



October 14, 2016

City of Emeryville
Mayor and City Council
1333 Park Ave
Emeryville, CA 94608

RE: Draft Fair Workweek Ordinance--Oppose

Dear Honorable Mayor and Members of the City Council:

The California Retailers Association (CRA) and its members operating in the City of Emeryville must respectfully oppose the draft fair workweek ordinance proposed. Our industry is uniquely situated within this debate. Retail is dynamic and highly competitive, constantly responding to consumer demand while maintaining a balance of what is feasible for the business and employees. As such, retailers must identify efficiencies in order to maximize productivity. In doing so, each of our member companies approach scheduling, provision of work hours, pay, benefits and the like, differently. To apply a one-size-fits-all advanced schedule mandate to an entire industry would be misguided and fails to consider retailers who have less predictability in their business model or do not have the ability to accurately forecast customer traffic, shipping schedules, and other workload issues.

Rigid scheduling policies have left employees frustrated and unsatisfied with their work environment. Our members operating in San Francisco have cited the many challenges for both employers and employees to comply. Many employees do not know their own availability two weeks in advance and are frustrated with the lack of scheduling flexibility under the ordinance compared to scheduling practice prior to enactment. Employers are now unable to accommodate last minute scheduling requests to avoid situations that could trigger predictability pay penalties. As a result, both the employer and employees must cope with last minute unfilled work hours resulting in existing staff to picking up the burden of the workload. Indeed, restrictive scheduling policies not only burden both employers and employees, they also strain the work culture of the retail environment from one where an open dialogue existed to one where all communication has become a legal conversation. While the proposed ordinance includes some improvements such as codifying the current industry practice of the right to decline to ensure workers are protected, it still unnecessarily regulates scheduling in a manner which creates more problems than solutions. We caution the City of Emeryville to heed the lessons learned

from San Francisco and to pursue this issue with a more balanced approach. Below are some comments from our experiences to help inform your decisions moving forward.

Compensation for Schedule Changes and Exceptions

We appreciate the Council's motion during the August 16 hearing to include the right to decline schedule changes within the proposed ordinance. This effectively codifies the current industry practice for schedule changes. We recommend extending this to last minute schedule changes as this policy is consistently applied in the industry regardless of the time schedule changes are requested. Whether schedule changes are made before the holiday season, 3 weeks in advance, several hours before a shift, or during a shift, the employee always has the right to decline with no retaliation. By only partially applying this right to schedule changes made within 7 days of a scheduled shift, the draft ordinance implies that the right to decline doesn't exist for last minute schedule changes which is not the case for any retail operations.

Furthermore, the ordinance only includes 3 exceptions from predictability pay covering only small portion of circumstances that are out of the employer's control. In San Francisco, several more were included in acknowledgement of the multitudinous scenarios that trigger non-employer initiated schedule changes. These exceptions include employee call outs/time requests off where the employer did not receive advanced notice, changes as a result of disciplinary actions, employee initiated shift exchanges, and for employers who require overtime. The majority of schedule changes made typically come from employees but can also be caused by unforeseen circumstances. It is unreasonable to penalize employers for schedule changes out of their control especially when business operations must still continue.

Overall, the concept of predictability pay simply creates numerous and costly avenues of enforcement and litigation without providing any real material benefit to employees. Retailers who are subject to predictability penalties would have to engage in onerous recordkeeping which entails the documentation of initial posting of schedules, all subsequent changes to that schedule, details explaining the reason for those schedule changes, and employee consent to work those hours just to name a few. Even for a small retailer, this level of specificity necessary to comply with predictability pay requirements is impossible to do, especially in addition to all their existing responsibilities to keep business operations running. As a result, many retailers in San Francisco have to be less flexible rather than risk the enforcement and litigation. Extending the right to decline for all schedule changes will help maintain scheduling flexibility for employees and reinforces the law's protection of their freedom to decline without retaliation.

Additional Hours for Part-Timers

Retailers generally have a system in place to communicate the availability of additional hours. The draft ordinance requires employers to offer additional hours to existing employees prior to hiring new employees. Our members support the upward mobility of their employees. Rather than engage in a costly and time-consuming hiring and training process, retailers find it beneficial and cost neutral for business operations if existing employees are retained and elevated. Still, these provisions pose challenges when the

needs of the business call for a higher volume of employees to manage high volumes of consumer traffic. This also poses challenges during seasonal hiring or for transition programs for high-risk youth.

We certainly recognize the modified approach the draft ordinance takes with offering flexibility in how additional hours may be offered and the clarification for ensuring additional hours offered are for the appropriate employee classifications.

Our members are concerned with the complicated process proposed in the ordinance to ensure the additional hours are accepted or declined. Not only are there two different and confusing timeframes to be considered when additional hours are offered (hours expected to last more than 2 weeks, an employee has 72 hours to accept or decline; hours lasting 2 weeks or less, an employee has 24 hours to accept or decline), but it is incumbent on employers to receive an affirmative decision on the additional hours every time they're made available and to maintain the relevant documentation. This is an act in futility. If the additional hours are already made available, why is it necessary to engage in this tedious task?

Fair Workweek Certification Program

During the August 16 hearing, the Council discussed prospects of including a certification program by which businesses who meet the requirements of such a program would be considered as satisfying an alternative means of compliance with the ordinance. We fully support this program and urge the City Council to include it in any actions taken moving forward. The staff report outlines a stakeholder process to develop the guidelines of such a program subject to the input of the Economic Development Advisory Committee and final approval by this body. Our members would be committed to engage in this process. We have extensive experience with different scheduling policies and can inform the development of this program to ensure best practices are considered. Such a program must be consistent with the City's goals that strive to provide a healthy work/life balance for employees. We understand this program to incorporate best scheduling practices along with other employee related benefits that are consistent with the City's goal.

The staff report has also identified the ordinance to be resource-intensive since enforcement of such a detail-oriented ordinance will be exceedingly complex. In addition, the ordinance seeks to regulate a business operation that isn't typically regulated by municipalities. The implementation of a certification program could alleviate the financial burden such an ordinance presents and allow funds to be redirected to the City's other competing needs. Implementing this program will also help identify operations within Emeryville that have scheduling inefficiencies and set a standard for those to work towards.

Overly restrictive scheduling policies have many unintended consequences and limited flexibility, access to jobs, and work hours that so many Californians rely upon. We would urge the City Council to consider alternatives and partner with businesses in Emeryville to develop solutions encouraging best scheduling practices. Thank you for your consideration of our position and comments.

The California Retailers Association is the only statewide trade association representing all segments of the retail industry including general merchandise, department stores, mass merchandisers, supermarkets, fast food restaurants, chain drug and convenience stores, as well as specialty retailers such as auto, book and home improvement 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 2,776,000 people – nearly one fifth of California's total employment.

If you have any questions, please feel free to contact me at 916-443-1975 or amanetti@calretailers.com.

Sincerely,

A handwritten signature in black ink, appearing to read 'A Manetti', with a stylized flourish at the end.

Angie Manetti
Director, Government Affairs

cc: Sheri Hartz, City Clerk
Chadrick Smalley, Economic and Housing Development Manager, Emeryville