

Communication from Public

Name: Peter J. Fugiel
Date Submitted: 05/24/2022 08:43 AM
Council File No: 19-0229
Comments for Public Posting: I would like to submit expert testimony regarding the Fair Work Week Ordinance. In the attached document, I summarize recent research on the problem of unstable scheduling and the benefits of effective scheduling regulation. Please contact me if you have any questions or concerns in this matter.

I | SCHOOL OF LABOR & EMPLOYMENT RELATIONS

April 5, 2022

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

Dear Council President Martinez and Economic Development & Jobs Committee Chair Price,

I am writing in support of the Los Angeles Fair Work Week Ordinance (file no. 19-0229) now before the Economic Development & Jobs Committee of the City Council. As a social scientist with expertise on this topic, I can testify that this legislation, properly implemented, would improve the health, well-being, and economic security of tens of thousands of retail workers in LA.

I am currently a Postdoctoral Research Associate with the Project for Middle Class Renewal at the University of Illinois School of Labor & Employment Relations. My research examines labor standards and job quality with a focus on scheduling practices in retail trade. As part of my doctoral studies in sociology at the University of Chicago, I worked with Susan Lambert and colleagues on the Stable Scheduling Study, an innovative field experiment conducted in 28 Gap clothing stores in Chicagoland and the San Francisco Bay Area. I have been following the development of fair work week policies since the 2014 introduction of the Schedules that Work Act, which cited early estimates I provided on the extent of unpredictable schedules.

Across the many studies and cases I have examined, a common theme is clear: unstable scheduling harms workers and their families. Inconsistent shifts make it harder for workers to plan their lives outside of work. Without a consistent schedule or adequate advance notice, it is difficult for workers to maintain regular sleep and meal times, let alone for students to take classes or parents to arrange childcare. This inconsistency not only harms workers themselves, but also disrupts their ability to provide and care for their dependents. Young children thrive on routine and are sensitive to disruptions caused by last-minute changes to a parent's work schedule (for more details, see testimony submitted by Anna Gassman-Pines and Elizabeth Ananat on 6/26/19).

Unstable scheduling undermines the promise of a living wage and exacerbates racial inequality in the labor market. Los Angeles was a leader in raising the minimum wage to \$15 per hour and planning future raises to keep pace with inflation. But this wage level does not ensure a decent income for workers who lack adequate or reliable work hours. Unstable scheduling increases the risk of shortfalls in monthly earnings and financial hardship, particularly for part-time workers in retail and other consumer services. Managers are not obligated to provide workers with a minimum number of hours, yet they can demand "open availability" from workers to cover any and all shifts. Workers who limit their availability or decline unscheduled shifts tend to receive fewer hours and may have no recourse but to quit or get another job. These practices are widespread in the retail sector, but they disproportionately impact workers of color. According to research by Adam Storer and colleagues with the Shift Project, Black and Hispanic workers are more likely than their White coworkers to have unstable schedules and these racial disparities are greatest for non-White workers with White managers.

Retail employers and industry lobbyists who oppose this ordinance argue that unstable scheduling is necessary to meet unpredictable business needs. Yet the draft proposal allows for schedule changes provided that employers compensate workers with “predictability pay” (\$185.06). If unstable scheduling adds value for the business, why not compensate workers who accept schedule changes in order to produce this value? Any sensible business person would demand a higher return for riskier investments. It is only fair that employers pay a premium to workers who bear greater risk of work-life conflict and lost earnings on behalf of the business.

Some employers claim that workers with unstable schedules already enjoy greater flexibility or opportunities for advancement. These claims are contradicted by research I conducted (soon to be released as a working paper through the Washington Center for Equitable Growth) using national data from the Bureau of Labor Statistics on a cohort of employees born in the early 1980s. I find these early-career workers are penalized rather than rewarded for scheduling risk. Compared with more stable but otherwise similar jobs, workers with unpredictable schedules report lower job satisfaction and less beneficial flexibility. They are also more likely to leave jobs with unstable schedules, contributing to the high rates of turnover in retail, food service, transportation, and other sectors where unstable scheduling is common.

The Los Angeles Fair Work Week Ordinance has the potential to reduce the harm of unpredictable scheduling by requiring large retailers to provide advance notice or extra pay for schedule changes. In Seattle, similar legislation has been effective in improving schedule predictability as well as sleep quality and economic security for covered workers, as shown by Kristen Harknett and coauthors in a study published last year in the *Proceedings of the National Academy of Sciences*. To be clear, Seattle achieved this success through careful rulemaking and significant investments in enforcement following the enactment of scheduling legislation. I therefore urge the Council to consult with labor researchers and enforcement officials on best practices for implementing this ordinance as it nears passage. For instance, I would warn against a broad definition of “unanticipated customer need” (185.06.B.2) which could become a loophole to deny predictability pay for most schedule changes.

I would be happy to answer questions about this testimony and recommend other experts whom you could consult regarding implementation and enforcement of fair workweek standards. Thank you for your consideration of this important issue.

Sincerely,



Peter J. Fugiel, Ph.D.

Postdoctoral Research Associate
University of Illinois at Urbana-Champaign
School of Labor & Employment Relations
504 E. Armory Ave.
Champaign, IL 61820
260.468.8528 | pfugiel@illinois.edu

Communication from Public

Name: Francisco Diez

Date Submitted: 05/24/2022 07:31 AM

Council File No: 19-0229

Comments for Public Posting: On behalf of the Center for Popular Democracy (CPD), I write to express our support for the Fair Workweek Ordinance. We also wish to thank the Council sponsors of the policy, BCA, and the City Attorney's office for their diligence in developing the policy and mechanisms for enforcement. The Center for Popular Democracy's Fair Workweek Initiative (FWI) has provided technical assistance to policymakers and enforcement staff on the development and enforcement of fair workweek policy since 2014. CPD has been deeply engaged in the design and implementation of fair workweek ordinances in San Francisco, Seattle, Emeryville CA, New York City, Philadelphia, Chicago, and the state of Oregon, as well as the Opportunity to Work ordinance adopted by voters in San José, CA. A robust ordinance would ensure that retail workers have more stability, predictability, and input into their schedules, allowing working families across the city to thrive. This policy will ensure that retail workers in the city: Receive two weeks' notice of their schedules; Are not forced to work "clopening" shifts or to remain "on-call" for shifts; 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. Will be able to enforce the law through the private right of action and benefit from penalty structures that will result in real changes in incentives. However, we write in particular to encourage the City Council to incorporate lessons learned from the passage and implementation processes of fair workweek laws in other jurisdictions. Specifically, we recommend that the policy 1) limit exceptions to predictability pay (especially employer initiated exceptions); 2) expand the information included in the good faith estimate; 3) ensure that workers are compensated for violations of advance notice protections; 4) incorporate a flexible, outcome-focused access to hours requirement. Furthermore, we write to briefly highlight the positive impact that this bill will have on business as well as covered workers. See attached document for more details.

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

May 24, 2022

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

CC: LA City Councilmembers

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

On behalf of the Center for Popular Democracy (CPD), I write to express our support for the Fair Workweek Ordinance. We also wish to thank the Council sponsors of the policy, BCA, and the City Attorney's office for their diligence in developing the policy and mechanisms for enforcement.

The Center for Popular Democracy's Fair Workweek Initiative (FWI) has provided technical assistance to policymakers and enforcement staff on the development and enforcement of fair workweek policy since 2014. CPD has been deeply engaged in the design and implementation of fair workweek ordinances in San Francisco, Seattle, Emeryville CA, New York City, Philadelphia, Chicago, and the state of Oregon, as well as the Opportunity to Work ordinance adopted by voters in San José, CA.

A robust ordinance would ensure that retail workers have more stability, predictability, and input into their schedules, allowing working families across the city to thrive.

This policy will ensure that retail workers in the city:

- Receive two weeks' notice of their schedules;
- Are not forced to work "clopening" shifts or to remain "on-call" for shifts;
- 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.
- Will be able to help enforce the law through the private right of action and benefit from penalty structures that will result in real changes in incentives

However, we write in particular to encourage the City Council to incorporate lessons learned from the passage and implementation processes of fair workweek laws in other jurisdictions. Specifically, we recommend that the policy 1) limit exceptions to predictability pay; 2) expand the information included in the good faith estimate; 3) ensure that workers are compensated for violations of advance notice protections; 4) incorporate a flexible, outcome-focused access to hours requirement.

Furthermore, we write to briefly highlight the positive impact that this bill will have on business as well as workers.

1. Limit Exceptions to Predictability Pay

We strongly recommend requiring predictability pay for nearly all employer-initiated schedule changes. Several cities have accommodated employer concerns about predictability pay by enumerating many circumstances in which predictability pay does not apply. This complexity has made it harder for workers

to understand when they are entitled to compensation – a serious problem in an enforcement system that relies heavily on worker complaints. A longer list of exceptions will also burden the Bureau of Contract Administration (BCA) by requiring investigators to examine complex fact patterns. Taking the “mass communication” exception as one example, BCA staff would have to determine: (1) whether the reason for the added hours was the unplanned absence of a scheduled employee, (2) whether the communication was made to a big enough group of workers, and (3) whether it made clear that employees could decline. Finally, these exceptions do not benefit employers: the savings associated with avoiding predictability pay are likely outweighed by the cost of tracking and recording when complicated exceptions apply, and increased compliance risk because managers are not properly trained to apply the exceptions.

The policy should adhere as closely as possible to a bright-line rule: employee-initiated changes (requests to leave work early, shift swaps, vacation time) do not trigger predictability pay, but workers are compensated when the employer initiates a schedule change, regardless of the circumstance.¹ Under that principle, CPD recommends that the City Council decline to enact exceptions for:

A. Emergency Operational Closures

One common exception for predictability pay is for something along the lines of the “employer’s inability to begin or continue operations due to threats to employees or property, the recommendation of a public official, public utilities failure, natural disaster, a weather event, or an event that would cause the Employer to violate a law.”

However, we question whether workers should bear the full cost of such closures (in the absence of this exception, workers would receive half-time pay, so they would still lose wages). When a disaster causes a retailer to shut down, the retailer may have insurance to defray costs, but workers typically have little savings to cushion the blow. As climate change increases the likelihood of natural disasters that may cause such closures, the implications of this policy choice may become more serious. If this exception is included, it should be reserved for situations that are both rare and easily verifiable: natural disasters and government-declared states of emergency.

B. Unplanned Absences and Unanticipated Needs

Another potential exception could allow employers to offer additional hours of work, without predictability pay, to cover absences when the offer (1) is communicated via written “mass communication” and (2) emphasizes that acceptance is voluntary. In the past, the BCA recommended permitting in-person communications about schedule changes when two or more working employees are present. The requirement to offer the hours to multiple employees at once is designed to minimize the coercive experience of being asked for a favor by the manager that controls a worker’s hours and livelihood.

In practice, this complicated exception has proven to undermine compliance. Perhaps due to insufficient training of managers, some employers use mass communications to offer shifts without predictability pay for any reason, beyond unplanned employee absences. Evaluating each circumstance necessary to invoke the exception also consumes undue enforcement capacity and disempowers workers from participating in enforcement, as workers may not be in a position to confirm that a last-minute changed shift was due to a

¹ “Active attestation timeclocks” are available from some workforce management vendors. This product captures in real time any discrepancy between scheduled hours and the time a worker clocks in or out. In the event of a discrepancy that exceeds the “grace period” (typically 15 minutes), the system prompts the employee to note whether the change was manager or self-initiated, and automatically triggers compensation unless the employee confirms that he or she initiated the change.

coworker's absence rather than a manager's poor planning. By contrast, in New York City, which declined to enact this exception and requires compensation when workers change their plans to work in place of an absent coworker, no adverse effects have been reported. The exception that allows employers to extend shifts without predictability pay to meet "unanticipated customer demand" is equally challenging from an enforcement perspective and should be avoided.

C. Employees Facing Discipline

Another common exception is for the employer to deny predictability pay to an employee where the "employee hours are reduced due to the Employee's violation of any existing laws and/or company procedures."

By contrast, other cities such as New York City and Emeryville, CA, have elected not to include a disciplinary exception at all—the approach that we recommend. Due to the pressures corporations place on managers to stay within their labor budget, there is a substantial risk of managers fabricating discipline in order to reduce hours without compensation. To prevent exploiting this loophole, the enforcement agency would have to evaluate the disciplinary record, needlessly consuming scarce enforcement resources.

2. Bolster Predictability through Good Faith Estimates

Too often, workers accept a new retail job because they are assured that they'll receive the number of hours they need to make ends meet; yet after an initial training period their hours drop precipitously. The good faith estimate (GFE) policy was designed to mitigate this challenge by providing workers with reliable information at the time of hire.

CPD strongly supports the inclusion of a GFE in implementation recommendations. However, in order to ensure that the GFE provides meaningful predictability to workers, CPD urges the City Council to:

- Ensure that GFEs have sufficient specificity to give workers meaningful information. In addition to specifying the "median number of hours an Employee can expect to work" and whether they can expect to work on-call, as BCA has recommended in the past, Fair Workweek laws in San Francisco, Chicago, Philadelphia, and New York City also require information about the days and times workers can expect to work or to have off. Philadelphia, and New York City also require information about the location of the worksite. We recommend these elements also be included in Los Angeles' GFE policy.
- Establish clear presumptions for variances from the GFE that suggest it was not provided in good faith. Cities like Philadelphia have adopted specific standards that have made it easier for enforcement authorities to determine whether or not an employer has acted in bad faith.
- Ensure that workers receive revised GFEs when there is a significant change to employees' work schedules due to changes in employee availability or the employers' bona fide business needs.
- Require that workers receive compensation when their employer has violated their right to a GFE. Merely requiring employers to update an inaccurate GFE does not address the harm incurred by workers who accepted a job based on misinformation. A penalty for an inaccurate GFE would also promote compliance.

3. Provide Workers with Compensation for Violations of Advance Notice Rights

We recommend a requirement that employers post a schedule in the workplace that contains the shifts to be worked by all workers at the worksite, with specific times and locations. This schedule must be posted 14 days before the first shift on the schedule, allowing employees to plan child care options, doctor's visits, and other obligations. Reports from cities with fair workweek laws indicate that this posting requirement is easily implemented by employers, and has been well broadcast to and easily understood by workers.

Employees should be compensated for each day the schedule is not posted with the required notice, to ensure that employers do not avoid the obligation to compensate employees for last-minute changes (predictability pay) by simply violating the posting requirement. Direct compensation to employees, in addition to penalties recovered by the agency, have proven critical to compliance in cities that have adopted fair workweek laws.

4. Adopt Flexible, Outcome-Focused Access to Hours Requirements

All municipal fair workweek policies include a provision requiring employers to give existing workers the opportunity to work additional hours before hiring new staff (subject to overtime limitations). The city of San José also adopted this policy via ballot initiative in 2016. These policies all require the employer to post an opportunity for additional hours for a prescribed amount of time before hiring. If no existing employee desires or is available for the offered hours, or is qualified to perform the work, the employer can hire externally. The employer has discretion to distribute hours among interested workers (e.g., by seniority, first-come-first-served, by rotation) provided the distribution system is neither discriminatory nor designed to avoid the coverage mandates of the Affordable Care Act.

In essence, Access to Hours policies create a pre-hiring requirement: employers must first evaluate whether existing employees want to increase their work hours. Following intensive conversation with enforcement agencies in several cities with fair workweek laws around successes and challenges in enforcing Access to Hours, we recommend that the City Council:

- Adopt a flexible, outcome-focused requirement that employers make “every effort” to schedule existing employees for their desired number of hours.² Employees’ desired hours must be

² Sample ordinance language for this approach:

(1) Upon hiring an employee, a Covered Employer shall obtain a written statement of the employee’s desired number of weekly work hours and the days and times the employee is available to work. The employer shall notify the employee that this written statement will be relied on in distributing additional hours and may be modified in writing at any time during employment.

(2) Before hiring new employees from an external applicant pool or contractors, including hiring through the use of a temporary labor service agency, an employer shall make every effort to schedule existing employees for their desired number of weekly work hours, provided that:

- a. The employer may hire a new employee if existing employees lack, and cannot obtain with reasonable training, the qualifications necessary to perform the work.
- b. This section shall not be construed to require any employer to schedule employees to work hours required to be paid at an overtime rate under state or federal law.

(2) When an employer fails to offer existing employees opportunities to work their desired number of weekly work hours before hiring a new employee, existing employees must be compensated at the employee’s regular hourly rate for hours worked by a newly hired employee that occurred within the existing employee’s written availability.

recorded at the time of hire and may be updated. Employers can choose to use the existing posting process or a more individualized approach to match workers with newly available hours.

- Specify that workers denied hours due to violations of this ordinance are owed compensation. Many enforcement agencies pursue backpay by dividing the total number of hours worked by unlawful new hires among the part-time employees who were already employed at the time of hire. But the consensus from other cities is that employers invest more in compliance, and workers are more likely to participate in enforcement activity, when direct compensation to injured employees (in addition to penalties) is explicit in the ordinance.

If the Council prefers to emulate the procedurally prescriptive Access to Hours model of other cities instead of a streamlined “every effort” approach, the policy should address loopholes that have undermined compliance in other cities. These loopholes include:

- When employers are empowered to define the length of the shift and restrict workers to picking up the full shift, some employers have defined the start and end times of the shift in such a way that will make it impossible for most employees to bid on the shift and pick up the additional hours.³
- Some employers have hired new employees at locations outside the city limits and then transferred them into the stores subject to the Fair Workweek law in order to subvert “access to hours” protections. To curb this practice, employers should be required to offer hours to employees at the “home store” and only to workers at other stores if no “home store” employee is interested or qualified.
- Instead of offering additional hours to experienced employees, other employers have filled shifts by requiring newly hired employees to work hours other than those advertised at the time of hiring. The policy must prevent this by specifying that the hours worked by new hires must match the hours advertised in the notice.

Furthermore, employers covered by the bill stand to reap significant benefits. The companies that would be covered by this Fair Workweek bill are already complying with similar laws elsewhere. Workforce management company Deputy, which provides technology that supports compliance with these laws, reports positive impacts of fair workweek compliance for their clients:

- Fair workweek laws generally result in a 14% increase in hours for workers.
- Absences and tardiness have gone down by over 30%.
- **Covered employers in fair workweek jurisdictions have seen a 3% decrease in labor costs.**⁴

We applaud the City Council for taking steps to protect some of the most vulnerable retail workers, including the 70,000 covered by the policy, from unstable hours.

We look forward to Los Angeles joining the growing chorus of cities that have passed fair scheduling policies, including New York City, San Francisco, Seattle, Philadelphia, and Chicago. Our essential workers in the retail and grocery industry should not have to keep facing the same challenges that they did

³ New York City’s rule avoids this problem by requiring the employer to award shift increments, as long as the employer is not left to fill a shift of less than 3 hours, and requiring employers to award a shift to an employee already scheduled for an overlapping shift, then advertising any newly available hours. Similarly, San Francisco requires the distribution of shift increments provided the employer is not left to fill a shift of less than 4 hours.

⁴ Communication from Krista Hardwick, legal counsel, Deputy, Jan. 28, 2020.

prior to the pandemic.

We are happy to provide any assistance the Council may request to make this ordinance a reality.

Sincerely,
Francisco Diez
Senior Policy Strategist
Center for Popular Democracy

Communication from Public

Name: Oscar Beltran

Date Submitted: 05/24/2022 04:47 PM

Council File No: 19-0229

Comments for Public Posting: I did not get to give my public comment at todays council meeting. Good Afternoon city council members, My name is Oscar. I am a worker at Sprouts in Los Angeles and I have been working in this Industry for about 4 years now. I am a single father trying to make ends meet for my family. Being called in on my day off without proper notice or having my schedule changed at the last minute and not having a schedule posted with time overall affects my daily life, especially when I have to find childcare. This is why I urge you to pass the Fair Workweek policy. We need scheduling stability in these industries. We need a fair workweek policy in the city of Los Angeles just like other cities have passed including Emeryville and states like New York City, San Francisco, Seattle, Philadelphia, and Chicago. Thank you for your time.