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Honorable Members of the City Council
c/o Office of the City Clerk
200 N. Spring Street, Room 395
Los Angeles, CA 90012

October 4, 2019

Honorable Members:

**BUREAU OF CONTRACT ADMINISTRATION – LOS ANGELES FAIR WORK WEEK
IMPLEMENTATION RECOMMENDATIONS
(COUNCIL FILE 19-0229)**

BACKGROUND

In response to instruction from the City Council (C.F. 19-0229), the Office of Wage Standards (OWS) in the Bureau of Contract Administration (BCA) submits for your consideration a report of the implementation recommendations for a Los Angeles Fair Work Week law. The Council Motion requesting this report asserts that the purpose of a fair work week law is to provide protections against the unpredictability of retail workers' schedules that can lead to income insecurity, underemployment and challenges with child care. Cities across the country including Seattle, San Francisco, New York, Philadelphia, Emeryville, and San Jose have passed laws that provide scheduling protections for workers.

The BCA performed a review of these existing fair work week programs and attended a meeting to receive input from businesses with the Valley Industry and Commerce Association. Based on an evaluation of this information, as well as experience with implementing the Minimum Wage Ordinance and Fair Chance Initiative for Hiring Ordinance, the BCA suggests the recommendations below.

IMPLEMENTATION RECOMMENDATIONS

- 1. The City Council request that the Office of the City Attorney draft a Fair Work Week Ordinance consistent with the recommendations made in this report.**
- 2. For consistency and clarity, provisions regarding enforcement and administration of the Fair Work Week Ordinance should be included within Los Angeles Municipal Code Section 188, the Los Angeles Office of Wage Standards Ordinance, to the extent practicable. To accomplish this, the Office of the City Attorney should be directed to amend L.A.M.C. Section 188 as needed. In addition, to assist in obtaining records in a**



timely manner, LAMC Section 188.08B should be amended to include an administrative fine for “Failure to submit documents or information to the City within 30 Days, up to \$500.”

This implementation strategy will enable the OWS to build upon established labor standards enforcement practices that will promote consistency in the application of similar laws. For example, the use of consistent definitions, posting requirements, notice of correction procedures, appeals procedures, penalty determination criteria, and administrative fines will simplify and streamline the implementation process.

- 3. The Office of Wage Standards should be authorized to promulgate and enforce Rules and Regulations to implement this policy. In a manner consistent with the Minimum Wage Ordinance, the Rules and Regulations should have the force and effect of law, and may be relied upon by Employers, Employees, and other parties to determine their rights and responsibilities.**
- 4. The definition of a covered Employer should require all of the following elements be satisfied:**
 - **a retail establishment with 300 or more employees globally;**
 - **a retail business identified in the North American Industry Classification System (NAICS) within the retail trade categories 44 through 45 and their subcategories;**
 - **who directly or indirectly or through an agent or any other person, including through the services of a temporary service or staffing agency or similar entity, employs or exercises control over the wages, hours or working conditions of any Employee.**

The NAICS codes have been used successfully in other cities including Seattle to identify the types of retail establishments that are covered by the law. For example, the NAICS categories identified above include fixed point of sale retail, big box retail, grocery stores, and internet and mail order retailers.

- 5. The definition of a covered Employee should require both of the following elements be satisfied:**
 - **any individual who performs at least two hours of work in a particular week within the geographic boundaries of the City of Los Angeles for an Employer;**
 - **an individual who qualifies as an Employee entitled to payment of a minimum wage from any Employer under the California minimum wage law and the California Industrial Welfare Commission wage orders.**

This includes but is not limited to full-time, part-time, seasonal, or temporary workers.

Workers should be presumed to be employees. Employers must demonstrate that workers who are not employees are bona fide independent contractors.

The provisions of this Ordinance will apply to hours scheduled and performed within the City.

- 6. Employers are required to provide Employees with a good faith estimate of the median number of hours an Employee can expect to work each week.**

Upon hire of new Employees, Employers are required to provide a good faith estimate of the median number of hours an Employee can expect to work each week, and whether they will be expected to work on-call shifts. The estimate should also notify the worker of the potential for additional work and entitlement to predictability pay under the Ordinance. For existing Employees who were hired prior to the effective date of this law, the Employer must provide a good faith estimate upon request by an Employee.

Predictability pay is the required additional compensation when there is any Employer-initiated alteration to Employees' hours within the 14-day notice period, as described in Recommendation 15.

This estimate is not a contractual offer binding to the Employer. However, an estimate that is not made on a good faith basis may be found to be a violation of this law.

7. Prior to the start of employment, prospective Employees may request schedule preferences. The Employer has the sole discretion to accept or decline the request.

At the time of hire, any Employee has the right to request not to be scheduled for work shifts during certain hours, times, or locations of work, or to request not to work on-call shifts. Employees may also identify preferences for the hours or locations of work. The Employer has the sole discretion to accept or decline the request, provided that the Employer notify the Employee prior to the start of employment.

8. Employers must provide Employees with at least 14 calendar days' notice of their schedule.

A written notice of work schedules, either printed or electronic, must be posted no later than 14 calendar days before the first day of any new work period in a conspicuous and accessible location where Employee notices are customarily posted. If posted electronically, all Employees in the workplace must be able to access it at the work site.

9. During employment, Employees may request work schedule preferences. The Employer must consider all requests.

During employment, any Employee has the right to request, in writing, work schedule limitations and changes with regard to hours, locations, and on-call shifts. The Employer must consider all requests and may require verifying information from the Employee when reasonable. The Employer may grant or deny requests for reasons that are not unlawful and must inform the Employee of the decision and reason in writing if denied.

10. Employees have the right to decline to work any additional hours or additional shifts not communicated in the schedule 14 days in advance of the work period.

Employees may not be retaliated against or penalized for not accepting additional hours. Employees may also decline, without retaliation, any changed shift that does not result in a loss of total hours, but may require the Employee to work a different date or shift. If the Employee voluntarily accepts additional hours, such consent must be recorded in writing. Employees who accept hours at the Employer's request, or who have schedules changed by the Employer, must be paid predictability pay and/or overtime, as described in this report.

11. Employees have the right to a 10-hour rest between shifts.

Employees have the right to decline closing and/or opening shifts that are separated by less than 10 hours. Employers may only schedule such shifts with Employee consent in writing, and the Employer must pay a premium of time and a half for each shift not separated by at least 10 hours.

12. On-call shifts.

If an on-call shift is scheduled, but the Employee is not called in to work, the Employer must compensate the Employee at half of their regular rate of pay for each cancelled shift.

13. Before hiring new Employees, contractors, or temporary employees, Employers must offer additional shifts/hours to current Employees if they are qualified to do the work as reasonably determined by the Employer, and the additional hours would not result in the payment of overtime. Employers must post a notice of additional shifts/hours for at least three days and provide Employees with at least two days to consider the offer of additional shifts/hours.

14. Employers may not punish, penalize, retaliate, or take any adverse employment action against any Employee for exercising their rights under the Ordinance.

However, Employers may discipline an Employee for abuse of an Employer's reasonable notification and job requirements for Employee-requested work schedule changes, provided such changes are not due to a reason covered by another local, state or federal law.

15. Employers shall compensate Employees with predictability pay for changes to the schedule that are made less than 14 days in advance of the start of the work period, with certain exceptions.

Predictability pay for added hours and subtracted hours shall be provided as described below.

For each additional shift, or for each instance that hours are added to an existing shift, or for each instance that the date/time of a shift is changed with no loss of hours, the Employee shall receive an extra hour of pay at their regular rate.

If the Employee is sent home early or a shift is cancelled, or if hours are decreased, the Employer must compensate the Employee at half of their regular pay rate for each hour not worked.

Exceptions to compensation for schedule changes are:

- The Employee makes a written request for a schedule change or to leave early.
- Employee-to-Employee shift swaps. The Employer may require that it pre-approve work shift swaps or coverage and may assist Employees in finding such arrangements. Assistance shall be limited to helping an Employee identify other Employees who may be available to provide coverage or shift swap and does not include the Employer arranging the shift swap or coverage.

- The addition or subtraction is less than 15 minutes.
 - Employee accepts a schedule change in response to a mass communication from the Employer about available additional hours due to an Employee not being able to work their scheduled shift, provided that communication makes clear that acceptance of the hours is voluntary and the Employees have the right to decline.
 - Employee accepts a schedule change in response to an in-person group communication initiated by the Employer with two or more currently working Employees about additional hours due to unanticipated customer needs, provided that communication makes clear that acceptance of the hours is voluntary and the Employees have the right to decline.
 - Employee accepts additional hours as part of the access to additional hours provision described in recommendation #13.
 - Employee hours reduced due to the Employee's violation of any existing laws and/or company procedures.
 - 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.
 - The Employer is paying an overtime premium to an Employee due to a changed shift that exceeds the amount that would be paid for predictability pay.
- 16. The Employer may not require an Employee to find coverage for scheduled hours if the Employee is unable to work for a reason covered by other laws.**

This would include instances where an Employee elects to use paid sick time.

- 17. The Employer must retain the following written records for no less than 4 years:**
- **Work schedules and employment and payroll records pertaining to current and former Employees.**
 - **Copies of written offers to current and former Employees for additional work hours; copies of written responses from Employees.**
 - **Written correspondence between the Employer and Employee regarding any schedule changes, including but not limited to requests, approvals, and denials.**
 - **Good faith estimates of hours provided to Employees.**
 - **Any other records the OWS may require that Employers maintain to demonstrate compliance.**
- 18. Employers must post in a conspicuous place at any work place or job site the notice published each year by the City informing Employees of their rights under this law in English and any other language spoken by at least five percent of the Employees at the workplace or job site.**
- 19. Enforcement of predictability pay; penalties and fines will occur following a six-month implementation period focused on education and outreach. During this period, the**

Designated Administrative Agency may issue written findings of violations without monetary penalties to Employers that violate the law.

20. In addition to penalties and administrative fines, the OWS shall recover predictability pay for Employees. Penalties and administrative fines for Fair Work Week violations should be administered in a similar manner to minimum wage. For example, each day that a violation exists constitutes a separate violation for the purpose of assessing administrative fines.

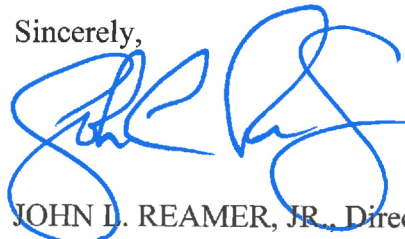
Penalties payable to Employees whose rights were violated are described in the table below.

Violation	Maximum Fine
Failure to provide a good faith estimate of work schedule	Up to \$500
Failure to compensate Employee at one and one-half times pay for working hours that are separated by less than ten hours from the previous shift	Up to \$500
Failure to provide at least 14 calendar days of advance notice of work schedule	Up to \$500
Failure to provide written notice of work schedule changes	Up to \$500
Failure to comply with prohibitions against requiring an Employee to find coverage for scheduled hours if the Employee is unable to work for a reason covered by other laws	Up to \$500
Failure to compensate Employee with additional compensation for work schedule changes	Up to \$500
Failure to offer additional hours of work to existing Employees before hiring new Employees	Up to \$500

21. Any Employee aggrieved by a violation, the City Attorney or any other person or entity acting on behalf of the public as provided for under applicable state law, may bring a civil action in a court of competent jurisdiction against the Employer violating this law.

The BCA looks forward to your instruction on the development and implementation of the Los Angeles Fair Work Week policy.

Sincerely,



JOHN L. REAMER, JR., Director
Bureau of Contract Administration