

Communication from Public

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December 4, 2019

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

Dear Honorable Councilmembers:

The California Retailers Association (CRA) is pleased to provide comments on the Bureau of Contract Administration's "Fair Work Week" proposal recently adopted by the Economic Development Committee.

CRA is the only statewide trade association representing all segments of the retail industry including general merchandise, department stores, mass merchandisers, fast food 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 currently operates over 164,200 stores with sales in excess of \$571 billion annually and employing over three million Californians – nearly one-fifth of California's total employment.

Retail is a dynamic industry subject to considerable seasonal and economic variability. Meeting customer demands at all times of year is a challenge we embrace, and flexibility is both a necessary and desirable feature of the retail enterprise. Indeed, surveys show that many retail employees choose retail specifically because the field allows them to work a flexible schedule. To meet the demands of customers, retail employers must have the ability to tailor work schedules to meet the needs of a diverse employee population, as well as the autonomy to make necessary adjustments to staffing levels as customer demand fluctuates throughout the year.

CRA requests the following amendments to BCA's proposal that will help preserve that flexibility:

Covered Employees. The time worked threshold for a covered employee is overly broad and may cover employees who only incidentally work within the City's geographic boundaries, such as employees on service calls. We request that this threshold be amended to cover only employees who spend at least 50 percent of their time at a physical location that is within the City's geographic boundaries, similar to the threshold in the City of Seattle's scheduling ordinance. Furthermore, employees who perform in-store services that are not directly related to retail, such as building maintenance, janitorial, tailoring, seamstress, and loss prevention/security, should not be covered by this law.

Documentation Requirements. A number of recommendations specifically require written documentation of scheduling changes. Retailers and other employers are increasingly turning to smartphone apps and other means of communicating with their employees that ease the scheduling of work shifts and enhance the accommodation of employee preferences. Any ordinance should allow for scheduling requests and changes to be documented via technology.

Good Faith Estimate. Requiring employers to provide an estimate of the "median" number of hours an employee can expect to work is neither clear nor likely to be meaningful to most employees, nor is it something that employers currently track. We request that this be amended to require a mean or average number of hours expected to be scheduled. The requirements should not be overly prescriptive given that this is an estimate.

Offer of Hours. Depending on how the ordinance is written, requiring employers to offer available shifts or hours to current employees could create complications if employers are required to accomplish overly prescriptive notification requirements before hiring new employees or allowing current employees to accept new hours or shifts. If the ordinance is overbroad with regard to this section, it could slow down hiring and unfairly burden the process for employees who want to schedule more hours. CRA requests that this recommendation be clarified to require communication only to employees who are both qualified and available to work the shift, and include the ability of employers to operate a "standby list" of employees who wish to be notified, similar to current law in Oregon.

Advanced Notice. Creating a schedule is a complex process that requires data, forecasting, combining employee availability with payroll and customer needs, as well as consideration of local, state and federal laws. Any mandate to increase advance notice will have a significant impact to the scheduling process and will require system changes, technology and process changes as well as employee training. This will be increasingly complex for Los Angeles, as it will become one of the largest markets to pass a scheduling ordinance impacting retail and grocery. Oregon (2-year delay), Philadelphia (1-year delay), and Chicago (2-year delay) passed

laws that phase-in the 14-day notice gradually to allow businesses time to transition and be in compliance. We would ask that the City Council consider this approach as well.

Predictability Pay. The exceptions to predictability pay acknowledge a number of the challenges facing employers when they must schedule or re-schedule their employees on short notice. The recommendations should also consider and accommodate re-scheduling employees when other employees cancel on short notice, either due to illness or other personal matters, and exempt any voluntary schedule changes, including occasions when an employee decides to voluntarily clock in or out beyond the shift scheduled by the employer. The fifteen-minute exception is insufficient to account for these employee-initiated situations. As it stands, this proposal would still penalize the employer for factors entirely out of their control.

Health Care Services. CRA is concerned about the impact of these recommendations on essential health care services provided by pharmacies at retail locations. We would request that an ordinance exclude employees working in health care from its provisions.

Private Right of Action. Violations of this ordinance should remain a matter of administrative enforcement. A private right of action creates an avenue for mischief by opportunistic trial attorneys and other parties with ulterior motives to sue over legal interpretations or technical violations, even where there is no identifiable harm to employees.

Implementation. Six months is an exceedingly short timeframe in which to review and revise company policies, design new management practices, install new scheduling software or systems, and re-train both managers and employees. We would request an implementation period of fifteen (15) months that ends after the 2020 holiday season.

Thank you for your consideration. If you have any questions or comments, please do not hesitate to contact me at (916) 443-1975 or steve@calretailers.com.

Sincerely,



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