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December 20, 2022

Establishing County Fair Workweek Employment Standards for Retail Workers

The COVID-19 pandemic highlighted how critical retail companies and their front-line workers are in providing essential goods and services to Los Angeles County (County) residents. Nevertheless, the retail workers who we’ve deemed as “essential” during the pandemic are struggling to make ends meet, predict their income, and care for their family members. Historically, retail jobs are known to pay low wages and set unpredictable hours and work week schedules with employees having little control. The industry’s wages and working conditions have not improved much since the pandemic began and retail workers continue to face significant financial stress and negative impacts on their health and wellbeing.¹

The retail industry employs about a half a million workers in the County. More than half of these workers are paid low wages and work part time.² Importantly, and contrary to popular belief, most retail workers are not high school students looking to make extra money or seeking seasonal employment. Instead, they are over 25 years old, have a high

¹ Zundl, Elaine, Daniel Schneider, Kristen Harknett, and Evelyn Bellew. 2022 “Still Unstable: The Persistence of Schedule Uncertainty During the Pandemic” Shift Project Research Brief. <https://shift.hks.harvard.edu/stillunstable>.
² Shadduck-Hernández, J., Waheed, S., Sharma, P., Stepick L., Nguyen, V., Macias, M., Orellana, R. (2018). Hour Crisis: Unstable Schedules in the Los Angeles Retail Sector. UCLA Labor Center.

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school diploma, and work year-round.^{3,4} Furthermore, 57% of retail workers in the County are Latinx and 52% are women.⁵ These numbers underscore that the negative impacts of the retail industry's working conditions affect women of color the most, specifically Latinas.^{6,7}

Unpredictable schedules and fluctuating weekly hours rob workers of their free time and allow employers to evade labor laws. Retail employees typically receive little or no advanced notice of their work schedules or any changes to their schedules, including when shifts are canceled. Retail managers will often ask workers to come in on their days off, and expect them to have open availability and be "on call." With this uncertainty, retail employees are dispossessed of their time outside of work and time they anticipated being paid for.⁸

Additionally, retail managers commonly assign "clopening" shifts which forces individuals to work the closing shift and return the next morning to work an opening shift. The "clopening" shifts are only a couple of hours apart and do not provide enough time for the worker to properly rest. Retail managers also frequently schedule "split shifts" where a worker will be scheduled for two separate shifts with only a small, unpaid break in between that does not provide them enough time to go home or run errands. As a result, workers with assigned split shifts are given no choice but to spend their personal time at their workplace.⁹

Finally, retail employers have adopted technologies that have improved operations and workplace efficiencies at the expense of their workers' rights. For example, retail companies' use scheduling programs known as "just-in-time" or "scheduling to demand," which are designed to precisely adjust worker hours daily to reduce staffing costs and meet payroll targets. With a large reserve of available workers on standby to draw from,

³ Anderson, D. Augustus and Lynda Laughlin (2020). Retail Workers: 2018 American Community Survey Reports.

⁴ Shadduck-Hernández, et al. (2018).

⁵ Shadduck-Hernández, et al. (2018).

⁶ Shadduck-Hernández, et al. (2018).

⁷ Sharma, Preeti, Lina Stepick, Janna Shadduck-Hernández, Saba Waheed (2021). Labor Studies Journal. Time Theft in the Los Angeles Retail Sector: The Need for New Labor Standards and a Fair Workweek. <https://www.census.gov/content/dam/Census/library/publications/2020/demo/acs-44.pdf>.

⁸ Sharma et al. (2021)

⁹ Sharma et al. (2021)

these companies can schedule hours in a way that will ensure certain workers do not qualify for overtime pay or health insurance, as mandated by State and Federal laws. Moreover, they can overwork or underwork employees to suit the companies' needs.¹⁰

Labor organizations, worker centers, and other advocacy groups have led the fight for “fair workweek” policies in many jurisdictions in California and across the nation. A fair workweek would compel retail companies to provide predictable schedules for their workers, ban last-minute schedule changes, and require time off for employee emergencies. As a result of their advocacy, San Francisco County passed a set of ordinances known as the Retail Workers Bill of Rights in 2015, which established the first set of retail worker protections in the United States.

In response to similar advocacy efforts, Seattle, New York, Philadelphia, and Chicago have implemented their own fair workweek laws between 2016 and 2020. In November 2022, the City of Los Angeles adopted a fair workweek ordinance, which will require retail companies with 300 or more employees globally to: provide workers with advanced notice of their schedule, a right to rest between shifts, and a good faith estimate of weekly work hours at time of hire.

Oregon is the only state that has implemented fair workweek laws statewide. A recently published study found that the state’s “weekly wages in the industries covered by Oregon’s fair workweek law grew faster on average than states without these protections, while improving employment stability and reducing employee turnover.”¹¹ Importantly, the percentage of workers who were underemployed decreased at a faster rate compared to other states.¹² The National Bureau of Economic Research published working papers that found similar positive effects in Emeryville, which passed their fair workweek law in 2017. In addition to increased stability, the study found that workers are showing positive health impacts, namely improved sleep quality. Significantly, the study found that fair workweek policies have “no effect on total hours worked per week.”¹³

¹⁰ Sharma et al. (2021)

¹¹ The Illinois Update. (2022). Laws Shown to Boost Wages and Job Quality in Essential and Frontline Industries. <https://illinoisupdate.com/2022/02/14/study-fair-workweek-laws-shown-to-boost-wages-and-job-quality-in-essential-and-frontline-industries/>.

¹² The Illinois Update. (2022).

¹³ Oltmans Ananat, Elizabeth, Anna Gassman-Pines, and John Fitz-Henley II (2022). New research shows Fair

The County has taken important steps over the last decade to protect workers. In 2015, the County passed a minimum wage ordinance and created the Wage Enforcement Program within the Department of Consumer and Business Affairs (DCBA) to ensure a fair workplace and enforce against wage theft. In 2020, the County Board of Supervisors (Board) passed an ordinance that prevents retaliation against workers who report public health violations and created public health councils to facilitate peer-to-peer education within workplaces to support proactive identification of violations and monitor employer compliance. Additionally, the Board passed the Temporary Hero Pay Ordinance that gave retail workers additional wages due to COVID-19 for about four months. We recognized then that retail workers are critical to our economy and as such, they should be compensated fairly and protected, but these ordinances are simply not enough.

In November 2021, the Board adopted a motion to establish an Office of Labor Equity (OLE) within DCBA that would consolidate and expand its worker protection and enforcement functions while building partnerships between organized labor, workers, community-based worker advocacy organizations, and employers. Since the establishment of the OLE, DCBA has advanced the strategic enforcement of key worker protections, including the County's Minimum Wage, Temporary Hero Pay, Prevention of Human Trafficking, Employee Paid Leave for Expanded Vaccine Access, and Preventing Retaliation for Reporting Public Health Violations ordinances.

If we want to continue to meaningfully support our retail workers, the County must pass fair workweek protections that afford retail workers proper time off and control over their schedules, and compensation for when they don't have either. We need fair workweek protections to compel companies to convert part time workers to full time workers, especially if they are seeking more hours to meet the cost of living.

WE THEREFORE MOVE THAT THE BOARD OF SUPERVISORS:

1. Direct the Director of the Department of Consumer and Business Affairs (DCBA) through its Office of Labor Equity, in collaboration with the Director of

the Department of Economic Opportunity (DEO), and County Counsel, to report back in writing in 120 days with:

- a. A summary of Los Angeles County's current retail worker and industry landscape;
 - b. An analysis of comparable local jurisdictions' Fair Workweek policies' outcomes and lessons learned;
 - c. An analysis of other worker groups or industries that could also benefit from the adoption of fair workweek policies;
 - d. Additional learnings from engagement of key relevant stakeholders such as employers, workers, labor, economic development and community-based organizations.
2. Direct County Counsel, with support from the Directors of DEO and DCBA to return to the Board in six months with a Fair Workweek ordinance for adoption that would require all retail businesses in the unincorporated areas of Los Angeles County with 300 or more employees globally to:
- a. Provide employees with 14 days' notice of their work schedule;
 - b. Provide employees with the right to rest between multiple 10-hour shifts;
 - c. Provide employees with a good faith estimate of weekly work hours at time of hire;
 - d. Provide employees with a good faith estimate of potential opportunities for full-time work at time of hire;
 - e. Provide employees with a good faith estimate of predictability of pay at time of hire;
 - f. Provide employees with the right to request schedule changes and ability to decline hours before and after schedule posting;
 - g. Ensure that additional work hours are offered to existing covered employees before hiring new workers;
 - h. Provide employees with predictability pay compensation for last-minute scheduling changes, and

This ordinance should also include anti-retaliation protections for employees

exercising their rights under the ordinance and allow for the County to impose enforcement mechanisms including restitution and penalties payable to the aggrieved employee.

3. Direct the Chief Executive Officer, in consultation with County Counsel, and the Directors of DEO and DCBA to report back to the Board during the FY 2023-24 Final Changes budget phase with a cost estimate and a budget recommendation to implement the proposed Fair Workweek ordinance. This will allow recommendations to be made within the context of the overall budget and numerous funding priorities and requests.

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