

¹⁶ Joan C. Williams & Heather Boushey, *The Three Faces of Work-Family Conflict: The Poor, the Professionals, and the Missing Middle*, CTR. AM. PROGRESS (Jan. 25, 2010), <https://www.americanprogress.org/article/the-three-faces-of-work-family-conflict/>.

¹⁷ Lisa Dodson, *Stereotyping Low-Wage Mothers Who Have Work and Family Conflicts*, 69 J. OF SOC. ISSUES 257, 259 (2013).

¹⁸ Anna Danziger & Shelley Waters Boots, *Lower-Wage Workers and Flexible Work Arrangements*, URBAN INST. (2008).

¹⁹ Wen-Jui Han, *Maternal Nonstandard Work schedules and Child Cognitive Outcomes*, 76 CHILD DEV. 137-15 (2005).

- **Strengthening Early Childhood Outcomes:** Parents with unpredictable schedules have less flexibility to engage in regular activities with children such as family mealtime, bedtime, and reading books, all of which have been found to contribute to a child's healthy development.²⁰ Studies have linked parents' unpredictable work schedules to children's mental health conditions, such as anxiety, depression, and withdrawal in pre-school aged children.²¹ Unstable schedules have also been linked to problems with cognitive development, including lower expressive language ability in early childhood and lower reading and math performance in middle childhood.²²
- **Increasing Educational Opportunities:** A fluctuating work schedule makes it nearly impossible for workers to attend school and increase their economic opportunities. Nationally, almost one-third of working post-secondary students aged 26-32 receive less than one's week advance notice of their work hours, and young people cite conflicts between work and school schedules as the primary reason for leaving college before obtaining a degree.²³ Working students report their unpredictable schedules limit the number of classes they take, their access to campus facilities, and their participation in extracurricular activities.²⁴

B. Los Angeles' FWW Ordinance Will Protect Hourly Workers and their Families

The Los Angeles FWW policy is a commonsense measure that will greatly improve the lives of approximately 70,000 workers in the city. This measure will help ensure retail and grocery workers have access to the scheduling stability that affords them a good quality of life, positive work-life balance, dignity, and respect.

Specifically, the ordinance will ensure that workers:

- Receive two weeks' notice of their schedules;
- Are not forced to work "clopening" shifts or to remain "on-call" for shifts;

²⁰ Susan J. Lambert et al., *Precarious Work Schedules Among Early-Career Employees in the U.S: A National Snapshot*, U. OF CHICAGO, EMPLOYMENT INSTABILITY, FAMILY WELL-BEING AND SOCIAL POLICY NETWORK (Aug. 27, 2014).

²¹ See, e.g., Stephanie S. Daniel et al., *Nonstandard Maternal Work Schedules During Infancy: Implications for Children's Early Behavior Problems*, 32 *INFANT BEHAV. & DEV.* 195, 203-04 (2009); E. Rosenbaum & C.R. Morett, *The Effect of Parents' Joint Work Schedules on Infants' Behavior Over the First Two Years of Life: Evidence from the ECSLB*, 13 *MATERNAL & CHILD HEALTH J.* 732, 732 (2009); Wen-Jui Han, *Shift Work and Child Behavioral Outcomes*, 22 *WORK, EMP. & SOC.* 67 (2008); Wen-Jui Han, Daniel P. Miller, & Jane Waldfogel, *Parental Work Schedules and Adolescent Risky Behaviors*, 46 *DEV. PSYCH.* 1245, 1261 (2010); Pamela Joshi & Karen Bogen, *Nonstandard Schedules and Young Children's Behavioral Outcomes Among Working Low-Income Families*, 69 *J. OF MARRIAGE & FAMILY* 139-56 (2007).

²² Erika C. Odom, Lynne Vernon-Feagans, & Ann C. Crouter, *Nonstandard Maternal Work Schedules: Implications for African American Children's Early Language Outcomes*, 28 *EARLY CHILD. RES. Q.* 379 (2013); Wen-Jui Han, *Maternal Nonstandard Work Schedules and Child Cognitive Outcomes*, 76 *CHILD DEV.* 137, 137, 152 (2005); Wen-Jui Han & Liana E. Fox, *Parental Work Schedules and Children's Cognitive Trajectories*, 73 *J. OF MARRIAGE & FAM.* 962, 962 (Oct. 2011).

²³ Jean Johnson & Jon Rochkind, *Whole Lives Ahead of Them: Myths and Realities About Why So Many Students Fail to Finish College*, *PUBLIC AGENDA* (Jan. 2009).

²⁴ *Id.*

- Will not be retaliated against for requesting a change in their shift;
- Will receive additional compensation for last-minute changes to their schedules; and
- Will be offered additional hours at their place of employment before employers hire additional part-time workers.

Importantly, the FWW ordinance will only apply to large employers with at least 300 employees globally in the retail and grocery sector, including chains and franchises. It will not directly impact smaller businesses or “mom and pops.”

C. Fair Workweek Laws Are Working Nationwide

Finally, it is important to note that FWW measures are not untested: one state and six cities have enacted comprehensive FWW protections.²⁵ New York City has opened hundreds of investigations against companies and filed a million-dollar lawsuit against Chipotle under their workweek law.²⁶ A recent two-year study of Seattle’s Secure Scheduling Ordinance found that the measure increased work schedule stability and predictability, increased job satisfaction and satisfaction with work schedules, increased overall happiness and sleep quality, and reduced material hardship.²⁷ Another analysis of Oregon’s fair workweek law found that the FWW ordinance successfully reduced “clopening” shifts, improved workers’ ability to have input into their work schedule, and gave workers two weeks’ notice.²⁸

In February 2019, Public Counsel and the Fair Workweek Coalition-LA hosted a public forum on the problem of unfair scheduling practices and called for a city ordinance to address this critical issue. The next day, Councilmembers Wesson and Price introduced a motion to initiate this process. Unfortunately, the bill stalled in early 2020 due to the Covid-19 pandemic. Although Covid-related needs and measures have understandably taken center stage for the past two years, it is time to urgently revisit the need for a fair workweek ordinance to protect retail workers in our city.

This year, Los Angeles has an opportunity to stand up for workers and enact crucial protections that will reduce income, gender, and racial inequality in the workplace. Los Angeles’ retail workers and working parents deserve to also have access to the safe and stable schedules that will allow their families to thrive. We urge you to pass this crucial reform.

²⁵ See generally Sophia M. Mitchell et al., *Exploring the Legal Response to Unpredictable Scheduling Burdens for Women in the Workplace*, CTR. FOR PUBLIC HEALTH L. RESEARCH (Oct. 2021).

²⁶ Michael Gold, *Workers Accuse Chipotle, the “Food With Integrity” Company, of Abuses*, N.Y. TIMES (Sept. 10, 2019).

²⁷ Kristen Harknett, Daniel Schneider & Véronique Irwin, *Seattle’s Secure Scheduling Ordinance*, SHIFT PROJECT (Feb. 2021), <https://shift.hks.harvard.edu/wp-content/uploads/2021/02/Seattle-Year-2-Evaluation.pdf>,

²⁸ Lola Loustaunau et al., *Persistent Unpredictability: Assessing the Impacts of Oregon’s Employee Work Schedules Law*, U. of Oregon (Jan. 2021), <https://cpb-us-e1.wpmucdn.com/blogs.uoregon.edu/dist/a/13513/files/2021/01/WorkSchedulesReport.pdf>.

Thank you for your leadership,

Cara McConnell Newlon

Cara Newlon

Peter & Patricia Gruber Fellow, Public Counsel

A handwritten signature in black ink, appearing to read "Jill Thompson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jill Thompson

Directing Attorney- Women and Girls' Rights, Public Counsel