

**September 9, 2016**

To: Mayor Dianne Martinez and Emeryville Councilmembers  
Cc: City Manager Carolyn Lehr, City Attorney Michael Guina, Economic Development and Housing Manager Chad Smalley  
From: Jennifer Lin, EBASE; Anya Svanoie, ACCE; Rachel Deutsch, Center for Popular Democracy  
Re: **Fair Workweek in Emeryville- Proposed Policy Improvements**

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Thank you for providing direction on components of a strong Fair Workweek policy in Emeryville at the August 16 study session. We especially appreciate the recognition of important issues to low-wage workers in Emeryville, including:

- **Who's covered under the policy:** Fast food and Retail workers will be included. The Council still needs to decide whether the threshold is:
  - Companies with < or = 12 locations globally and 16 or more employees in Emeryville, OR
  - > 55 employees globally for retail and > 20 employees within Emeryville for fast food. Franchises would be included if the brand (not the particular franchisee) meets the above standard.
- **Policy components:** Include Right to Request, Right to Decline Clopening Shifts, 2 Weeks Advance Notice of Schedules, some limited Predictability Pay, and Offer of Hours.
- **Predictability pay exceptions:** The exceptions in 5-39.04(c)1)-(3) will be included, but exception (c)(4) (unplanned absences) will not.
- **Certification of exemplary employers:** The city will consider developing programs to incentivize companies to adopt exemplary practices, but will not exempt these businesses from the regulation currently being drafted.

**Fix Predictability Pay and Clopening Protections:**

- **Right to decline alone is not sufficient to protect workers—it must be paired with predictability pay and accountability to a set schedule.** Managers have enormous power over their employees' economic security, so workers feel compelled to agree to schedule changes that may make their lives difficult, rather than risk having their hours cut in the future or receiving less favorable schedules. Financial incentives are needed to encourage employers to plan ahead and get the schedule right the first time. Restricting predictability pay to only changes with less than 24 hours is a huge step backward from other cities. (Please see policy grid for comparison.)
- Giving workers the right to decline *added* hours but allowing the employer to unilaterally cut hours, with predictability pay, strikes the right balance. Allowing workers to veto other kinds of changes would actually be harder on employers than requiring predictability pay.

- **Cloping protections** must include compensation for workers who agree to work clopenings. (E.g., for a shift starting at 6 am after the employee worked till 10 pm the previous evening, the worker would be paid time-and-a-half from 6 am to 9 am, then revert to straight time).
  - Workers being coerced to “volunteer” for these unhealthy shifts – and if they do work these shifts they should be compensated.
  - Compensation was omitted from staff report – oversight that needs to be fixed.
  - Seattle is voting on 10 hours rest between shifts, with right to decline *and* compensation.
  
- Intend to include building services contractors pending more information from city staff.

**Use language from Simplified Model Ordinance or Seattle Secure Scheduling Bill**

- San Francisco was the first attempt to regulate schedules and the implementation and rulemaking process has revealed several problems and ambiguities in the language. The model policy and the Seattle bill address those shortcomings. For example:
  - Restricting predictability pay to changes that are “required” by employment means examining whether an employee’s agreement to a changed shift is truly voluntary or coerced, which has been a challenge to implement in San Francisco. Will essentially mean that no one receives predictability pay.
  - Access to hours language means employees are only eligible up to 35 hours, when it is just as cost-effective for the employer to offer them hours up to the overtime limit. That extra 5 hours can make a significant difference for retail and fast food employees.